

Overview of the Code of Civil Procedure

Original Code was legislated in 1908. The Amendment Act 1976 extensively amended it.

Interpretation clause-“Decree” is defined as the formal expression of an adjudication which, so far as regards Court expressing it, confusingly determines the rights of the parties with regard to all any of the matter in controversy in the suit and maybe either preliminary or final. It includes rejection of the plaint and order under section 144 (restitution). It does not include orders from each appeal lies as an order and order of dismissal for default. Decree maybe preliminary or final. When further proceeding is required to be taken before the suit can be completely disposal of after the decree, such a decree is preliminary. The decree may be partly preliminary and final. The definition makes it clear that there may be more than one decree in a suit.

“Decree holder” is defined as a person holding decree or executable order. “Judgment” means the statement given by the Judge of the grounds of a decree or order. “Legal representative” means a person who in law represents the estate of deceased and includes any person who into medals with the estate of the deceased. “Mesne profits” of a property means those profits which the person encounter possession of such property actually received or might wait ordinarily gems have received there from, together with interest on such profits, but shall not include profits made by the person in wrongful possession.

Suits in general

Part 1 of the Code of Civil Procedure in its titled as *suits in general*. It include section 9 to section 35-B. Section 9 is regarding jurisdiction of a Civil Court. By this section universal jurisdiction is given to the Civil Court to try all suits of Civil nature except cognizance thereof is 6 expressly or impliedly barred by any statute. Implied bar is required to be understood from the scheme of the special Act.

Section 9-A is introduced for our State. It postpones inquiry of the application for interim relief until objection to the jurisdiction taken by the party is decided. Section 10 provides for stay to the trial of the suit in which the matter in issue is also direct and substantially in issue in a previously instituted suit between the same parties pending in the same or other court in India having jurisdiction to grant the relief claimed. The object of the section is to discourage the multiplicity of the suit. Principle of Res Judicata incorporated in section 11 bars the jurisdiction of the court to try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties or between parties under home they are any of them claim, litigating the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and final decided by such court.first two explanations define former suit and competent court. Third explanation disclose expectation of the legislature that the controversy earlier decided must be foreground in the suit. Explanation 4 incorporates principle of constructive is Judicata. Explanation 5 provides for integration of decree. explanation 6 provides for inclusion of all persons in the arena of parties to the suit, who are interested in the right litigated in a represented suit. Expulsion 7 provide for application of this section to a execution proceedings. Explanation it provides for finality of the decree passed by the court of limited jurisdiction.

Place of suing

section 15 to 21 –these sections provide for place of suing. Th suit is required to be instituted in the court of the lowest grade competent to try it. Suits pertaining to immovable property including suit for possession, partition, mortgage, wrong to remove property and for determination of any other right to property are required to be instituted in the court within

whose local limits properties situated. However, when the relief sought regarding wrong to immovable property can be entirely obtained through defendant's personal obedience, such suit can be filed where defendant resides or immovable property is situated. When property is situated within the jurisdiction of several courts, suit can be filed in any of those courts. when there is uncertainty as to local limit of the court in which immovable property is situated, suit can be filed in any of such court. Suit for compensation for wrongs to person or movables can be filed in a court within the local limits of which wrong was committed or defendant resides or works for gain.

Other suits are required to be instituted where defendant resides or cause of action arises. In case of several defendants suit can be filed in the court in the local limits of which any of the defendant reside with the leave of the court or with consent of defendants who do not reside in the local limits of the court in which suit is instituted. Appellate Court will not entertain objection to the jurisdiction, unless the objection is taken at earliest stage and before settlement of issues, where issues are required to be framed. Section 21-A was added in 1976 to create bar to the suit to set aside the decree on the question of jurisdiction.

Sections 22 to 25 deal with transfer of suits. Discretionary power to transfer the suit is given under section 24. The section empowers district court and High Court to transfer suits or other proceedings from one court to other made any stage of the trial. Section 25 deals with powers of Supreme Court to transfer proceedings.

