



**USHA VATS & ASSOCIATS**

[www.ushavatsassociates.in](http://www.ushavatsassociates.in)

**Comprehensive  
Commentary on**

# **SECTION 10**

## **CPC – STAY OF SUIT**

Prepared by

**Adv Usha Vats & Adv Manoj Parashar**

# 1. Introduction

Civil litigation often involves multiple proceedings between the same parties over the same issues. If courts allowed parallel trials of identical issues, the result would be conflicting judgments, wastage of judicial time, harassment to parties, and mockery of justice.

To prevent this, the Code of Civil Procedure, 1908 (CPC) introduces certain checks. One such safeguard is Section 10 CPC – Stay of Suit.

The doctrine underlying Section 10 is based on the principle of “Res Sub Judice” (Latin: “a matter under judicial consideration should not be agitated again”). It prevents courts from proceeding with a trial of a suit where the matter is already pending before another court of competent jurisdiction.

Thus, Section 10 is not about barring the filing of a subsequent suit (plaint can still be filed), but it bars *trial* of such suit until the previously instituted matter is decided.

The aim is judicial discipline, consistency of decisions, and avoidance of multiplicity of litigation.

## 2. Text of Section 10 CPC

*“No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.”*

### **Key Expressions:**

- “No Court shall proceed with the trial” – mandatory bar, though limited.
- “Matter in issue is directly and substantially in issue” – not incidental or collateral, but the crux of the matter.
- “Previously instituted suit” – first suit must be pending when the second is filed.
- “Same parties or parties under whom they claim” – includes successors/representatives.

- “Same title” – parties must be litigating under the same capacity (e.g., as owner, as heir, etc.).

### **3. Conditions for Application of Section 10**

**For Section 10 to apply, following must be satisfied:**

1. Two suits must be instituted – one earlier, one later.
2. Matter in issue in both must be directly and substantially the same.
3. Parties must be the same (or claiming under them).
4. Both suits must be pending before courts competent to try.
5. Earlier suit must be pending at the time of institution of later suit.
6. Relief claimed must be such that decision in earlier suit would operate as *res judicata* in the later.

If all these are satisfied, the later suit must be stayed until disposal of the earlier one.

### **4. Scope and Nature**

- Mandatory or Discretionary?

The language “No Court shall proceed with the trial” indicates a mandatory bar. However, courts have clarified it applies only to *trial* (recording of evidence, adjudication), not to filing of plaint, issuing of summons, or interim orders.

- Stage of Stay

Stay can be ordered any time before commencement of trial.

- Effect

It does not dismiss the second suit but merely suspends its trial.

## 5. Difference between Section 10 and Section 11

Aspect	Section 10 – Stay	Section 11 – Res Judicata
Stage	During pendency	After final decision
Object	Prevents parallel trial	Prevents re-litigation
Effect	Second suit is stayed	Second suit is barred
Nature	Procedural	Substantive

**Thus, Section 10 is “preventive” while Section 11 is “curative.”**

---

## **6. Illustrations & Practical Examples**

### **Example 1:**

- Suit A filed in Delhi Court: “X seeks declaration of ownership over property.”
- Later, Suit B filed in Mumbai Court: “Y seeks declaration over same property.”
  - Since both involve same property and same issue of ownership, Mumbai suit must be stayed.

### **Example 2:**

- Suit A: “Recovery of loan amount ₹5 lakh.”
- Suit B: “Declaration that loan agreement is void.”
  - Decision in Suit B will directly affect Suit A. Hence, later suit stayed.

### **Example 3:**

- Suit A: Dispute over House 1.
- Suit B: Dispute over House 2.
  - Section 10 won't apply – matters are not the same.

## 7. Important Judgments

(i) Indian Bank v. Maharashtra State Cooperative Marketing Federation (1998) 5 SCC 69

- SC held Section 10 applies only when the matter in issue is *directly and substantially* same, not when it is merely incidental.

(ii) Aspen (India) Pharma v. Collector of Central Excise (2003 SC)

- Stay applies only to trial proceedings, not to interlocutory matters like injunctions.

(iii) Pukhraj D. Jain v. G. Gopalakrishna (2004) 7 SCC 251

- Section 10 is mandatory if conditions are satisfied.

(iv) National Institute of Mental Health v. C. Parameshwara (2005) 2 SCC 256

- Object is to prevent two parallel trials, but not to prevent passing of interim orders in subsequent suit.

(v) *Satyendra Kumar v. Raj Nath Dubey* (2021 SC)

- Reaffirmed that Section 10 does not bar passing of interim orders in later suit.

(vi) *Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal* (1962 AIR SC 527)

- Section 10 not attracted when the issues are different even if parties are same.

(vii) *Vishnu Dutt Sharma v. Daya Sapra* (2009) 13 SCC 729

- Held that object is to avoid conflicting judgments.

(viii) *Bhagwat Singh v. Rajaram* (AIR 2007 MP 1)

- Even if second suit is filed first in time but numbered later, Section 10 will apply to the one instituted earlier.

## **8. Exceptions – When Section 10 does not apply**

- Where earlier suit is pending in a foreign court not covered under Section 10.
- Where issues are different (though parties may be same).
- Where one suit is for injunction and another for damages (different reliefs).
- Where one is criminal proceeding and other is civil.
- Where summary suits under Order 37 CPC are filed (summary procedure prevails).

## **9. Stay of Suits vs Stay of Proceedings**

- Section 10 deals with stay of trial of suits.
- Courts have inherent power under Sec. 151 CPC to stay other kinds of proceedings for justice.

Example: If criminal case is pending on fraud, civil suit on same issue may be stayed under inherent powers.

## **10. Comparative Position**

In English law, doctrine of *lis alibi pendens* applies – courts may stay a suit if another is pending in another jurisdiction.

Indian Section 10 is a statutory embodiment, but narrower.

## **11. Critical Analysis**

- Section 10 is beneficial but sometimes misused to delay proceedings.
- Modern trend: Courts prefer not to mechanically stay suits unless identity of issues is clear.
- Need for amendments to expand Section 10 to cover tribunals and arbitration? (Currently limited).

## **12. Conclusion**

Section 10 CPC embodies the principle of judicial discipline and avoidance of multiplicity of litigation.

It ensures courts do not conduct parallel trials of identical disputes, thereby preventing inconsistent decisions.

Courts have consistently held its application is mandatory once conditions are satisfied, but at the same time, it does not bar filing of suits or granting of interim relief.