

# Jurisdiction of Civil Courts

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1. **Bengal, Agra & Assam Civil Courts Act, 1887 & Composition of Civil Courts:** According to Sec. 3 of the Bengal, Agra & Assam Civil Courts Act, 1887 and Sec. 2(4) of the Code of Civil Procedure, 1908, there are the following classes of Civil Courts in India. As regards the nomenclature of Civil Courts of various levels, a three Judge Bench of the Supreme Court, in the matter of **All India Judges' Association & others vs. Union of India & others, (2002) 4 SCC 247**, by partial modification of the report given by Justice K.J. Shetty, the Chairman of First National Judicial Pay Commission, has held on 21.3.2002 that it would be more appropriate for each State, taking into consideration the local requirements, to adopt appropriate nomenclatures of courts in their States. However in the State of U.P. the Civil Courts of various levels are known with the following nomenclatures:
  - (1) High Court
  - (2) Court of the District Judge
  - (3) Court of the Additional District Judges
  - (4) Court of Civil Judge (Senior Division)
  - (5) Court of Additional Civil Judges (Senior Division)
  - (6) Court of Civil Judge (Junior Division)
  - (7) Court of Addl. Civil Judges (Junior Division)
  
2. **Oudh Courts Act, 1925 (Repealed vide U.P. Act No. 2 of 1956 w.e.f. 11.1.1956):** Prior to the amendments and repeal of the provisions under Oudh Courts Act, 1925, the various levels of Civil Courts used to be governed by the provisions contained under the Bengal, Agra & Assam Civil Courts Act, 1887. With the repeal and amendments of the Oudh Courts Act, 1925 now only the Bengal, Agra & Assam Civil Courts Act, 1887 is applicable to the Civil Courts of various levels in the State of U.P.
  
- 3.1 **“Jurisdiction”:** Meaning of Jurisdiction? : Jurisdiction generally means an authority of law to entertain, hear and determine a matter. It is the power to

decide rightly or wrongly. **See: Nusli Neville Wadia Vs. Ivory Properties, (2020) 6 SCC 557 (Three- Judge Bench)**

**3.2 “District Court” & its jurisdiction (Sec. 2 (4) CPC):** “District” means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction (hereinafter called a “District Court”), and includes the local limits of the ordinary original civil jurisdiction of a High Court.

**4. Different sorts of jurisdictions of Civil Courts:** The Civil Courts have jurisdictions of the following sorts:

- (i) Local jurisdiction [Sec. 2(4) CPC]
- (ii) Pecuniary jurisdiction (Sec. 6 CPC)
- (iii) Jurisdiction over subject matter (Sec. 16 CPC)
- (iv) Special jurisdiction if conferred (Sec. 4 CPC)
- (v) Statutory bars regarding jurisdictions

**5.1. Extent of jurisdiction of Civil Court u/s. 9 CPC:** A civil court has jurisdiction u/s. 9 CPC to try all suits of civil nature unless expressly or impliedly barred. The jurisdiction of civil court u/s. 9 CPC is very expansive and the statute which excludes such jurisdiction should be strictly interpreted. See:

- (i) Sahebgouda vs. Ogeppa, (2003) 6 SCC 151
- (ii) Dhruv Green Field Ltd. vs. Hukam Singh, (2002) 6 SCC 416

**5.2. Relief not claimed in plaint not to be granted:** A relief larger than the one claimed by plaintiff in the suit cannot be granted by court. It is not open to the court to grant a relief to the plaintiff on a case for which there is no basis in the pleadings. See:

- (i) Meena Chaudhary Vs. Commissioner of Delhi Police, (2015) 2 SCC 156.
- (ii) Rajendra Tewary vs. Basudeo Prasad, 2002 (46) ALR 222 (SC)
- (iii) Om Prakash Vs. Ram Kumar, (1991) 1 SCC 441 (Para 4).
- (iv) Srinivas Ram Kumar Vs. Mahabir Prasad, AIR 1951 SC 177 (Three-Judge Bench)
- (v) M. Siddiq (Ram Janmabhumi Temple Vs. Suresh Das, (2020) 1 SCC 1 at pages 737 & 738 (Para 1228) ( Five-Judge Bench).
- (v) Venkataramana Devaru Vs. State of Mysore, AIR 1958 SC 255 ( Five-Judge Bench) ( Para 14).

**5.3. Merits of the case not to be discussed when court has no jurisdiction:** It is settled law that once court holds that it has no jurisdiction in the matter, it should not consider the merits of the matter. Kindly see: Jagraj Singh vs. Birpal Kaur, AIR 2007 SC 2083

6. **Onus on party seeking ouster of jurisdiction:** Onus lies on party seeking ouster of civil courts jurisdiction u/s. 9 CPC. See: Sahebgouda vs. Ogeppa, (2003) 6 SCC 151
7. **Test to decide jurisdiction: (A)** Exclusion of jurisdiction of civil court should not be readily inferred. The tests to be applied to decide whether or not the civil court has jurisdiction are as under:
- (i) Is legislative intention of excluding jurisdiction of civil court explicit or clear by necessary implication
  - (ii) Does the statute provide adequate remedy in case of grievance against the order made under the statute. See: State of A.P. vs. Manjeti Laxmi Kantha Rao, (2000) 3 SCC 689
- (B) Test as to whether the civil court has jurisdiction u/s. 9 CPC is of competence of the civil court to take decision. See--- Pankaj Bhargava vs. Mohinder Nath, (1991) 1 SCC 556
- (C). **Court can pass order despite caveat:** Court can pass order( issuing commission) despite caveat under Section 148-A CPC.: See: K. Sadasivan Vs Surendradas Bhanu, AIR 2021 (NOC) 168 Kerala (Full Bench).
8. **Principles governing the exclusion of jurisdiction of civil courts---** The Supreme Court has laid down following principles for determining the question of ouster of jurisdiction of civil courts---
- (1) Where the statute given a finality to the orders of the special tribunals, the civil courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.
  - (2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.  
Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.
  - (3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court

cannot go into that question on a revision or reference from the decision of the Tribunals.

