An Overview of Code of Civil Procedure (CPC)
(for Executive Officers)

S.S. Upadhyay

- *Former District & Sessions Judge*
- *Former Legal Advisor to Different Governors, Uttar Pradesh, Lucknow*
- *Former Addl. Director (Training) Institute of Judicial Training & Research, UP, Lucknow.*
- *Lokpal, Dr. APJ Abdul Kalam University of Technology & Engineering, UP, Lucknow & its 760 Engineering Colleges*
- *Mobile : 9453048988*
- *E-mail : ssupadhyay28@gmail.com*
- *Website: lawhelpline.in*

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(1)
Kinds of Civil Courts

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 **Oudh Courts Act, 1925 (Repealed vide U.P. Act No. 2 of 1956 w.e.f. 11.01.1956):** Prior to the amendments and repeal of the provisions under Oudh Courts Act, 1925, the various levels of Civil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.

(2)
Jurisdiction of Civil Courts

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)**

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.

3. **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

4. **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. **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.**

6. **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

7. 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 Gazzettee 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

8. 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**

9. **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

10. **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.**

11. **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--- **Vithalbhai (P) Ltd. vs. Union Bank of India, (2005) 4 SCC 315.**

12. **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).

13. **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

14. **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

15. **Jurisdiction and maintainability of suit should be decided first before passing any interim order:** Question of jurisdiction would assume importance even at stage a court considers question of grant of interim relief. Where an interim relief is claimed in a suit before a civil court and party to be affected by grant of such relief, or any other party to the suit, raises a point of maintainability thereof or that it is barred by law and also contends on that basis that interim relief should not be granted, grant of relief in whatever form, if at all, ought to be preceded by court by formation and recording of at least a prima facie satisfaction that suit is maintainable or that it is not barred by law. In the present case, defendant had challenged the maintainability of the suit before the trial court by taking a plea in his written statement that the suit property was a Bhumidhai land owing to which the suit was barred by Section 331 of the UP ZA & LR Act,1950 and also by Section 41(h) of the Specific Relief Act,1963 and as such not maintainable before the civil court. What was required of the trial court in such a situation was to record a satisfaction, at least prima facie, that the suit was maintainable and then proceed to pass such orders as it considered proper in the circumstances of the suit. It would be inappropriate for the court to abstain from recording its prima facie satisfaction on the question of maintainability, yet, to proceed to grant protection pro tem on the assumption that the question of maintainability of the suit has to be decided as a preliminary issue under Order 14, rule 2 CPC. But without deciding the question of maintainability of the suit, the trial court decreed the suit under Order 8, rule 10 CPC against all defendants including those who had not filed their written statements. See: Asma Lateef Vs Shabbir Ahmad, (2024) 4 SCC 696(Three- Judge Bench) (Paras 50, 51)

16. **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

17. 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

18. **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).

19. **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

20. 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**

21. 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)**

22. 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)**

23. **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).

24. **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.**

25. **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.

26. **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

27. **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**

28. **Relief claimed in plaint but not discussed in judgment and not grated in writing must be deemed to have been declined:** Relief claimed in plaint but not discussed in judgment and not grated 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).**

29. **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.**

30. **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

31. **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 in-executable 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.

32. **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.

(3)
Jurisdiction of Civil Courts vis-à-vis Small Causes Court

1. **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.

(4)
Agricultural Land & Jurisdiction of Civil Court

1. **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. 1st ADJ, (2001) 3 SCC 24

(ii) Chheda Singh vs. Town Area Committee, Akbarpur, (1999) 1 SCC 266 (Three-Judge Bench).

2. **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. 2nd 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.)

(5)
Main Proceedings & their Stages in a Civil Suit

(A)

(i) Institution of suit by presenting plaint to the court
(ii) Issuing summons to the defendant
(iii) Filing of written statement by defendant
(iv) Framing of issues
(v) Production of evidence by plaintiff
(vi) Production of evidence by defendant
(vii) Arguments
(viii) Judgement
(ix) Preparation of decree
(x) Execution of decree

(B)
Ancillary or Misc. Proceedings in a Civil Suit

(i) Disposal of interim injunction application
(ii) Issuing commission for inspection of disputed property
(iii) Amendment of pleadings
(iv) Addition or deletion of parties to the suit
(v) Substitution of legal representatives to the deceased party
(vi) Appointment of receiver
(vii) Restoration of suit if dismissed in default
(viii) Setting aside ex parte decree

(6)
Trial of Suits before Civil Court

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)**

2. **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.

