

THE DOCTRINE OF ESTOPPEL AS A RULE OF EVIDENCE: AN OVERVIEW

Yuvraj Rathore⁸¹³ & Shaurya Singh Rathore⁸¹⁴

The law for estoppel or the rule of exclusion of certain evidence under certain circumstances, like between tenant and landlord, licensee of person in possession and licensor (s. 116), or as between acceptor and drawer of a bill of exchange, as between Bailee and bailor and licensor and license (s. 117). Estoppel is a procedure of proof.⁸¹⁵

Section 115 of evidence act reads:

*“When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing”.*⁸¹⁶

Illustration: *“A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it; The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title”.*⁸¹⁷

The doctrine embodied under this section is not a rule of equity, but is a rule of evidence formulated and applied in courts of law.⁸¹⁸

In *Pickard v. Sears*, the mortgagee of the machinery permitted it to remain in the possession of the mortgagor, against whom a judgment was executed. The machinery was seized in execution, but although the mortgagee spoke to the judgment creditors attorney he foolishly made no reference to the fact that machinery in which he had an interest had been seized to pay another man’s debt, nor did he make any claim to the machinery for some time. When he eventually did so, it was held that he might be estopped from denying that the machinery was the debtor’s, as his conduct amounted to a willful representation to that effect.⁸¹⁹

Estoppel is based on the maxim, *allegans contraria non est audiendus* (a person alleging contradictory facts should not be heard) and is that kind of *proesumptio juris et de jure*, where the fact presumed is taken to be true,

⁸¹³ 3rd Year B.A. LL.B. (Hons.) Student, Gujarat National Law University, Gandhinagar

⁸¹⁴ 3rd Year B.A. LL.B. (Hons.) Student, Gujarat National Law University, Gandhinagar

⁸¹⁵ M. MORIR, TEXTBOOK ON THE LAW OF EVIDENCE 370 (2011)

⁸¹⁶ Section 115, INDIAN EVIDENCE ACT 1872.

⁸¹⁷ *Id.*

⁸¹⁸ M. MORIR, TEXTBOOK ON THE LAW OF EVIDENCE 373 (2011)

⁸¹⁹ *Pickard v. Sears*, (1837) 6 Ad & EL 469.

not as against all the world, but as against a particular party, and that only by reason of some act done, it is in truth a kind of *argumentum ad hominern*. Hence it appears that estoppels' must not be understood as synonymous with "conclusive evidences"—the former being conclusions drawn by law against parties from particular facts, while by the latter is meant some piece or mass of evidence, sufficiently strong to generate conviction in the mind of a tribunal, or rendered conclusive on a party, either by common or statute law.⁸²⁰

Section 116 reads - Estoppel of tenant; and of licensee of person in possession:

No tenant of immovable property or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the license of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such license was given.

The doctrine is generally recognized that a tenant is estopped, while the tenancy continues, to deny the title of his landlord.⁸²¹

Section 117 - Estoppel of acceptor of bill of exchange, Bailee or licensee:

No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such bill or to endorse it; nor shall any Bailee or licensee be permitted to deny that his bailor or licensor had, at the time with the bailment or licence commenced, authority to make such bailment or grant such licence.

Explanation 1.-The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn.

Explanation 2.-If a Bailee delivers the goods bailed to a person other than the bailor, the may prove that such person had a right to them as against the bailor.

As per the stand taken by Supreme Court in the case of *Mohan v. State*⁸²², the rule of issue estoppel does not prohibit that evidence given at one trial against the accused cannot be given in another trial for another offence.⁸²³

Thus where the acquittal order of a Magistrate on a minor offence was set aside and the accused committed for trial on a major offence, the principle of issue estoppel will not apply.⁸²⁴

SCOPE OF DOCTRINE OF ESTOPPEL

⁸²⁰ M. MORIR, TEXTBOOK ON THE LAW OF EVIDENCE 373 (2011).

⁸²¹ *Schwartz v. Mahoney*, (1893) 97 Cal. 131.

⁸²² *Mohan v. State*, AIR 1968 SC 1281.