- (4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.
  - (5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected a suit lies.
  - (6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.
  - (7) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply. See---
    - (i) **Church of North India vs. Lavajibhai Ratanjibhai, (2005) 10 SCC 760**
    - (ii) **Dhulabhai vs. State of M.P., AIR 1969 SC 78**
9. **Alternative remedy & jurisdiction of Civil Court u/s. 9 CPC---** Bar of jurisdiction of civil court u/s. 9 CPC cannot be inferred unless alternative remedy is provided. Where there is no express bar but statutory provisions imply exclusion of jurisdiction, such exclusion still cannot be inferred unless the statute also provides an adequate and efficacious alternative remedy. See--  
- **Dhruv Green Field Ltd. vs. Hukam Singh, (2002) 6 SCC 416**
10. **Jurisdiction of Civil Court u/s. 9 CPC vis-à-vis other statutes---** For ouster of civil court's jurisdiction u/s. 9 CPC, the facts and circumstances necessary for filing action under that statute must have arisen on the date of intended filing of the suit. See--- **Ishar Singh vs. National Fertilizers, 1991 SCC 649 (Three Judge Bench)**
11. **When only part of the reliefs maintainable in civil court---** If for part of the reliefs, the suit is maintainable in the forum where it has been laid, it is not open to the forum to shut out its doors to the suitor (It was a case of back wages and correction of date of birth and the suit was held maintainable in civil court). See--- **Ishar Singh vs. National Fertilizers, 1991 SCC 649 (Three Judge Bench)**
12. **Civil Court when to have jurisdiction u/s. 9 CPC despite express or implied bar of jurisdiction---** A civil court would have jurisdiction u/s. 9 CPC despite express or implied bar if the order or action complained of is a nullity. But if the order is **illegal** but not a **nullity**, jurisdiction of civil court would remain barred. Civil Courts jurisdiction u/s. 9 CPC is open where action taken by the authority is without jurisdiction under any Act. See---

- (i) **Dhruv Green Field Ltd. vs. Hukam Singh, (2002) 6 SCC 416**
- (ii) **Sardara Singh vs. Sardara Singh, (1990) 4 SCC 90 (Three Judge Bench).**

**13. Stage of raising plea against want of jurisdiction of Civil Court (Sec. 21 CPC)---** Exclusion of civil courts jurisdiction is not to be readily inferred. Any objection as to exclusion of civil courts jurisdiction should be taken before the trial court and at the earliest otherwise in the absence of proof of prejudice, the higher court may refuse to entertain such a plea. See--- **Ramesh Chand vs. Anil Panjwani, (2003) 7 SCC 350.**

**14.1 Purpose of trial:** Purpose of trial is to determine the validity of the allegations. The objective is to secure a fair and impartial administration of justice between the parties to the litigation and not the achievement of a hearing wholly free from errors. Once a civil action has been instituted and issue is joined upon the pleadings, there must be a trial on the issue before a judgement may be rendered. Trial is not a contest between lawyers but presentations of facts to which the law may be applied to resolve the issues between the parties and to determine their rights. It is also not a sport; it is an inquiry into the truth, in which the general public has an interest. The parties are required to help the court to further the overriding objective. Undoubtedly, perhaps unquestionably, the same objectives guide the interpretation of the Civil Procedure Code, 1908. **Objectives in framing rules for conducting civil proceedings can be summed up as under:**

- (i) ensuring that the parties are on equal footings;
- (ii) saving expense;
- (iii) dealing with the case in ways which the proportionate:
  - (a) to the amount of money involved;
  - (b) to the importance of the case;
  - (c) to the complexity of the issues; and
  - (d) to the financial position of each party;
- (iv) ensuring that it is dealt with expeditiously and fairly; and
- (v) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases; and
- (vi) enforcing compliance with rules, practice directions and orders. See: **Mohammed Abdul Wahid Vs. Nilofer and Another, (2024) 2 SCC 144.**

**14.2 Objection as to jurisdiction at the stage of hearing of the application for interim orders---** Objection u/s. 9-A CPC regarding want of jurisdiction would not prevent the court from passing interim orders while decision on question of jurisdiction is pending if called for in the facts and circumstances of the case. See---

- (i) **Tayabhai M. Bhagasarwalla vs. Hind Rubber Industries Pvt. Ltd., (1997) 3 SCC443**
- (ii) **Prithavi Nath Ram vs. State of Jharkhand, (2004) 7 SCC 261 1998 (2) JCLR 972 All.**

- 15.1. Violation of interim injunction order & jurisdiction to punish the contemnor u/o. 39, rule 2-A CPC---** (A) Any violation of interim injunction issued by the court prior to the decision regarding jurisdiction would render the defendant liable to be punished u/o. 39, rule 2-A CPC. See---
- (i) **Tayabhai M. Bhagasarwalla vs. Hind Rubber Industries Pvt. Ltd., (1997) 3 SCC 443**
  - (ii) **Prithavi Nath Ram vs. State of Jharkhand, (2004) 7 SCC 261**

**(B)Merits of the case not to be discussed when court has no jurisdiction---** It is settled law that once court holds that it has no jurisdiction in the matter, it should not consider the merits of the matter. See- **Jagraj Singh vs. Birpal Kaur, AIR 2007 SC 2083.**

- 15.2. Injunction suit without seeking declaration of title maintainable if there is no cloud on title of plaintiff:** A prayer for declaration of title in a suit for injunction will be necessary only if the denial of title by the defendant or challenge to the plaintiff's title raises a cloud on the title of the plaintiff to the property. A cloud is said to raise over a person's title when some apparent defect in his title to a property or when some prima facie right of a third party over it is made out or shown. An action for declaration is the remedy to remove the cloud on the title to the property. On the other hand, where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration and a suit for injunction may be sufficient. Where the plaintiff, believing that the defendant is only a trespasser or a wrongful claimant without title, files a mere suit for injunction, and in such a suit, the defendant discloses in his defence the details of the right or title claimed by him, which raise a serious dispute or cloud over the plaintiff's title, then there is a need for the plaintiff to amend the plaint and convert the suit into one for declaration. Alternatively, he may withdraw the suit for bare injunction with permission of the court to file a comprehensive suit for declaration and injunction. He may file the suit for declaration with consequential relief even after the suit for injunction is dismissed where the suit raised only the issue of possession and not any issue of title. In the present case, there was no issue involved about the title of the plaintiff and his father. It is not as if the respondent-defendants had set up a title in themselves or were claiming through somebody who was claiming the title. Their plea was of adverse possession against the appellant which presupposes that the appellant was the owner. When in a suit simpliciter for a perpetual injunction based on title, the defendant pleads perfection of his title by adverse possession against the plaintiff or his predecessor, it cannot be said that there is any dispute about the title of the plaintiff. Hence, the plaintiff need not claim a declaration of title in such a case as the only issues involved

in such a suit are whether the plaintiff has proved that he was in possession on the date of the institution of the suit and whether the defendant has proved that he has perfected his title by adverse possession. Therefore, in the present case, it was not necessary for the appellant/plaintiff to claim a declaration of ownership in the suit for injunction. There was no cloud on his title. Therefore, the suit, as originally filed, was maintainable. **See: K.M. Krishna Reddy Vs. Vinod Reddy, (2023) 10 SCC 248 (paras 16 & 17).**