Section 34 is about grant of interest in a money suit. The court can grant interest on the principal amount adjudged from the date of suit till date of recovery. Three different stages are provided to determine the aspect of providing interest, Interest before filing suit, interest from date of suit to date of decree and interest from date of decree to the date of payment. proviso added by 1976 Amendment Act provides for grant of interest at bank rate in case of commercial transactions. The discretion however lies with the court.

Section 35 deals with costs. General rule is cost follow the event. The discretion however lies with court. court has to give reasons if it departs from their above rule. Compensatory costs may be imposed for filing false and vexacious claims or for raising false and vexacious defence.

Execution

Substantive provisions for execution are provided in part II from section 36 to 74. "Court which passed the decree" is the court of first instance, even if decree is passed in appeal. In case of change in territorial jurisdiction, the court which passed a decree and the court in whose jurisdiction the Territory wearing subject-matter is situated have simultaneous jurisdiction to entertain execution application. Decree may be transferred by the court passing it in following circumstances;

- 1.in the judgment debtor resides or works for gain within the local limits of transferee court,
- 2.property of the judgment debtor within the jurisdiction of court passing decree is not sufficient to satisfy decree,
- 3.immovable property directed to be sold by decree is situated outside the jurisdiction of original court,
- 4.for the reasons to be recorded court feels it necessary to transfer the execution.

In view of section 47, all questions relating to the execution, discharge or satisfaction of the decree. Purchase of the property during sale in execution and his representative is deemed to the party to the suit for this provision. All questions regarding delivery of possession of property is deemed question relating to execution.

Legal representatives of judgment debtor, who dies before satisfaction of the decree unviable to satisfy the decree to the extent of the property of the deceased which has come to the hands.

Five modes of execution are given in section 51. Execution by arrest and attention should not be ordered unless the judgment debtor is heard and the court is satisfied that the judgment debtor is purposefully avoiding execution of decree.

The provisions under section 73 of the Code of Civil Procedure introduced principle of rateable distribution. The objects of the section are as under,

- 1.to prevent unnecessary multiplicity of execution proceedings,*
- 2.to avoid the necessity of each and every decree holder two separately attach and sell the property of judgment debtor,*
- 3.to secure an equitable administration of the property by putting all the decree holders upon the same footing and making the property ratably divisible among them.*

Crucial date for determining right for rateable distribution is not the date of sale but the date when assets are received by the court. The decree holders, who applied for execution before receipt of assets by the court are only entitled for rateable distribution. Rateable distribution means equal distribution of the proceeds. Proviso (a) is in respect of property sold subject to the mortgage. In this case if the mortgagee asks for rateable distribution on the basis of the execution proceeding filed by him, he will not be entitled to share the surplus arising from such sale, because his rights as a mortgagee pass with the property as encumbrance. Proviso (b) however provides for sale of property free from mortgage with the consent of mortgagee. In such situation the mortgagee gets the same interest in the proceeds of the sale as he had in the property sold. Proviso (c) provides for application of proceeds realized by sale of immovable property for the discharge of encumbrance thereon. It provides for rateable distribution among the holders of the decrees after application of the amount, first to meet expenses of the sale, secondly in discharging the amount under decree and had in discharging the interest and principal monies due on subsequent encumbrances.

Incidental proceedings

Issuing commission to examine any person, for local investigation, to examine or adjust accounts, to make partition, to hold expert investigation, to conduct sale of the property subject to speedy and natural decay and to perform and ministerial act are preferred as incidental proceedings. Unfettered discretion is given to the court to issue commission.

Suit against government, public bodies and others.

Notice under section 80 is necessary for filing suit against government. Suits for urgent relief can be filed without notice with the leave of the court, however no interim relief in such cases can be granted without giving a chance of hearing to the government or public officer as the case may be.

Special proceedings

This part include substantive provisions regarding the suits in this is a public nuisance or breach of trust in public charities.