3. **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 behind**

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.

4. **New Procedure for trial of civil suits as directed by the Supreme Court:** The Supreme Court has directed to adopt following procedure for trial of civil suits, service of processes, filing of written statements, costs, adjournments, collection of evidence and the related matters:

(i) All courts at district and taluka levels shall ensure proper execution of the summons and in a time bound manner as prescribed under Order V Rule (2) of CPC and same shall be monitored by Principal District Judges and after collating the statistics they shall forward the same to be placed before the committee constituted by the High Court for its consideration and monitoring.
(ii) All courts at District and Taluka level shall ensure that written statement is filed within the prescribed limit namely as prescribed under Order VIII Rule 1 and preferably within 30 days and to assign reasons in writing as to why the time limit is being extended beyond 30 days as indicated under proviso to sub-Rule (1) of Order VIII of CPC.
(iii) All courts at Districts and Talukas shall ensure after the pleadings are complete, the parties should be called upon to appear on the day fixed as indicated in Order X and record the admissions and denials and the court shall direct the parties to the suit to opt for either mode of the settlement outside the court as specified in sub-Section (1) of Section 89 and at the option of the parties shall fix the date of appearance before such forum or authority and in the event of the parties opting to any one of the

modes of settlement directions be issued to appear on the date, time and venue fixed and the parties shall so appear before such authority/forum without any further notice at such designated place and time and it shall also be made clear in the reference order that trial is fixed beyond the period of two months making it clear that in the event of ADR not being fruitful, the trial would commence on the next day so fixed and would proceed on day-to-day basis.

(iv) In the event of the party's failure to opt for ADR namely resolution of dispute as prescribed under Section 89(1) the court should frame the issues for its determination within one week preferably, in the open court.

(v) Fixing of the date of trial shall be in consultation with the learned advocates appearing for the parties to enable them to adjust their calendar. Once the date of trial is fixed, the trial should proceed accordingly to the extent possible, on day-to-day basis.

(vi) Learned trial judges of District and Taluka Courts shall as far as possible maintain the diary for ensuring that only such number of cases as can be handled on any given day for trial and complete the recording of evidence so as to avoid overcrowding of the cases and as a sequence of it would result in adjournment being sought and thereby preventing any inconvenience being caused to the stakeholders.

(vii) The counsels representing the parties may be enlightened of the provisions of Order XI and Order XII so as to narrow down the scope of dispute and it would be also the onerous responsibility of the Bar Associations and Bar Councils to have periodical refresher courses and preferably by virtual mode.

(viii) The trial courts shall scrupulously, meticulously and without fail comply with the provisions of Rule 1 of Order XVII and once the trial has commenced it shall be proceeded from day to day as contemplated under the proviso to Rule (2).

(ix) The courts shall give meaningful effect to the provisions for payment of cost for ensuring that no adjournment is sought for procrastination of the litigation and the opposite party is suitably compensated in the event of such adjournment is being granted.

(x) At conclusion of trial the oral arguments shall be heard immediately and continuously and judgment be pronounced within the period stipulated under Order XX of CPC.

(xi) The statistics relating to the cases pending in each court beyond 5 years shall be forwarded by every presiding officer to the

Principal District Judge once in a month who (Principal District Judge/District Judge) shall collate the same and forward it to the review committee constituted by the respective High Courts for enabling it to take further steps.

(xii) The Committee so constituted by the Hon'ble Chief Justice of the respective States shall meet at least once in two months and direct such corrective measures to be taken by concerned court as deemed fit and shall also monitor the old cases (preferably which are pending for more than 05 years) constantly.

(xiii) The Secretary General is directed to circulate the copy of this judgment to the Registrar General of all the High Courts for being placed before the respective Chief Justices for a consideration and suitable steps being taken as opined herein above. See: Judgment dated 20.10.2023 passed by the Hon'ble Supreme Court in Civil Appeal No. 4296 of 2023, Yashpal Jain Vs. Sushila Devi & Others.

5. Direction of Supreme Court to Trial Courts to prepare chart for systematic presentation and exhibition of documents and producing the same in judgments: The Supreme Court has issued directions to all Trial Courts to prepare a chart for systematic presentation and exhibition of documents and producing the same in the judgments. The directions of the Supreme Court as issued by it on 15.12.2025 are reproduced below:

Preparation of Tabulated Charts in all the judgments:

(1) All trial Courts dealing with criminal matters shall, at the conclusion of the judgment, incorporate tabulated charts summarizing- a. Witnesses examined; b. Documents exhibited, and c. Material objects (muddamal) produced and exhibited.