- 16. Pecuniary Jurisdiction of Civil Court in Uttar Pradesh w.e.f. 05.02.2016:** **Vide** Uttar Pradesh Civil Laws (Amendment) Act, 2015 read with Notification No. 35/IVg-27, Allahabad: Dated 05.2.2016 of the Allahabad High Court, different Sections of the Bengal, Agra and Assam Civil Courts Act, 1887 have been amended by the State Legislature of Uttar Pradesh. After the said amendments, pecuniary jurisdiction of different Civil Courts of the District Judiciary w.e.f. 05.02.2016 for different types of proceedings is as under:

Sl. No.	Name of Court	Nature of Case	Pecuniary Jurisdiction
1.	District Judge	Appeal	Twenty Five Lakh
2.	District Judge	Revision	Five Lakh
3.	Civil Judge (Senior Division)	Civil Suit	Unlimited
4.	Civil Judge (Junior Division) – Parent Court having seniority exceeding three years	Civil Suit	Five Lakh
5.	Addl. Civil Judge (Junior Division)	Civil Suit	One Lakh
6.	Judge, Small Causes Court	SCC Suit	One Lakh
7.	Judge, Small Causes Court	Money Suit	Twenty Five Thousand

- 17. Relevant C.L./Notification of the Allahabad High Court enhancing the appellate jurisdiction of the District Judges: See below:**

Allahabad High Court Notification  
No. 35/IVg-27, Dated: Allahabad: 05.02.2016

In exercise of the powers conferred by Sub-Section 1(b) of Section 21 of the **Bengal, Agra and Assam Civil Courts Act, 1887** as amended by the Uttar Pradesh Civil Laws (Amendment) Act, 2015 (UP Act No. 14 of 2015), the High Court is pleased to direct that an appeal from a decree or order of a Civil Judge where the value of the original suit in which, or in any proceeding arising out of which the decree or order was or is made, whether instituted or commenced before or after the date of publication of this notification in Official Gazettee did not or does not exceed twenty five lakhs rupees for purposes of filing appeals shall lie to the District Judges.

By order of the Court,  
(Sheo Kumar Singh-I)  
Registrar General

- 18. Pecuniary jurisdiction when raised due to amendment---** If the pecuniary jurisdiction of the court is raised because of amendment in valuation clause of the plaint, the court must return the plaint for presentation to proper court u/o. 7, rule 10 CPC having pecuniary jurisdiction even if higher court fee is paid by the plaintiff. See--- **Devendra Singh vs. Bhole Ram, AIR 1991 All 157**
- 19. No implied ouster of jurisdiction of Civil Court---** A court which would otherwise have jurisdiction in respect of the subject matter concerned, ouster of jurisdiction cannot be implied. Ouster must be express. See---
- (i) Bhatia International vs. Bulk Trading S.A., (2002) 4 SCC 105 (Three Judge Bench)**
- (ii) Church of North India vs. Lavajibhai Ratanjibhai, (2005) 10 SCC 760**
- 20(A). Stage of rejection of plaint under Order 7, rule 11 CPC---** (A) If the suit is barred by some law and is not maintainable, the provisions of Order 7, rule 11 CPC can be exercised both at the threshold of the proceedings, and in the absence of any statutory restriction, at any stage of the subsequent proceedings. However, preliminary objection regarding maintainability of the suit due to want of jurisdiction should be raised at the earliest, though the power of the court to consider the same at a subsequent stage is not taken away. See:
- (i) Rajendra Bajoria Vs Hemant Kumar Jalan, AIR 2021 SC 4594**
- (ii) Vithalbai (P) Ltd. vs. Union Bank of India, (2005) 4 SCC 315**
- (iii) Samar Singh vs. Kedar Nath, 1987 Suppl. SCC 663**
- 20(B). Stage of rejecting plaint:** The provision of Order 7, rule 11 CPC is mandatory in nature. If the court finds that plaint does not disclose a cause of action or that the suit is barred by any law, the court has no option but to reject the plaint. The power under Order 7, rule 11 CPC may be exercised by the court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial. The plea that once issues are framed, the suit must go to trial cannot be accepted. See: **Dahiben Vs. Arvindhbai Kalyanji Bhanusali, (2020) 7 SCC 366**
- 20(C). Stage of rejecting plaint u/o 7, rule 11 CPC---** Order 7, rule 11(d) CPC applies only where the statement as made in the plaint without any doubt or dispute shows that the suit is barred by any law in force. It does not apply in case of any disputed question. Rejection of the plaint u/r. 11 does not preclude the plaintiff from presenting a fresh plaint in terms of rule 13. Or. 7, rule 11 is applicable at any stage of the suit subject to above position of law. Or. 7, rule 11 even casts a duty on the court to perform its obligations in rejecting the



plaint when the same is hit by any of the infirmities provided in the four clauses of rule 11 to Or. 7 CPC even without the intervention of the defendant. See---

(i) **Popat and Kotecha Property vs. State Bank of India Staff Association, (2005) 7 SCC 510**

(ii) **Sopan Sukhdeo Sable vs. Asstt. Charity Commissioner, (2004) 3 SCC 137**

(iii) **Saleem Bhai vs. State of Maharashtra, (2003) 1 SCC 557**

**20(D-1).Limitation and rejection of plaint u/o 7, rule 11(d) CPC:** Plaint should be rejected by the court under Order 7, rule 11(d) CPC if it is barred by any law or law of limitation. See: **Dahiben Vs. Arvindbhai Kalyanji Bhanusali, (2020) 7 SCC 366.**

**20(D-2).If the court has no jurisdiction to entertain the suit, it cannot decide the issue of limitation on merits:** Question of limitation in no case can be said to be a question of jurisdiction of the court in the context of Section 9-A CPC. Issue of limitation, therefore, cannot be decided as a preliminary issue of jurisdiction u/s 9-A CPC. If the court has no jurisdiction to entertain the suit, it cannot decide the issue of limitation on merits. See: **Nusli Neville Wadia Vs. Ivory Properties, (2020) 6 SCC 557 (Three- Judge Bench)**

**20(E). Only averments in plaint can be considered for rejecting plaint u/o 7, rule 11 CPC:** Only averments in plaint can be considered for rejecting plaint under Order 7, rule 11 CPC. Any evidence and averments in written statement cannot be considered at this stage: **Nusli Neville Wadia Vs. Ivory Properties, (2020) 6 SCC 557 (Three- Judge Bench)**