Supplemental proceedings

Section 94 deals with discretionary powers of the court to;

- (a) issue or novelist to secure presence of the defendant to hear him for making order against him to furnish security;
- (b) direct the defendant to produce any property belonging to him and to place it to the disposal of the court.
- (c) Grant interim injunction and in case of disobedience sent the person guilty thereof to the civil prison ad attach his property;
- (d) Appointed receiver of any property;

(e) Make such other interlocutory orders as may appear to be just and convenient.

Appeals

In view of section 96 there can be first appeal challenging every decree passed by any court exercising original jurisdiction. Appeal also lies against original decree pass ex parte. No appeal is provided against consent decree. No appeal shall lie, except on a question of law, challenging the decree of small causes court when the subject matter of the suit does not exceed Rs 3000/-. When no appeal is filed against preliminary decree, no appeal can be filed against final decree. Decree shall not be reversed, varied or remanded for error or irregularity such as non-joinder of necessary parties or causes of action. The Amendment Act of 1976 introduces similar provisions for order under section 47 of the Code of Civil Procedure.

Order under section 35-A, order to refuse institution of representative suit under section 91 or 92, order under section 95, order imposing fine or directing arrest or detention in Civil prison otherwise than in execution proceeding and any order made available by rules may be challenged by way of appeal. No appeal lies against other orders, however when the decree is challenged, any error, defect or irregularity in any order affecting the decision of the case may be set forth as a ground of appeal.

Second appeal-second appeal lies against the appellate decrees only if the High Court is satisfied that the case involves substantial question of law. If High Court comes to such conclusion, it will then, formulate that question. The respondent however will be at liberty to argue that the case does not involve such question. The court may hear the appeal on any other substantial question of law, not formulated by it, if, for reasons of record comes to conclusion that the case involves such question.

In view of the provisions under section 103 High Court may determine issues of fact, if the evidence on record is sufficient, which is not been determined by lower courts of which has been wrongly determined by lower courts.

Powers of appellate court-appellate court shall have power;

- (1) to determine a case finally;
- (2) to remand a case;
- (3) to frame issues and refer them trial court;
- (4) to take additional evidence or to require such evidence to be taken;

section 109 provides for special leave to prefer appeal before Supreme Court. It is the High Court, who has to certify that the case involves a substantial question of law of general importance and the said question needs to be decided by the Supreme Court.

Reference, Review and Revision

Reference-When the court is satisfied that and the case involves a question to the validity of the Act, ordinance or regulation necessary for the disposal of the case, and it is of the opinion that Such Act, Ordinance or Regulation is invalid or Inoperative, but has not been so declared by the High Court or by the Supreme Court, the court shall State a case setting out its opinion and reasons therefore, and refer the same for the opinion of the High Court.

Review- An aggrieved party by decree, or order may apply for review. The preconditions are, (1) the degree or order is not appellable, (2) of appeal is provided but not preferred, (3) by a decision on a reference from court of small causes. The court may make such order thereon as it thinks fit.

Revision-the High Court may call for record of any case decided by any subordinate court on the face of a it the court appears,

- (a) To have exercised a jurisdiction not vested in it by law, or
- (b) To have failed to exercise jurisdiction so vested,

(c) To have acted in the exercise of its jurisdiction illegally on with material irregularity.

In view of the provisions under section 144 when a decree or order is varied to or modified, the party and entitled to the benefits shall have to proceed to be court of original jurisdiction. the court shall have to place the parties in the position which they would have occupied but for such decree or order and for that purpose, the court may make any order including order for the refund of costs, payment of interest , competition, damages and mense profits.

In view of view of provisions under section 148, the court may, in its discretion enlarged time for doing any act prescribed by the Code. The person expecting any application in suit already instituted or about to be instituted, may lodge a caveat in respect thereof. The c caveat shall have to serve notice of the caveat by registered post acknowledgement due to the person against whom caveat is filed. On receiving the notice the applicant shall have to furnish copy of the application made by him along with all documents filed by him in support of application error the caveator's expenses to the caveator.