(2) These charts shall form an appendix or concluding segment of the judgment and shall be prepared in a clear, structured and easily comprehensible format.

Standardized Chart of Witnesses:

(1) Each criminal judgment shall contain a witness chart with at least these columns- a. Serial Number; b. Name of the Witness c. Brief Description/Role of the Witness, such as: Informant, Eyewitness, Medical Jurist/Doctor, Investigating Officer (I.O.), Panch Witness, etc.

(2) The description should be succinct but sufficient to indicate the evidentiary character of the witness. This structured presentation will allow quick reference to the nature of

testimony, assist in locating the witness in the record and minimize ambiguity.

(3) The judgment featured a Specimen Chart for Witnesses Examined for reference.

Standardized Chart of Exhibited Documents:

(1) A separate chart shall be prepared for all documents exhibited during trial. This chart shall include- a. Exhibit Number; b. Description of document; c. The Witness who proved or attested the document.

(2) Illustratively, the description may include: FIR, complaint, panchnamas, medical certificates, FSL reports, seizure memos, site plans, dying declarations, etc.

(3) The requirement of specifying the witness who proved the document ensures traceability of proof and assist the Court in appreciating compliance with the Evidence Act, 1872/Bharatiya Sakshya Adhiniyam, 2023.

(4) The Judgment also attached a Specimen Chart for Exhibited Documents for reference.

Standardized Chart of Material Objects/Muddamals:

(1) Whenever material objects are produced and marked as exhibits, the trial Court shall prepare a third chart with- a. Material Object (M.O.) Number; b. Description of the Object; c. Witness who proved the Object's Relevance (e.g., weapon, clothing, tool, article seized under panchnama, etc.)

(2) This enables clarity regarding the physical evidence relied upon.

(3) The judgment attached a Specimen Chart for Material Objects/Muddamals

Special Provisions for Cases Involving Voluminous Evidence:

(1) In complex cases, such as conspiracies, economic offences or trials involving voluminous oral or documentary evidence, the list of witnesses and exhibits may be substantially long. Where the number of witnesses or documents is unusually large, the trial Court may prepare charts only for the material, relevant, and relied-upon witnesses and documents, clearly indicating that the chart is confined to such items. This ensures that the charts remain functional reference tools rather than unwieldy compilations.

Application to Defence Witnesses and Evidence:

(1) The aforesaid directions shall apply, mutatis mutandis, to all witnesses examined and all evidence adduced by the defence.

Adoption of Specimen Format and Permissible Deviations:

(1) The specimen charts provided in the judgment shall ordinarily serve as the standard format to be followed by trial Courts across the country.

Observations Regarding Applicability to Civil Proceedings:

(1) While these directions are primarily intended to streamline criminal trials, we leave it open to the High Courts to consider, wherever appropriate, the adoption of similar tabulated formats in civil matters as well, particularly in cases involving voluminous documentary or oral evidence, so as to promote clarity, uniformity, and ease of reference.

(2) The Supreme Court further directed that the High Courts may consider incorporating the above directions in their respective rules governing the procedure of trial Courts. **See:** Judgement dated 15.12.2025 of the Supreme Court passed in Manojbhai Jethabhai Parmar Vs. State of Gujarat, 2025 SCC OnLine SC 2803.

6. **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)

(7)
Maintainability of Suits

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.**

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).**

(8)
Arbitration & Specific Performance of Contract

1. **A case involving specific performance of an agreement can also be decided by Arbitrator under:** A case involving specific performance of an agreement can also be decided by Arbitrator under Arbitration and Conciliation Act, 1996. See:
(i) Deccan Paper Mills Company Limited Vs. Regency Mahavir Properties, (2021) 4 SCC 786 (Three-Judge Bench) (Para 23)
(ii) Olympus Superstructures (P) Limited Vs. Meena Vijay Khetan, (1999) 5 SCC 651

(9)
Rejection of Plaint

1. **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) Vithalbhai (P) Ltd. vs. Union Bank of India, (2005) 4 SCC 315
(iii) Samar Singh vs. Kedar Nath, 1987 Suppl. SCC 663

2. **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. Arvindbhai Kalyanji Bhanusali, (2020) 7 SCC 366**