**20(F). Only a pure question of law, and not mixed question of law and fact, can be decided as a preliminary issue:** Under Order 14, rule 2 CPC, issues of law as to jurisdiction and bar to suit created by any law are to be decided as preliminary issues. Only a pure question of law and not mixed question of law and fact can be decided as a preliminary issue both u/s 9-A and Order 14, rule 2 CPC. Recording of evidence at that stage is impermissible. See: **Nusli Neville Wadia Vs. Ivory Properties, (2020) 6 SCC 557 (Three- Judge Bench)**

**20(G). Plea of want of jurisdiction should be raised at the time of obtaining leave u/s 92 of the CPC** to file the suit under Religious and Charitable Endowments Act, 1927. Such plea cannot be raised after leave to file the suit has been granted. The bar of suit u/s. 9 r/w. Or. 7, r. 11(d) CPC in determining jurisdiction of court is as existing on the date of institution of the suit or on the date on which suit comes up for hearing. If the court has jurisdiction to try the suit when it comes for disposal, it then cannot refuse to assume jurisdiction by

reason of the fact that it had no jurisdiction to entertain it at the date of institution. See--- **Sudhir G. Angur vs. M. Sanjeev (2006) 1 SCC 141.**

21. **Consent, waiver or acquiescence & jurisdiction of Civil Courts**— No amount of consent, waiver or acquiescence can confer jurisdiction on a court which it inherently lacks or where none exists. See--- **Vithalbai (P) Ltd. vs. Union Bank of India, (2005) 4 SCC 315.**
  
22. **Injunction suit in respect of agricultural land & jurisdiction of Civil Court**--- A recorded tenure holder under the provisions of UPZA & LR Act, 1950 having prima facie title over the agricultural land in his favour and being in possession, can file a civil suit seeking cancellation of void document /sale deed brought about through fraud and impersonation. In such a case the plaintiff need not file a suit for declaration of title before the revenue court as his title is not in doubt and the Civil Court could have jurisdiction to decide the suit of such tenure holder for cancellation and injunction. A suit by recorded tenure holder for cancellation of void document is not barred u/s. 331 of the UPZA & LR Act, 1950 and the suit is maintainable u/s. 9 of the CPC. See---
  - (i) **Shri Ram vs. 1<sup>st</sup> ADJ, (2001) 3 SCC 24**
  - (ii) **Chheda Singh vs. Town Area Committee, Akbarpur, (1999) 1 SCC 266 (Three-Judge Bench).**
  
23. **Sec. 229-B, 229-D, 331 of the UPZA & LR Act, 1950 & The Power of Civil Court to Grant Injunction**--- If the name of the plaintiff is not recorded as tenure holder of the agricultural land in the revenue records and question of declaration of title is involved, the jurisdiction of the civil court to entertain injunction suit and grant interim injunction would be barred u/s. 331 of the U.P. Zamindari Abolition & Land Reforms Act, 1951 as the civil court cannot direct for the expunction or correction of the entries in revenue records and the same can be done only by the revenue courts. The remedy of the plaintiff in respect of the agricultural land under such facts and circumstances would be a suit for declaration of title before the revenue court **u/s. 229-B of the UPZA & LR Act, 1951** and interim injunction can also be granted by the revenue court **u/s. 229-D** of the that Act. But where the name of the plaintiff is recorded in the revenue records as tenure holder of the agricultural land and no question of declaration of title is involved, the plaintiff can institute a suit in civil court for injunction against the defendant for restraining him from transferring the land, interfering with the possession of the plaintiff or demolishing any constructions etc. on such land or cutting trees etc. standing thereon. See---
  - (i) **Kamla Shankar vs. IIIrd ADJ, Mirzapur, 1998(89) R.D. 484 (All)**
  - (ii) **Magan Lal Chaturvedi vs. District Judge, Mathura, 1998 ALJ 2323 (All)**
  - (iii) **Deokinandan vs. Surajpal, 1996 ALJ 144 (SC)**
  - (iv) **Tej Bhan Singh vs. II ADJ, Jaunpur, 1995 ALJ 109 (All)**

- (v) **Surya Narain Pandey vs. Addl. Civil Judge, Gyanpur, 1995 R.D. (H) All**
- (vi) **Jyoti Ram vs. District Judge, Saharanpur, 1995 RD 99 (All)**
- (vii) **Tej Bhan Singh vs. IX ADJ, Jaunpur, 1994 R.D. 476 (All)**
- (viii) **Indra Pal vs. Jagannath, 1993 ALJ 235 (All)**
- (ix) **Bhagwat Prasad vs. Jitendra Narain, 1991 ALJ 971 (All)**
- (x) **Chandra Deo Pathak vs. Swami Nath Pathak, 1987 R.D. 51 (All)**
- (xi) **Vijai Singh vs. 2<sup>nd</sup> ADJ, Bulandshahr, 1982 ALJ 725 (All)**
- (xii) **1980 R.D. 32 (Summary of Cases-43) (All—L.B.)**
- (xiii) **Jai Singh vs. Hanumant Singh, 1979 ALJ 645 (All)**
- (xiv) **Kishori Lal vs. Shambhoo Nath, 1978 ALJ 1273 (All)**
- (xv) **Parsottam vs. Narottam, 1970 ALJ 505 (All—D.B.)**

**24. Cancellation of sale deed & jurisdiction of Civil Court---** A recorded tenure holder under the provisions of UPZA & LR Act, 1950 having prima facie title over the agricultural land in his favour and being in possession, can file a civil suit seeking cancellation of void document /sale deed brought about through fraud and impersonation. In such a case the plaintiff need not file a suit for declaration of title before the revenue court as his title is not in doubt and the Civil Court could have jurisdiction to decide the suit of such tenure holder for cancellation and injunction. A suit by recorded tenure holder for cancellation of void document is not barred u/s. 331 of the UPZA & LR Act, 1950 and the suit is maintainable u/s. 9 of the CPC. See---

- (i) **Shri Ram vs. 1<sup>st</sup> ADJ, (2001) 3 SCC 24**
- (ii) **Chheda Singh vs. Town Area Committee, Akbarpur, (1999) 1 SCC 266 (Three Judge Bench)**
- (iii) **Ram Padarath vs. 2<sup>nd</sup> ADJ, Sultanpur, 1989 AWC 290 (All—F.B.)**
- (iv) **Kishori Prasad vs. 3<sup>rd</sup> ADJ, Varanasi, AIR 2003 All 58**

**25A. Jurisdiction of Civil Court in respect of incidental issues when the suit is barred u/s. 9 CPC---** A Civil Court has no jurisdiction u/s. 9 CPC to decide an issue arising incidentally in a civil suit which is to be specifically decided by a competent authority under some Act. The Civil Court in such matter should refer the issue to that authority and dispose of the suit in accordance with the decision of the authority. See--- **G.S. Shinde vs. R.B. Joshi, (1979) 2 SCC 495**