⁸²³ *Id.*

⁸²⁴ *Id.*

Appearing initially as a negative aspect in the field of evidence, the principle has extended its scope.⁸²⁵ Estoppel by deed can be described as "estoppel by matter in writing" which rests on the principle that written evidence is more conclusive than oral evidence.⁸²⁶ Estoppel by deed is applicable in the court of law so as to cajole a party from taking an opposite stand. In estoppel by deed, it is the written document that is always given reliance.

As per the principle recognized in *The Doctrine of Res Judicata*⁸²⁷-

“Where one person (representor) has made a representation to another person (representee) by acts or by conduct or by silence or by any action, with the intention and with the result of inducing the representee on the faith of such representation to alter his position to his detriment the representor in any litigation which may afterwards take place between him and the representee, is estopped as against the representee from making or attempting to establish by evidence any averment substantially at variance with his former representation, if the representee at the proper time and in the proper manner objects thereto.”

Ever since the principle of estoppel has been expounded and applied in judicial proceedings there has been a conflict of views as to whether estoppel is a rule of evidence or a rule of substantive law.⁸²⁸

The principle of estoppel is recognized in India as a rule of evidence incorporated under the purview of Section 115 of The Indian Evidence Act, 1872. The section reads as follows:

“When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe such a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.”

In the case of *R.S. Madanappa and ors. v.. Chandramma and Anr*⁸²⁹, the court made the following observation with regards to the principle of estoppel concerning Section 115 of the Indian Evidence Act, 1872-

“We doubt whether the court while determining whether the conduct of a particular party amounts to an estoppel, could travel beyond the provisions of Section 115 of the Evidence Act.”

The court denied to accept the contention that the law of estoppel by representation is not confined to the provisions of Section 115 of the Evidence Act.

⁸²⁵ <http://dyuthi.cusat.ac.in/xmlui/bitstream/handle/purl/45/Dyuthi-T0063.pdf?sequence=4>

⁸²⁶ *Id.*

⁸²⁷ SPENCER-BOWER AND TURNER, ESTOPPEL BY REPRESENTATION 5 (2003).

⁸²⁸ *Id.*

⁸²⁹ *R.S. Madanappa And Ors v. Chandramma And Anr.*, 1965 AIR 1812.

In the landmark judgement of *Ganges Mfg. Co. v. Sourujmull*⁸³⁰, the appellants in this case contended that Sections from 115 to 117 as given in Chapter VIII of the Indian Evidence Act, 1872 lay down the only rules of estoppel which are now implemented under the force of law in the then existing India under the British rule. They further contended that by virtue of Section of the aforementioned Act, all rules and doctrines of the Evidence Law shall be repealed except those that are in the Act itself. The court held the following opinion-

“The Courts here would then be debarred from entertaining any questions in the nature of estoppel which did not come within the scope of Sections 115 to 117, however important those questions might be to the due administration of the law.”

They held that the argument becomes erroneous assumption that all rules of estoppel are also rules of evidence. But still, the Court recognized the principle of estoppel being a part of the Law of Evidence, by stating-

“Where a man has made a representation to another of a particular fact or state of circumstances, and has thereby wilfully induced that other to act upon that representation and to alter his own previous position, he is estopped as against that person from proving that the fact or state of circumstances was not true. In such a case the rule of estoppel becomes so far a rule of evidence, that evidence is not admissible to disprove the fact or state of circumstances which was represented to exist.”

NATURE OF ESTOPPEL IN INDIA

The precise and exact nature of an estoppel has lead different opinions. An estoppel has at least three aspects.

(1) As a Rule of Evidence

There is high authority for the view that estoppel is only a rule of evidence.⁸³¹ Estoppel has some similarity to an irrefutable presumption of law, and has been so treated for one of its effects is to prevent the rebuttal of facts alleged by the other party. But an estoppel has two characteristics of evidence to distinguish it from such a presumption which is a rule of substantive law. An estoppel may be waived by the party who would otherwise benefit by it; and frequently operates only between the parties to an action.⁸³²

(2) As a Matter of Pleading

As per the jurist Stephen fitzjames, estoppels belong rather to the law of pleading than to that of evidence.⁸³³ Subject to minor exceptions, a party who proposes to rely on an estoppel must raise this point and state the relevant facts in his pleading. This requirement involves an exception to the rule that evidence should not be pleaded, but

⁸³⁰ *Ganges Mfg. Co. v. Sourujmull*, (1880) ILR 5 Cal 669.