Inherent powers-section 151 saves inherent powers to the court to make such orders as may be necessary for the end of justice, or to prevent abuse of the process of the court. It is no well settled that the inherent powers can only be used when there is no express provision in the Code.

The court may correct the clerical or arithmetical mistakes in any decree or order at any time either of its own or on the application of any other parties. For the purpose of determining real question or issue, general powers to amend any defect or error in proceeding in suit are given to the court by section 153.

Orders and rules

the first schedule of the Code of Civil Procedure have orders and rules. Order I deals with parties to suits. Who may be joined as plaintiffs and defendants, representation of one person as plaintiffs or defendant in the representative suit, mis-joinder and non-joinder are the important subjects referred in this order. The principle of dominus-letis is incorporated in rule 10 (2). In one way it can be said that legislation tried to depart from this principle as it left to the court to allow addition of parties necessary to effectively and completely agitating upon and settle all questions in awarding the suit.

Order II is about frame of suit. Rule 1 provides that the object of order is to prevent proliferation of litigation. It requires that every controversy between the parties is decided in one and the same suit. Rule 2 carries this theme forward and provides that every suit shall include whole claim, which the plaintiff is entitled to make in respect of the cause of action. The person failing to do so is debarred from the relief regarding the claim omitted. The court may permit to sue for omitted relief.

order III is about recognised agents. Order IV is for institution of suit. Order V is for issue and service of summons. Order VI is about pleading generally. To make the pleading precise several provisions are made. Pleading is required to contain material facts and not evidence. When fraud, misrepresentation, breach of trust, wilful default or undue influence is pleaded, the party is required to give particulars, with dates and items if necessary. Condition precedent is required to be distinctly specified. Where the contents of the document are material, the effect day of shall be given, without setting out contents of whole document. For malice, fragment intention, knowledge or any other condition of mind of any person, wherever material, shall be referred as fact without setting out circumstances to infer the same. Notice also should be had reached as fact unless terms of the notice of the circumstances under which it was given are material. Whenever any contract or in relation between the person's is to be implied from series of letters of conversations, such contract or relation should be treated

as fact and letters, conversations or circumstances should be referred generally. Presumption, which the law creates in favour of a party, should not be pleaded unless the same has first been specifically denied.

Doctrine of departure in order VI rule 7 provides that no pleading shall raise any new ground of claim or no party shall plead allegation of fact inconsistent with the previous pleading except by the amendment. The pleading is required to be signed by the party and his advocate. In absence of the party or because of any other good cause, when the party is unable to sign the pleading, any authorised person can sign pleading. Pleading is required to be verified by the party or one of the parties or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case.

Order VI rule 17 gives a wide discretion to the court to allow amendment of pleading. The proposed amendment shall be necessary for determining the real question in controversy between the parties. It is now settled principle that the party should not introduce a new case or should not prejudice the other side.

Order VII is in respect of plaint. Generally it deals with a day but it was to be contained in the plaintiffs. In money suits amount of the claim should be mentioned. In more property should be described appropriately interest of the plaintiff and defendant and liability of the defendant is required to be mentioned. Grounds of exemption from limitation law are required to be set apart in the plaint.

The important features of order VII are the provisions regarding return and rejection of plaint. Rule 10-A provides that after appearance of the defendant, if the court is of the opinion that the plaint should be returned it shall inform its decision to the plaintiff before doing so. This provision means, the court has performed opinion of return of plaint after considering the defence or after hearing the defendant. After such an intimation by the court, plaintiff will have to apply regarding the options available to him under rule 10-A. In following four cases the plaint shall be rejected;

- (a) where it does not disclose the cause of action;
- (b) where claim is undervalued even after directions the plaintiff fails to pay the required court fees;
- (c) where suit is properly valued but plaint is written upon insufficiently stamped paper;
- (d) where the suit appears from the statement in the plaint to be barred by any law.