**25B. Relief claimed in plaint but not discussed in judgment and not granted in writing must be deemed to have been declined:** Relief claimed in plaint but not discussed in judgment and not granted in writing must be deemed to have been declined. If a decree is silent as regards any relief claimed by the plaintiff in the plaint, Explanation V to Section 11 CPC declares that such relief must be treated as refused. See: **Yashwant Sinha Vs. CBI, (2020) 2 SCC 338( Three-Judge Bench).**

26. **Civil Court competent to decide its jurisdiction---** A civil court is competent under CPC to decide its own jurisdiction. A civil court has powers to decide the preliminary issues as to the maintainability of the suit or the bar of resjudicata or estoppel. See--- **Thirumala Tirupati Devasthanams vs. Thallappakka Ananthacharyulu, (2003) 8 SCC 134.**
27. **Maintainability of the suit to be decided on the basis of pleadings and the reliefs claimed in the plaint---** The question of maintainability of a suit can be decided on the basis of the averments contained in the plaint and the stated reliefs claimed in the plaint and not from the effect which the decree may cause. Defence plea taken in the written statement cannot be looked into for the purpose of deciding maintainability of the suit. See---
- (i) **Ramesh Chand vs. Anil Panjwani, (2003) 7 SCC 350**
  - (ii) **Saleem Bhai vs. State of Maharashtra, AIR 2003 SC 759**
  - (iii) **Ashok Kumar Srivastav vs. National Insurance Company Ltd., (1998) 4 SCC 361**
  - (iv) **M/s. Bharat Petroleum Corp. Ltd. vs. Smt. Parvati Devi, 1998 (32) ALR 149**
  - (v) **T.Arvindandam vs. Satyapal, AIR 1977 SC 2421**
28. **Right to file suit u/s 9 CPC is inherent right---** Right of filing suit u/s. 9 CPC is an inherent right of a litigant while the right of appeal u/s. 96 & 100 of the CPC has to be conferred by statute. See--- **Shiv Shakti Coop. Housing Society vs. Swaraj Developers, (2003) 6 SCC 659**
29. **Civil, criminal & departmental proceedings to go on simultaneously----** Civil liability will not cease merely because statute includes the same event under provisions dealing with criminal liability. See---
- (i) **State Bank of India vs. R.B. Sharma, (2004) 7 SCC 27**
  - (ii) **Kendriya Vidyalaya Sangathan vs. T. Srinivas, (2004) 7 SCC 442**
  - (iii) **Jiyajeerao Cotton Mills Ltd. vs. Madhya Pradesh Electricity Board, 1989 Supp (2) SCC 52.**
30. **Execution proceedings & plea of want of jurisdiction---** In case of a decree being “nullity” for want of jurisdiction is patent on the face of the decree, then the executing court may take cognizance of the nullity, else normal rule will prevail that the executing court cannot go behind the decree. A decree suffering from illegality or irregularity of procedure cannot be termed as inexecutable by the executing court. The remedy of the person aggrieved by such a decree is to have it set aside in a duly constituted legal proceeding or by a superior court failing which he must obey the command of the decree. See---
- (i) **Rafique Bibi vs. Sayed Walliuddeen, (2004) 1 SCC 287**
  - (ii) **Vasudeo vs. Rajabhai, (1970) 1 SCC 670.**

**31.1. Compromise on behalf of party when to be entered into by the counsel ?:**

The counsel appearing for a party is fully competent to put his signature to the terms of any compromise upon which a decree can be passed in proper compliance with the provisions of Order 23 Rule 3 CPC and such decree is perfectly valid, depending on the authority conferred on the counsel in terms of the vakalatnama. It will be prudent for counsel not to act on implied authority except when warranted by the exigency of circumstances demanding immediate adjustment of the suit by agreement or compromise and the signature of the party cannot be obtained without undue delay. In these days of easier and quicker communication, such contingency may seldom arise. A wise and careful counsel will no doubt arm himself in advance with the necessary authority expressed in writing to meet all such contingencies in order that neither his authority nor integrity is ever doubted. This essential precaution will safeguard the personal reputation of the counsel as well as uphold the prestige and dignity of the legal profession. To insist upon the party himself personally signing the agreement or compromise would often cause undue delay, loss and inconvenience, especially in the case of non-resident persons. It has always been universally understood that a party can always act by his duly authorized representative. If a power-of-attorney holder can enter into an agreement or compromise on behalf of his principal, so can a counsel possessed of the requisite authorization by vakalatnama act on behalf of his client. Not to recognize such capacity is not only to cause much inconvenience and loss to the parties personally, but also to delay the progress of proceedings in court. See :

**(i) Prasanta Kumar Sahoo Vs Charulata Sahu,(2023) 9 SCC 641**

**(ii) Y. Sleebachen & Others Vs. State of Tamil Nadu through Superintending Engineer Water Recourses Organization/Public works Department and Another, (2015) 5 SCC 747 (paras 16 to 20).**

**31.2. Compromise by counsel :** After the amendments in Order 23, rule 3 CPC in the year 1976, a compromise needs to be reduced in writing and signed by the parties and not by the counsel alone. See :

**(i) Prasanta Kumar Sahoo Vs Charulata Sahu,(2023) 9 SCC 641**

**(ii) Gurpreet Singh Vs. Chatur Bhuj Goel, (1988) 1 SCC 270**

**(iii) Banwari Lal Vs. Chando Devi, (1993) 1 SCC 581**

**(iii) Dr. Jitendra Kumar Jain Vs. ADJ, Roorkee, AIR 2006 (NOC) 1248  
(All)**

**31.3. Compromise by counsel alone invalid :** A compromise memo filed by counsel alone under Order 23, rule 3 CPC without signatures of the parties is invalid. Compromise petition must be signed by the parties as well. In the absence of signatures of the parties, a compromise petition containing only the signature of the counsel engaged by the parties should not be accepted by the Court. See :

- (i) **Premlata Vs. First Addl. Civil Judge Meerut, 1998 (32) ALR 352 (All)**
- (ii) **Lokumal Topandas Vs. Allahabad Bank, AIR 1998 All 398**

**31.4. Compromise by counsel held valid :** The words ‘in writing and signed by the parties’, inserted in Order 23, R. 3, CPC by the CPC (Amendment) Act, 1976 necessarily mean and include duly authorized representative and Counsel. Thus a compromise in writing and signed by counsel representing the parties, but not signed by the parties in person, is valid and binding on the parties and is executable even if the compromise relates to matters concerning the parties, but extending beyond the subject matter of the suit. A judgment by consent is intended to stop litigation between the parties just as much as a judgment resulting from a decision of the Court at the end of a long drawn out fight. A compromise decree creates an estoppel by judgment. Counsel’s role in entering into a compromise has been traditionally understood to be confined to matters within the scope of the suit. However, a compromise decree may incorporate not only matters falling within the subject matter of the suit, but also other matters which are collateral to it. The position before the amendment in 1976 was that, in respect of the former, the decree was executable, but in respect of the latter, it was not executable, though admissible as judicial evidence of its contents. See :