⁸³¹ J. Per Bowen in *Low v. Bouverie*, (1891) 3Ch 82 (105) CA.

⁸³² *Id.*

⁸³³ STEPHEN JAMES FITZJAMES, A DIGEST OF THE LAW OF EVIDENCE 200 (2008).

it does not show that estoppel is not a rule of evidence. Failure to plead an estoppel may amount to a waiver, and thus may result in making admissible facts which would otherwise be excluded.

(3) As Substantive Law

The doctrine of estoppel belongs rather to substantive than to adjective law.⁸³⁴ Yet it has been shown that estoppels are not on the same footing as the rules of Substantive law embodied in irrefutable presumptions, and estoppels will not generally found a cause of action at common law⁸³⁵, for they involve no claim. However, it is said that they may support claims to equitable relief and they may amount to a defense when they prevent a plaintiff proving some facts, essential to his case. Accordingly, estoppels have some characteristics of substantive law.⁸³⁶

GENERAL CONDITIONS OF ESTOPPEL

1. Estoppels must be reciprocal or mutual

This statement seems to mean that an estoppel must bind both parties to the litigation.

2. Estoppels cannot circumvent the Law⁸³⁷

Hence the contractual incapacity of a minor cannot be evaded by any estoppel against asserting his Infancy, even though he has obtained a loan by a false representation that he was an adult.⁸³⁸ And a tenant, who fails to raise a defense that his rent is in excess Of the standard rent permitted by statute, is not estopped from making a subsequent application to determine the lawful rent.⁸³⁹

3. Estoppels must be certain

The statement that an estoppel must be clear, precise or unambiguous primarily refers to the representation on which an estoppel by conduct may be founded.⁸⁴⁰

4. Conflicting Estoppels Cancel each Other

The classical example is Prof. Coke's statement that "estoppel against estoppel both put the matter at large".⁸⁴¹

5. Fulfilling Doctrine of Estoppel

⁸³⁴ STEPHEN JAMES FITZJAMES, A DIGEST OF THE LAW OF EVIDENCE 210 (2008).

⁸³⁵ *Low v. Boueerie*, (1891) 3 82 (105) CA.

⁸³⁶ *Id.* para 52.

⁸³⁷ *Bradshaw v. M'Mullan*, (1920) 2 Ir R 412 (425, 426) HL.

⁸³⁸ *Leslie Ltd. v. Sheill*, (1914) 3 KB 607 (616) CA.

⁸³⁹ *Griffiths v. Daview*, 1943 KB CA.

⁸⁴⁰ *Low v. Bouturie*, (1891) 3 Ch 82 (105) CA.

⁸⁴¹ W. S. HOLDSWORTH, 9 A HISTORY OF ENGLISH LAW 151 (1926).

The doctrine of promissory estoppel is an equitable doctrine and the petitioners cannot ask the Court to apply the same to compel something which is inequitable, one who seeks equity must do equity. In our society larger public must get precedence over individual interest or interest of comparatively smaller section of society.⁸⁴²

ESTOPPEL BY ITSELF DOES NOT CREATE A CAUSE OF ACTION OR TITLE

Estoppel, except as a bar to testimony, has no operation or efficacy whatsoever. Emphatically it is not a cause of action in itself; nor does it create one, though the application of this, as of any other rule of evidence in the course of litigation, may result in a total or partial establishment or disestablishment of the case made by one or other of the parties.⁸⁴³

Estoppel merely operates as a bar to the suit; it does not extinguish the right.⁸⁴⁴ Estoppel deals with questions of fact and not question of right. In other words, there is no general rule of law that a man is estopped from asserting a right which he has said that he will not. Estoppel by representation is one of those rules of evidence which are personal to the parties, and does not belong to that class of rules which relate to titles or rights against the world. As between the parties to the representation, therefore, rule of estoppel may affect or create substantive rights. It may enable a party as against another party to claim a right of property which in fact he does not possess,⁸⁴⁵ and in this sense it may more correctly be viewed as a substantive rule of law.⁸⁴⁶

Third parties are not affected by the rule at all.⁸⁴⁷ Waiver, as distinguished from estoppel, is contractual. It is an agreement to release or not to assert a right, and may, therefore, constitute a cause of action.⁸ Estoppel is different from contract in its nature and consequences.⁸⁴⁸

WHEN ESTOPPEL IS NOT ATTRACTED?