Order VIII is regarding written statement, set-off and counter-claim. The defendant shall have to produce written statement before the first hearing or within such time permitted by the court. The defendant is required to specifically plead the defences about maintainability of the suit, validity of transaction on which claim is based and all other defences, which if not described properly will take the opposite side by surprise. Denial is required to be specific. Evasive denial will not be sufficient. Rule 5 creates presumption that allegation in the plaint not specifically denied with a amount to an admission of the fact by implication. This presumption not available against a party under disability. Proviso to this rule, however, creates discretion for the court to direct the plaintiff to prove any fact so admitted otherwise than by such admission.

In view of rule 5 sub-rule 2, when the defendant did not file pleading the court pronounce judgment on the basis of facts contained in the plaint. The judge may, however, direct the plaintiff through the facts in the plaint. Similar provisions come in rule 10, which provides that the court pronounce judgment against a party failing to file written statement as required by rule 1 and rule 9. Here also discretion is left to the court to pass any other order than two pronounce judgment.

Provisions for set-off in rule 6 required the defendant and this set up in money suits. The defendant at the first hearing of the suit present written statement condemning the particulars of the date sought to be set off. The written statement shall have the effect of plaint of the a cross suit. The court has to form a final judgment in respect of original claim and of the set-off. The plaintiff has to file written statement to the set-off. In order to provide a platform to resolve all the controversies in one suit, provisions of counterclaim are introduced. The defendant can raise any right or claim in respect of the cause of action accruing to the defendant against plaintiff either before or after filing the suit but before the defendant has delivered his defence. The counterclaim has the effect of cross suit. Any sort of claim such as claiming declarations, injunctions or claiming a possession can be raised by way of counterclaim. Counterclaim is governed by the rule of plaint.

Order IX is about appearance of parties. Parties have appeared before courts either in person or by direct advocate on the day fixed in summons. The suit can be dismissed at the stage of appearance if the plaintiff fails to pay process be, court fees, Postal , charges, if any or to present copies of the plaint or concise statement today fixture for the appearance of defendant. If neither party appears when the suit is called on for hearing, the suit may be dismissed. In both these consequences either the plaintiff may bring fresh suit or seek its restoration under order IX rule 4. If the plaintiff after summons returned on some fails for one month to apply for fresh summons the court shall make order of dismissal against such defendant. In such a case the plaintiff meet bring a fresh suit.

Order X container mandatory provision of examination of the parties at pre-trial stage. Rule 1 requires hearing of the parties at the first hearing for ascertainment about admission are denial of the allegations in pleadings. The court shall have to record such admissions or denials. At the first hearing the court shall have to only examine the parties appearing in person to elucidate matter in controversy in the suit. The court may also only examine the person able to cancer at the question relating to the suit achieve above object. Substance of examination is required to be reduced in writing by the judge. Where the pleader of any party is unable to answer any material question relating to the suit, which the court is of opinion that the party whom he represents ought to answer, the court may postpone the hearing of the suit directing the party to appear in person. If such party fails to appear in person on the day so appointed by the court may either pronounce the judgment against him or make such order in relation to the suit as it thinks fit.

Provisions under order XI can be used for discovery of the facts by interrogatories, affidavit and documents. Interrogatories of the set-off questions in writing for the examination opposite parties. Interrogatories can be delivered with the permission of the court. Interrogatories may be objected on the ground of scandalous nature , irrelevant, not material and privilege. Interrogatories shall be answered by filed within ten days or such extended time by the court.

Any party me apply the court for an order directing the party to any suit to make discovery of document which are all have been in his possession of power, relating to any matter in question therein. Discovery of document can be refused if it is not necessary either for disposing fairly of the suit or for saving costs. Court may order production of document. Notice for production of document and request for inspection of documents pleaded or referred by the adverse party can be given. In case of non-compliance of order for discovery, if he's plaintiff his suit may be dismissed Andy fees defendant his defence can be struck out.

Answers or any part of the answer to the interrogatories may be used in evidence by opposite party without referring total answer.