- (i) **Byram Pestonji Gariwala Vs. Union Bank of India, AIR 1991 SC 2234**
- (ii) **Jineshwardas Vs. Smt. Jagrani, 2003 (53) ALR 599 (SC)**

**31.5. Entering into compromise by counsel without consent of party amounts to misconduct :** Where an Advocate was not authorized by the party to enter into compromise and the Advocate had yet entered into compromise, it has been held by the Supreme Court that the said act of the Advocate amounted to misconduct within the meaning of Section 35 of the Advocates Act, 1961 and the party was directed to approach the State Bar Council for appropriate disciplinary action against the Advocate concerned. See :

- (i) **Ram Asarey Vs. DDC, Faizabad, (1998) 6 SCC 480**
- (ii) **Narain Pandey Vs Pannalal Pandey, 2013 (118) RD 674 (SC)**

**31.6. Suit for cancellation of compromise decree lies before the court which recorded the compromise:** Suit for cancellation of compromise decree can be filed only before the court which passed the compromise decree. See: **Triloki Nath Singh Vs. Anirudh Singh, (2020) 6 SCC 629**

**31.7. Compromise decree can be set aside by court which granted the decree or an appeal u/o 43, rule 1-A CPC can also be filed: See: Vipin Aggarwal Vs Raman Gandotra, (2023) 10 SCC 529**

**32. Representative suit u/o 1, rule 8 CPC:** It is essential that there must be numerous persons having the same interest in a suit to be filed as a representative suit under Order 1, rule 8 CPC. Before a person can be allowed either to prosecute or defend a suit on behalf of others interested, specific permission of the court is mandated. Order 1, rule 8(2) CPC requires notice of the institution of the suit to be given to all persons interested, in the manner as directed or by advertisement. A person on whose behalf or for whose benefit the suit has been instituted or is being defended may apply to the court to be impleaded as party to the suit. Under sub-rule 4(4) to rule 8 of Order 1 CPC, no part of the claim in the suit can be abandoned and the suit cannot be withdrawn nor can a compromise, agreement or satisfaction be recorded unless notice has been furnished to all persons interested. See: **M. Siddiq (Ram Janmabhumi Temple) Vs. Suresh Das, (2020) 1 SCC 1 (Five-Judge Bench) (Para 580).**

**33.1. Civil court has no jurisdiction in respect of wakf property :** Suit for injunction in respect of wakf property lies before the Wakf Tribunal constituted under the Wakf Act, 1995 as amended in 2013 and not before the civil court. Civil court has no jurisdiction in respect of the wakf property. See: **Rashid Wali Beg Versus Farid Pindari and others, (2022) 4 SCC 414.**

**33.2. Suit for eviction from wakf property lies in civil court u/s 9 CPC :** Suit for eviction from wakf property is tribal by civil court. Wakf Act does not provide determination of dispute of eviction by Wakf Tribunal. Civil Court u/s 9 CPC has jurisdiction to try such suit. See : **Faseela M. Vs. Munnerul Islam Madrasa Committee, 2014 (4) ALJ 22 (SC).**

**34. Civil suit and proceedings before executive Magistrate u/s 145 CrPC:** No party can be allowed to use the provisions of Section 145 CrPC for ulterior purposes or as a substitute for civil remedies. The jurisdiction and power of the civil court cannot in any manner be hampered. An executive Magistrate cannot decide a party's title or right to possession of the land. . See: **M. Siddiq (Ram Janmabhumi Temple) Vs. Suresh Das, (2020) 1 SCC 1 (Five-Judge Bench) (Paras 293 to 298).**

**35.1. "Cause of action": Meaning of?:** The expression "cause of action" means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. It is axiomatic that without a cause, there cannot be any action. See: **State of Goa Vs. Sumit Online Trade Solutions Pvt. Ltd., (2023) 7 SCC 791.**

**35.2. Jurisdiction of Civil Courts vis-à-vis Small Causes Court:** Dispute between landlord and tenant falls u/s 41 of the Presidency Small Cause Courts Act, 1882. Such dispute is liable to be decided by the Courts of Small Causes. Civil Court has no jurisdiction to adjudicate matter of counter claim and as such the plea of counter claim by the defendant was not maintainable. See:  
**(i) Mahadev Vs. Shree Krishna Woolen Mills Pvt. Ltd., AIR 2019 SC 913.**

(ii) **Prabhudas Damodar Kotecha Vs. Manhabala Jeram Damodar, AIR 2013 SC 2959.**

(iii) **Mansukhlal Dhanraj Jain Vs. Eknath Vithal Ogale, AIR 1995 SC 1102.**

**36.1. Pre-conditions for grant of permission to institute suit u/s 92 CPC:** Pre-conditions for grant of permission to institute a suit u/s 92 CPC are as under :

(i). The Trust in question is created for public purposes of a charitable or religious nature

(ii). There is a breach of Trust or a direction of court is necessary in the administration of such a Trust

(iii). The relief claimed is one or the other of the reliefs as enumerated in Section 92 CPC. See: **Ashok Kumar Gupta Vs. Sitalaxmi Sahuwala Medical Trust, (2020) 4 SCC 321**

**36.2. Despite repeal of a provision under Trust Act 1882, court has discretionary power u/s 151 CPC to declare existence of constructive trust:** Despite repeal of Section 94 of the Trusts Act 1882, courts jurisdiction to declare existence of constructive trust can be derived from section 88 of the Trusts Act, 1882 and Section 151 CPC. See: **Janardan Dagdu Khomane Vs. Eknath Bhiku Yadav, (2019) 10 SCC 395**

**37.1. Inherent power of Civil Court u/s 151 CPC:** For the purpose of the discussion of the question in the context of the relevant provisions of the CPC, it is unnecessary to embark on any detailed or exhaustive examination of the circumstances and situations in which it could be predicated that a Court has the inherent jurisdiction which is saved by Section 151 of the Civil Procedure Code. It is sufficient if we proceed on the accepted and admitted limitations to the existence of such a jurisdiction. It is common ground that the inherent power of the Court cannot override the express provisions of the law. In other words, if there are specific provisions of the CPC dealing with a particular topic and they expressly or by necessary implication exhaust the scope of the powers of the Court or the jurisdiction that may be exercised in relation to a matter, the inherent power of the Court under Section 151 CPC cannot be invoked in order to cut across the powers conferred by the CPC. The prohibition contained in the CPC need not be express but may be implied or be implicit from the very nature of the provisions that it makes for covering the contingencies to which it relates. See: **Arjun Singh Vs. Mohindra Kumar, AIR 1964 SC 993**