In case of *S. Sethuraman v. R. Venkataraman*⁸⁴⁹, the appellant initially submitted himself to the jurisdiction of the Joint Director of School Education (appellate authority) regarding his promotion, but later on challenged the decision of the appellate authority. In these circumstances, the Supreme Court held that the appellant could not be estopped.⁸⁵⁰

No Estoppel in Criminal Cases:

⁸⁴² EDWARD COKE, 1 THE REPORTS OF SIR EDWARD COKE 352 (1826).

⁸⁴³ SPENCER-BOWER AND TURNER, ESTOPPEL BY REPRESENTATION 16 (2003).

⁸⁴⁴ Suraj, Prasad v. Oudh Behari, 193 IA 216: 131 IC 681.

⁸⁴⁵ Mercantile Bank of India Ltd. v. Central Bank of India Ltd., 1938 PC 52; Wahidan v. Nasir Khan, 1930 A 434 (2) 436: 124 IC 183.

⁸⁴⁶ Canada & Dominion Sugar Co. Ltd. v. Canadian National Steamships Ltd., 1947 PC 40.

⁸⁴⁷ Dixon v. Hammond, (1819) 2 B & Ald 310, per Abbott, CJ.

⁸⁴⁸ Canada and Dominion Sugar Co. Ltd. v. Canada National Steamships Ltd., 1947 PC 40.

⁸⁴⁹ S. Sethuraman v. R. Venkataraman, (2007) 6 SCC 382 (392).

⁸⁵⁰ *Id.*

Estoppel is a rule of civil actions. It has no application to criminal proceedings, though in such proceedings matters which in civil actions create an estoppel are usually so cogent that it would be almost useless to setup a different story.⁸⁵¹

A petition was filed for quashing the proceedings under sections 498A and 304 of IPC and under the Dowry Prohibition Act because of an agreement between the parties. The petition was dismissed as the party to the agreement was not bound by an unlawful compromise and hence there was no question of estoppel either.⁸⁵²

Estoppel should be pleaded: Onus of proving the Plea

The rule of estoppel depends for its application on certain of fact.⁸⁵³ It should, therefore, be specifically, pleaded⁸⁵⁴ unless there is no opportunity of doing so, e.g., in cases where there are no pleadings, in which case the party relying on estoppel must raise it by an objection in other form at the earliest possible stage of the proceeding.⁸⁵⁵

Where estoppel is not specifically pleaded, a party will not permitted to rely it at a subsequent stage.⁸⁵⁶ A person is entitled to plead estoppel in his own individual character and not as a representative of his assignees.⁸⁵⁷

KINDS OF ESTOPPEL

Spencer Bower and Turner have classified estoppels into three kinds:

- (i) estoppel by matter of record;
- (ii) estoppel by matter in writing; and
- (iii) estoppel by matter in pais.⁸⁵⁸

The first two are sometimes referred to as technical estoppels as distinguished from acquitable estoppels or estoppel in pais.⁸⁵⁹ All these kinds have been discussed under Indian law in various cases⁸⁶⁰

I. Estoppel by Matter of Record or Estoppel by Res Judicata

Estoppel by record means nothing more generally than that the matter is res Judicata.⁸⁶¹ It belongs more properly to the province of the pure procedure and is so dealt with in the Indian legislation.⁸⁶² *Res judicata* is an estoppel

⁸⁵¹ E. v. Maha Ram, 19 Cr LJ 615.

⁸⁵² Madhumiri surya Narayan v. state, 2003 Cr LJ NOC 75 (Kant).

⁸⁵³ Sheo Tahal Ram v. Bmaek Shukul, 53 A 747: 1931 A 689 (693).

⁸⁵⁴ *Id.*

⁸⁵⁵ SPENCER-BOWER AND TURNER, ESTOPPEL BY REPRESENTATION 423 (2003); Jado Singh v. Bishunath LA, 1942 P 71.