**37.2. Power u/s 151 CPC cannot be exercised in conflict with any other power of the Court expressly or impliedly provided in CPC:** Inherent power of the Court u/s 151 CPC is in addition to and complementary to the powers expressly conferred under the CPC but that power will not be exercised in conflict with any of the powers expressly or by implication conferred by other provisions of



CPC. If there is an express provision in CPC covering a particular topic, then Section 151 CPC cannot be applied. See:

- (i) **Vareed Jacob Vs. Sosamma Geevarghese, (2004) 6 SCC 378 (Three-Judge Bench)**
- (ii) **Mahoharlal Chopra Vs. Rai Bahadur, AIR 1962 SC 527**
- (iii) **Ram Chand & Sons Sugar Mills Vs. Kanhyalal Bhargava, AIR 1966 SC 1899**

**37.3. Inherent power u/s 151 CPC cannot be exercised so as to nullify the provisions of CPC:** Inherent power u/s 151 CPC cannot be exercised so as to nullify the provisions of CPC. Where the CPC deals expressly with a particular matter, the provision should normally be regarded as exhaustive. See:

- (i) **State of U.P. Vs. Roshan Singh, 2008 (71) ALR 1 (SC)**
- (ii) **National Institute of Mental Health & Neuro Sciences Vs. C. Parmeshwara, 2005 (2) AWC 1865 (SC)**

**37.4. Power u/s 151 CPC cannot be invoked to deal with an application for which there is a statutory provision in CPC:** Power u/s 151 CPC cannot be invoked to deal with an application for which there is a statutory provision in CPC. Temporary Injunction can be granted by Court under Order 39, rules 1 & 2 CPC and not u/s 151 CPC. See: **Satya Prakash Tiwari Vs. Civil Judge (Jr. Div) Etawah & Others, 2006 (62) ALR 431.** Following cases have been relied on by the High Court in this case:

- (i) **Vareed Jacob Vs. Sosamma Geevarghese, (2004) 6 SCC 378 (Three-Judge Bench)**
- (ii) **Arjun Singh Vs. Mohindra Kumar, AIR 1964 SC 993**
- (iii) **Atmaram Properties Private Limited Vs. Federal Motors Private Limited, 2005 (58) ALR 650**
- (iv) **Chitivalasa Jute Mills Vs. Jaypee Rewa Cement, 2004 (54) ALR 706**
- (v) **Naina Singh Vs. Koowarjee, AIR 1970 SC 997**
- (vi) **State of W.B. Vs. Karan Singh Binayak, (2002) 4 SCC 188**

**37.5. Section 151 CPC will not be available when there is alternative remedy:** In the case noted below, the Hon'ble Supreme Court has held as under:

- (a) Inherent power of the Court are not to be used for the benefit of a party/litigant who has remedy under CPC similar in the position vis-à-vis other statute.
- (b) Objective of Section 151 CPC is to supplement and not to replace the remedies provided for in the CPC. Section 151 CPC will not be available when there is alternative remedy.
- (c) Section 151 CPC cannot be invoked when there is express provision under which relief can be claimed by the aggrieved party.

- (d) Inherent powers u/s 151 CPC are in addition to the powers specifically conferred on the courts. See: **State of U.P. Vs. Roshan Singh, 2008 (71) ALR 1 (SC)**
- 37.6. Despite repeal of a provision under Trust Act 1882, court has discretionary power u/s 151 CPC to declare existence of constructive trust:** Despite repeal of Section 94 of the Trusts Act 1882, courts jurisdiction to declare existence of constructive trust can be derived from section 88 of the Trusts Act, 1882 and Section 151 CPC. See: **Janardan Dagdu Khomane Vs. Eknath Bhiku Yadav, (2019) 10 SCC 395**
- 38. Document/additional evidence not to be admitted after conclusion of final arguments and reserving judgment:** Document/additional evidence cannot be admitted by Court after conclusion of final arguments and reserving of judgment. See: **Arjun Singh Vs. Mohindra Kumar, AIR 1964 SC 993**
- 39. No presumption of abandonment of case by counsel unless client had knowledge of the same and case cannot be dismissed under order 9, Rule 8 CPC:** There can be no legal presumption about factum of abandonment of proceedings by counsel. Abandonment has to be express or even if it is to be implied, circumstances must be so strong and convincing that drawing such inference is inevitable rather no other view is possible. For that, court has to advert to material/evidence indicating that appellant/petitioner was duly served with applications filed by respondent and that he was fully aware about discharge of counsel representing him in proceedings including about service of court notices. Even if court were to infer abandonment, it can at best dismiss the petition for default in exercise of power under Order 9, Rule 8 CPC and not on merits as was erroneously done by the Family Court herein in gross violation of mandatory procedure and principles of natural justice. See: **Aman Lohia Vs. Kiran Lohia (2021) 5 SCC 489**
- 40. Mandatory directions of Supreme Court for compliance in suits and execution proceedings:** The Supreme Court, in Para 42 of its judgement in the case noted below, has issued following mandatory directions to the courts dealing with the civil suits and the execution proceedings of decrees:
- 42.1. In suits relating to delivery of possession, the court must examine the parties to the suit under Order 10 in relation to third-party interest and further exercise the power under Order 11 Rule 14 asking parties to disclose and produce documents upon oath, which are in possession of the parties to disclose and produce documents upon oath, which are in

possession of the parties including declaration pertaining to third-party interest in such properties

42.2. In appropriate cases, where the possession is not in dispute and not a question of fact for adjudication before the court, the court may appoint Commissioner to assess the accurate description and status of the property.

42.3. After examination of parties under Order 10 or production of documents under Order 11 or receipt of Commission report, the court must add all necessary or proper parties to the suit, so as to avoid multiplicity of proceedings and also make such joinder of cause of action in the same suit.

42.4. Under Order 40 Rule 1 CPC, a Court Receiver can be appointed to monitor the status of the property in question as custodial legis for proper adjudication of the matter.

42.5. The court must, before passing the decree, pertaining to delivery of possession of a property ensure that the decree is unambiguous so as to not only contain clear description of the property but also having regard to the status of the property.

42.6. In a money suit, the court must invariably resort to Order 21 Rule 11, ensuring immediate execution of decree for payment of money on oral application.

42.7. In suit for payment of money, before settlement of issues, the defendant may be required to disclose his assets on oath, to the extent that he is being made liable in a suit. The court may further, at any stage, in appropriate cases during the pendency of suit, using powers under Section 151 CPC, demand security to ensure satisfaction of any decree.

42.8. The court exercising jurisdiction under Section 47 or under Order 21 CPC, must not issue notice on an application of third party claiming rights in a mechanical manner. Further, the court should refrain from entertaining any such application(s) that has already been considered by the court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.

42.9. The court should allow taking of evidence during the execution proceedings only in exceptional and rare cases where the question of fact could not be decided by resorting to any other expeditious method like appointment of Commissioner or calling for electronic materials including photographs or video with affidavits.

42.10. The court must in appropriate cases where it finds the objection or resistance or claim to be frivolous or mala fide, resort to sub-rule (2)

of Rule 98 of order 21 as well as grant compensatory costs in accordance with Section 35-A.

42.11. Under Section 60 CPC the term "...in name of the judgment-debtor or by another person in trust for him or on his behalf" should be read liberally to incorporate any other person from whom he may have the ability to derive share, profit or property.

42.12. The executing court may dispose of the execution proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.

42.13. The executing court may on satisfaction of the fact that it is not possible to execute the decree without police assistance, direct the police station concerned to provide police assistance to such officials who are working towards execution of the decree. Further, in case an offence against the public servant while discharging his duties is brought to the knowledge of the court, the same must be dealt with stringently in accordance with law.

42.14. The Judicial Academies must prepare manuals and ensure continuous training through appropriate mediums to the court personnel/staff executing the warrants, carrying out attachment and sale and any other official duties for executing orders issued by the executing courts.

43. We further direct all the High Courts to reconsider and update all the Rules relating to execution of decrees, made under exercise of its powers under Article 227 of the Constitution of India and Section 122 CPC, within one year of the date of this order. The High Courts must ensure that the Rules are in consonance with CPC and the above directions, with an endeavour to expedite the process of execution with the use of information technology tools. Until such time these Rules are brought into existence, the above directions shall remain enforceable. See: Rahul S. Shah Vs. Jinendra Kumar Gandhi and others (2021) 6 SCC 481 (Three-Judge Bench)

41. **Court can u/s 151 CPC direct defendant to provide security before proceeding with suit:** Court may on application of plaintiff or on its own motion using inherent powers of court under Section 151 CPC, under circumstances warranting the same, direct the defendant to provide security before further progress of the suit. See: Rahul S. Shah Vs. Jinendra Kumar Gandhi, (2021) 6 SCC 418 (Three-Judge Bench)
42. **Retrospective and prospective application of amended law:** Amendment in law during pendency of appeal giving right to

party must be applied by court to give benefit of the amended law to the party: A change in law during pendency of appeal must be considered and appropriately applied. It is the duty of court, whether it is trying the original proceedings or hearing an appeal, to take notice of the change in law affecting the pending action and to give effect to the same. Mere severance of status by way of filing of a suit does not bring about the partition and till the date of the final decree. Thus, change in law, and change due to subsequent event, can be taken into consideration. In this case, Section 6 of the Hindu Succession Act, 1956 was amended wef 9.8.2005 giving equal rights to daughter as coparcener co-equal to sons from her birth. A preliminary decree was passed in the partition suit but before passing of the final decree, Section 6 of the Hindu Succession Act, 1956 was amended. Preliminary decree was challenged in appeal and during pendency of appeal, Section 6 of the said Act was amended. Supreme Court held that the final decree must have been passed in accordance with the amended Section 6 of the Hindu Succession Act, 1956. See: Prasanta Kumar Sahoo Vs Charulata Sahu, (2023) 9 SCC 641.

**43.1. Trial in a civil suit when commences? :** The date of first hearing in a civil suit is the date fixed for framing issues, i.e., the date on which court applies its mind to the facts and controversies involved in the case. Any date prior to such a date would not be a date of first hearing. Date for filing written statement is not the date for hearing of the suit. Trial in a civil suit commences on the date when the suit is taken up for framing of issues by the court after perusal of pleadings of the parties. But in a proceeding under the PSCC Act, 1887, any date fixed for hearing of the case would be the date of hearing as there is no provision under the PSCC Act, 1887 for framing of issues. See:

- (i) S.K. Gupta vs. B.K. Jain, 2007 (66) ALR 104 (All)
- (ii) Vidyabai vs. Padmalatha, 2009 (1) Supreme 239
- (iii) Mamchand Pal vs. Smt. Shanti Agarwal, 2002 (47) ALR 1 (SC)
- (iv) Ashok kumar vs. Rishi Ram, 2002 (48) ALR 401 (SC)
- (v) K.K. Gupta vs. ADJ, 2004 (57) ALR 776 (All)

**43.2. Proviso to o.6, rule 17 CPC added w.e.f. 01.07.2002 & its meaning:** Clarifying the scope and limit of Proviso to O. 6, rule 17 CPC added w.e.f. 01.07.2002, the supreme court has held that the words “**trial has commenced**” used in o.6, rule 17 CPC must be understood in the

limited sense as meaning “final hearing of the suit, examination of witnesses, filing of documents and addressing of arguments” See: Baldev Singh vs. Manohar Singh, (2006) 6 SCC 498

**43.3. Amendment after commencement of trial when be allowed:** Proviso added to o.6, rule 17 CPC w.e.f. 01.07.2002 is mandatory. However, amendment can be allowed only if inspite of due diligence the party could not have raised the matter before the commencement of the trial and when the proposed amendment is necessary to decide the real dispute between the parties. No application for amendment moved u/o.6, rule 17 CPC should be allowed after the commencement of trial unless the court is satisfied that the party seeking amendment, despite exercise of due diligence, could not have raised the plea or amendment before the commencement of trial. See:

- (i) Vidyabai vs. Padmalatha, 2009 (1) Supreme 238
- (ii) Ajendra Prasad vs. Swami Keshav Prakash, AIR 2007 SC 513
- (iii) Prabhu Niwas vs. Laxmi Niwas, 2006 (63) ALR 23 (All)
- (iv) Salem Advocates Bar Association vs. Union of India, (2005) 6 SCC 344 (Three Judge Bench)
- (v) Pradeep Singhvi vs. Heero Dhankani, (2004) 13 SCC 432

**43.4. When does trial in a civil suit commence?:** The Supreme Court has accepted a SLP in 2024 to decide an issue regarding the stage of commencement of trial in a civil suit. The issue has arisen in the context of interpretation of Order 6 Rule 17 CPC which provides for amendments of pleadings. The proviso to Order 6 Rule 17 CPC states that no amendment application can be allowed after commencement of trial.

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