⁸⁵⁶ *Id.*

⁸⁵⁷ C.K. Mehta v. Patel Narandas Haribhai, AIR 1983 (9) SC 119.

⁸⁵⁸ SPENCER-BOWER AND TURNER, ESTOPPEL BY REPRESENTATION 5 (2003).

⁸⁵⁹ Abdul Ghaffar Khanv. Ishtinq Ali, 1943 0 354; Kalyani sandaram v. Asstt. Controller of Estate Duty, Madras, AIR 1989 SC 1654.

⁸⁶⁰ SPENCER-BOWER AND TURNER, ESTOPPEL BY REPRESENTATION 7 (2003).

⁸⁶¹ Sanderhi Devrao Deshpande v. Devaji Shankar Deshpande, 1954 SC 82; Lal Khan v. Allah Ditto, PLD 1950 L 1915; Parma Nard v. Champa Lal, 1956 A 225;

⁸⁶² See sections 11-14, Civil Procedure Code; See also secs. 4044, Evidence Act, which deal with the relevancy of judgments.

by judgment.⁸⁶³ It embraces all those rules, the common characteristic of which is that final judicial decision of a tribunal of competent jurisdiction, once pronounced between parties litigant, cannot be contradicted by anyone, as against any other of such parties, in any subsequent litigation between the same parties respecting the same subject-matter.

There is a difference in the principles upon which the doctrines of *res judicata* and estoppel by representation are based. *Res judicata* in this country is founded on the principle that there should be an end to litigation as to any issue between the parties when once that issue has been directly determined between them by a Court of competent jurisdiction, and it affects not only the original parties but all others afterwards claiming under them and litigating under the same title. It bars fresh litigation at the outset. Estoppel by representation is a rule of evidence based on the principle that a man, who by his acts or statements has induced another to believe a thing to be true, should not afterwards be heard to deny the truth of that thing to the prejudice of the other who acted upon the belief so induced.⁸⁶⁴ *Res judicata* ousts the jurisdiction of the Court, while estoppel merely shuts the mouth of a party.

Estoppel does not force and effect of judgment depend on (1) nature of proceedings (2) forum on which it was pronounced mean anything more than that a person shall not be allowed to say one thing at one time and the opposite of it at another time while *res judicata* means nothing more than that a person shall not be heard to say the same thing twice over.⁸⁶⁵ Estoppel by *res judicata* extends also to matters of admission fundamental to the decision.⁸⁶⁶ A judgment by consent or default is as effective an estoppel between the parties as a judgment whereby the Court exercises its mind on a contested case.⁸⁶⁷

II. Estoppel by deed

The rule of estoppel binds the parties to the instrument and those claiming through them by deed. An estoppel by deed is a preclusion against the competent parties to a valid sealed contract and their privies, to deny its force and effect by any evidence of inferior solemnity.⁸⁶⁸ The tendency in modern times is, to treat estoppel by deed as resting upon contract and as merely a form of estoppel by representation.⁸⁶⁹ The doctrine of estoppel by deed in its technical sense cannot be said to exist in India.⁸⁷⁰ In Indian law, a representation contained in a document of however formal a character, being merely an admission, is not conclusive, and does not operate as an estoppel,

⁸⁶³ Bhagwati Prasad Sah v. Radha Kishun Seth, AIR 1950 P 354.

⁸⁶⁴ Kali Dayal v. Umesh Prasad, 65 IC 266 (268).

⁸⁶⁵ Allahbax Pindex v. Nusserwanji, 164 IC 43.

⁸⁶⁶ Gouinda Rao (in re:), AIR 1958 Mys 150.

⁸⁶⁷ Sailendra Narayan Bhanja Deo v. State, 1956 346; South American & Mexican co. (in re:), 1895 (1) Ch 37; Kinch v. Walcott, 1920 AC 482.

⁸⁶⁸ SPENCER-BOWER AND TURNER, ESTOPPEL BY REPRESENTATION 15 (2003).

⁸⁶⁹ *Id.*

⁸⁷⁰ D. Johnstone v. Go-pal Singh, 133 IC 628; Lachhman Mal v. Munshi Mahton, 1933 P 708 (2) 711.

unless the party to whom the representation was made has acted upon it and thus altered his position.⁸⁷¹ A representation contained in a formal deed is not clothed with any special sanctity in this country, except that in certain cases it excludes oral evidence to the contrary.⁸⁷²

III. Estoppel by Matters *in pais*

"Estoppel by matters *in Pais*" (also, pais) is defined by Blackstone as an "assurance transacted between two or more private persons in pais, in the country, that, is, upon the very spot to be transferred".⁸⁷³

Estoppel in pais is said to arise, firstly, from agreement or- contract; secondly independently of contract, from act or conduct of misrepresentation which has a change of position in accordance with the real or apparent intentions of the party against whom the estoppel is alleged.⁸⁷⁴ The Act deals with the subject of in pais in sections 115-117. The rules contained in sections 116 and 117 are instances of the estoppel by contract. Other cases which have been included under that designation will be found to fall within the purview of section 115, which, however, primarily appears to refer to what is known as estoppel by representation.

IV. EQUITABLE ESTOPPEL

The modern law of estoppel owes immensely to the doctrine of equity being founded on the incidents of contracts or relations analogous to contracts coupled with the representations of parties by a declaration, act, or omission. Estoppels that are not provided by statute law may, in this country, be termed equitable estoppels.⁸⁷⁵

A man may be estopped not only from giving particular evidence, but from doing acts, or relying upon any particular arguments or contention which the rules of equity conscience prevent his using as against his opponent.⁸⁷⁶

This doctrine also applies to a case where a person is given an unequivocal assurance and On the faith thereof, he acts detrimental to his interest and he then suffers an irretrievable injury in that pursuit. In such a case having made a promise, the maker thereof is precluded to resile therefrom.⁸⁷⁷

⁸⁷¹ Section 31 and 115, INDIAN EVIDENCE ACT 1872.

⁸⁷² Section 92, INDIAN EVIDENCE ACT 1872.

⁸⁷³ 2 BLACKSTONES'S COMMENTARIES 294.

⁸⁷⁴ West Punjab Government v. Akbar Ali, PLD 1952 L 430.

⁸⁷⁵ Rup Chand Ghosh v. Sarveswar Chandra, (1906) 33 Cal 915.

⁸⁷⁶ Ganges Manufacturing Co. v. Sourujmull, (1880) 5 Cal 699 (678).

⁸⁷⁷ N. Bhubaneswar Rao v. Principal, Osmania College, Hyd., AIR 1986 AP 196.

However it has been held that section 115 is not exhaustive and there may be rules of estoppel which may be applicable in India other than what is contained in that section.⁸⁷⁸

V. PROPRIETARY ESTOPPEL

A legal precedent that will prevent a party from denying the right that another party has in the first party's property. The second party will have had costs in relation to the first party's property.

Until 1986 the doctrine of proprietary estoppel was used as a way to bar litigants from asserting their strict proprietary rights. The doctrine had not been used to give effect to promises to leave property to someone in the future.⁸⁷⁹

It has developed into one of equity's sharpest instruments in its intervention in the common law and statutory regulation of land and the distribution of assets on death.⁸⁸⁰ In such a manner, there is a balance to be struck between the need to hold people for their bargains and promises.⁸⁸¹

In the case of *Cobbe v Yeoman's Row Management*⁸⁸², the essentials of proprietary estoppels were taken into consideration. The House of Lords in this case stated that Cobbe cannot make a claim of proprietary estoppel, and also negated on the aspect of acquiring an interest as regards to a constructive trust.

VI. PROMISSORY ESTOPPEL

The legal enforcement of a promise. Made by words or conduct to the promisee without the consideration of the detriment it may cause.

The doctrine of promissory estoppel does not fall within the scope of section 115 as the section talks about representations made as to existing facts whereas promissory estoppel deals with future promises.⁸⁸³

ESTOPPEL AND RES JUDICATA

Sometimes, the doctrine of "*res judicata*" is considered as a branch of law of estoppel. There is distinction between doctrine of "*res judicata*" principle of 'issue estoppel' and 'rule estoppel' under section 115 Of the Evidence Act. Doctrine Of *res judicata* creates legal embargo on hands of the court to a judicial determination of deciding the same question over again even though earlier determination may be demonstratedly erroneous. When the

⁸⁷⁸ Jaikaran Singh v. Sita Ram, AIR 1974 P 364.

⁸⁷⁹ <http://www.step.org/proprietary-estoppel-looking-both-forward-and-back-after-thorner-v-major>

⁸⁸⁰ Nick Piska, *Hopes, Expectations and Revocable Promises in Proprietary Estoppel*.

⁸⁸¹ M. Dixon, 'The Reach of Proprietary Estoppel: A Matter of Debate' [2009] Conv 85.

⁸⁸² [2008] 1 W.L.R. 1752

⁸⁸³ <http://www.legalserviceindia.com/article/1249-Promissory-Estoppel.html>

proceedings between the same parties have attained finality, they are bound by the judgment and cannot be permitted to re-agitate the same *lis*. The determination of the issue in the same set of facts in the previous *lis* between the parties would give rise to an issue of estoppel. It operates in any subsequent proceedings between the same parties.

The doctrine of *res judicata* is based on rule of procedure. However, doctrine of mere estoppel under section 115 Of the Evidence Act, there is embargo on the party to plead or prove a particular facts whereas in case of *res judicata*, the prohibition is operative against the court to deal with the same kind of issue again and again.⁸⁸⁴

ESTOPPEL AND ADMISSION

Though in both admissions and estoppels there are statements, an admission does not ripen into an estoppel unless the person to whom the representation is made believes it and acts upon such belief, whereas in the case of mere admission evidence can be given to show that the admission was wrongly made.⁸⁸⁵

Admission made in earlier suit as to the nature of property if proved valid in subsequent proceedings are binding as estoppel.⁸⁸⁶

ESTOPPEL AGAINST, OR IN FAVOR OF THE STATE

The State is entitled, along with the subjects, to a plea of estoppel.⁸⁸⁷ But the neglect or omissions of public officers as to their public duties will not work as an estoppel against the State.⁸⁸⁸ A mistaken interpretation made by Government officers of a grant by the State and their consequent mistaken acts are not binding on the State and would not create an estoppel as against the State.⁸⁸⁹ Promissory estoppel cannot be invoked to compel the Government or even a private party to do an act prohibited by law.⁸⁹⁰

The doctrine of promissory estoppel was applied by the Supreme Court to give relief to the employees to whom the State Government had held out certain promises as inducement to move into a newly created department. It was held that the employees having acted upon the -representations- could not be denied the rights and benefits promised to them by the State Government⁸⁹¹

⁸⁸⁴ Yamunabai Purushottam Deogirikar v. Mathurabhai Nilkanth Choudhari, AIR 2010 (NOC) 109 (Bom).

⁸⁸⁵ Badri v. Gulbi, AIR 1962 Pat 281.

⁸⁸⁶ Dara Singh v. Jasmir Singh, 2003 (2) RCR (Civil) 361 (P&H).

⁸⁸⁷ Assudibai v. Haribai, 1943 S 177

⁸⁸⁸ 10 RCL 32.

⁸⁸⁹ Secretary of State v. Fareedom Jijibhai Dwecha, 1934 B 434.

⁸⁹⁰ Surendra prasad v. O.N.G.C., (1986) 1 Cal LJ 107.

⁸⁹¹ Bhim Singh v. State of Haryana, AIR 1980 SC 768.

The State cannot be prevented from exercising its functions under the law must be deemed to be overruled by the Supreme Court in three member judgment in *Union of India v. Godfrey Philips*.⁸⁹² Even innocent or mistaken representation may operate as an estoppel against the party making the representation⁸⁹³ The State is not bound by the doctrine of promissory estoppel for acts of its subordinates done in violation of its direction on administrative instructions.⁸⁹⁴

CONCLUSION

Estoppel has been defined in a general way as the "preclusion of a person to assert a fact which has been admitted or determined under circumstances of solemnity, such as by matter of record or by deed, or which he has, by an act in pais, induced another to believe and act upon to his prejudice." As appears from this definition, estoppels are of three general classes: (1) estoppels by record; (2) estoppels by deed; (3) estoppels in pais, or, as they are sometimes called, equitable estoppel. The latter, and, indeed, all of these are sometimes treated under the head of conclusive' admissions. Estoppel of the first and second classes have been sufficiently treated elsewhere, and this chapter will be confined to the subject of estoppel in pais.

Estoppels have also been likened to solemn admissions and conclusive evidence. Formal admissions, conclusive evidence and estoppels have the common feature of affecting the admissibility, of evidence.

In English law, estoppel by representation of fact is a term coined by Spencer Bower.

The law relating to estoppel, as stated above, appears to be too widely stated in the following observation of the Supreme Court of India.⁸⁹⁵

"It is doubted whether the Court while determining whether the conduct of a particular person amounts to an "estoppels", could travel beyond the provisions of s. 115 of The Indian Evidence Act and rely upon what is sometimes called 'equitable estoppel'. But assuming that the law as stated by the Calcutta High Court, is correct, the point to be noted is that it was a case between private parties."

This species of estoppel is also referred to as "common law estoppel by representation" in Halsbury's Laws of England, vol 16(2), 2003 reissue.

⁸⁹² *Union of India v. Godfrey Philips*, AIR 1986 SC 806.

⁸⁹³ *Jagariban v. Ram Khilawan*, AIR 1976 MP 106.

⁸⁹⁴ *Shet Lal Sao v. State Of Bihar*, AIR 1986 pat 267 (FB).

⁸⁹⁵ *Maddnappa v. Chandramma*, A.I.R. 1965 S.C. 1812.

Spencer Bower defines estoppel by representation of fact as follows:⁸⁹⁶

“Where one person (‘the representor’) has made a representation of fact to another person (‘the representee’) in words or by acts or conduct, or (being under a duty to the representee to speak or act) by silence or inaction, with the intention (actual or presumptive) and with the result of inducing the representee on the faith of such representation to alter his position to his detriment, the representor, in any litigation which may afterwards take place between him and the representee, is estopped, as against the representee, from making, or attempting to establish by evidence, any averment substantially at variance with his former representation, if the representee at the proper time, and in proper manner, objects thereto.”

A second definition comes from Sean Wilken and Theresa Villiers:⁸⁹⁷

“An estoppel by representation [of fact] will arise between A and B if the following elements are made out. First, A makes a false representation of fact to B or to a group of which B was a member. [It is not necessary to demonstrate A knew that the representation was untrue.] Second, in making the representation, A intended or [in the alternatively,] knew that it was likely to be acted upon. Third, B, believing the representation, acts to its detriment in reliance on the representation. [It must have been reasonable to rely on the representation.] Fourth, A subsequently seeks to deny the truth of the representation. Fifth, no defence to the estoppel can be raised by A.

'Estoppels' in the sense in which the term is used in English legal phraseology, are matter of infinite variety, and are by no means confined to subjects which are dealt with in Chapter VIII of The Indian Evidence Act. A man may be estopped not only from giving particular evidence, but from doing acts, or relying upon any particular arguments or contention which the rules of equity and good conscience prevent him from using as against his opponent.

A representation can be made by words or conduct. Although the representation must be clear and unambiguous, a representation can be inferred from silence where there is a duty to speak or from negligence where a duty of care has arisen. Under English law, estoppel by representation of fact usually acts as a defense, though it may act in support of a cause of action or counterclaim.

Estoppel was once regarded as a rule or branch of the law of evidence, but the better opinion, and that which now prevails, is that it is more properly a branch of the substantive law.⁸⁹⁸ Although in some respects it might be

⁸⁹⁶ SPENCER BOWER, THE LAW RELATING TO ESTOPPEL BY REPRESENTATION 122 (2004).

⁸⁹⁷ SEAN WILKEN & THERESA VILLIERS, THE LAW OF WAIVER, VARIATION AND ESTOPPEL 150 (2002.).

⁸⁹⁸ Martin v. Maine Cent. R. Co., 83 Me. 104, 21 Atl. 740

regarded as within the field of procedure. In any event, however, it is customary to treat the subject to some extent in works on evidence, and it is clearly within the scope of our plan to treat it so far as questions of evidence are concerned when estoppel is involved as a particular issue in a case.



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