3. **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 it's 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

4. **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.**

5. **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)**

6. **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)**

(10)
Preliminary Issues & their Disposal

1. **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)**

(11)
Cancellation of Deeds

1. **Seeking cancellation of sale-deed on ground of undue influence executed by weak and old lady:** No presumption of undue influence in executing a registered sale-deed can arise merely because the parties are related to each other or the executant is old or of weak character. In view of Section 49 of Registration Act, 1908, registration of sale-deed re-enforces valid execution of the sale-deed and carries presumption of its validity. Burden of proof lies on the party challenging the genuineness of the transaction to show that the transaction is not valid in law. A registered document carries with it a presumption that it was validly executed. See:
   (i) **Jamil Begam Vs. Shami Mohd, AIR 2019 SC 72.**
   (ii) **Prem Singh Vs. Birbal, (2006) 5 SCC 353.**
   (iii) **Vishwanath Bapurao Sabale Vs. Shalinibai Nagappa Sabale, (2009) 12 SCC 101.**

2. **Cancellation of a document, whether registered or unregistered, can be sought only in civil court:** A document, whether registered or unregistered, can be cancelled by the court. See: Deccan Paper Mills Company Limited Vs. Regency Mahavir Properes, (2021) 4 SCC 786 (Para 22) (Three-Judge Bench)

3. **Presumption of genuineness of a registered document is attached to it:** Presumption of genuineness of a registered document is attached to it. Initial onus to prove it to be forged document lies on the plaintiff. In the present case, plaintiff lady had denied her signature on the sale deed. Divergent opinions of hand writing experts were produced by the plaintiff and the defendant. Ground taken by the plaintiff that the document/sale deed was the result of copied forgery could not be substantiated only on the basis of the opinion of the handwriting expert. Opinion of an expert is not binding piece of evidence if not corroborated by other pieces of evidence. In the said case, plaintiff had

failed to prove that her signatures on the documents i.e. general power of attorney and the sale deed were forged. See: Rattan Singh Vs. Nirmal Gill, AIR Online 2020 SC 854

4. **Power of attorney is of no consequence if no sale deed is executed in pursuance thereof:** In the present case, it goes without saying that the power of attorney executed by the appellant-defendant is of no consequence as on the strength of said power of attorney, neither sale deed has been executed nor any action pursuant thereof has been taken by the power-of attorney holder which may confer title upon the respondent-plaintiff. Non-execution of any document by the general power-of-attorney holder consequent to it renders the said general power of attorney useless. In connection with the general power of attorney and the will so executed, the practice, if any, prevalent in any State or the High Court recognizing these documents to be documents of title or documents conferring right in any immovable property is in violation of the statutory law. Any such practice of tradition prevalent would not override the specific provisions of law which require execution of a document of title or transfer and registration so as to confer right and title in an immovable property of over Rs 100 in value. In this regard, reference may be had to two other decision of the Delhi High Court in *Imtiaz Ali* v. *Nasim Ahmed* and *G. Ram* v. *DDA* which inter alia observe that an agreement to sell or the power of attorney are not documents of transfer and as such the right, title and interest of an immovable property do not stand transferred by mere execution of the same unless any document as contemplated under Section 54 of the Transfer of Property Act, 1882, is executed and is got registered under Section 17 of the Registration Act, 1908. The decision of the Supreme Court is Suraj Lamp & Industries (P) *Ltd.* v. *State of Haryana* also deprecates the transfer of immovable property through sale agreement, general power of attorney and will instead of registered conveyance deed. Legally an agreement to sell may not be regarded as a transaction of sale or a document transferring the proprietary rights in an immovable property but the prospective purchaser having performed his part of the contract and lawfully in possession acquires possessory title which is liable to be protected in view of Section 53-A of the Transfer of Property Act, 1882. The said possessory rights of the prospective purchaser cannot be invaded by the transferor or any person claiming under him. See: *Ghanshayam* vs *Yogendra Rathi* (2023) 7 SCC 361 (Paras 12, 14, 15 & 16)

5. **Presumption of knowledge of execution of document from date of its registration:** When a document is required by law to be registered and is got registered, then the whole world comes to know (by way of constructive notice) about the execution and registration of such document from the date of its registration. Referring to Explanation I to Section 3 of the Transfer of Property Act, 1882, it has been held by the Supreme Court that knowledge of execution and registration of such document for purposes of limitation starts from the date of its registration. See:
(i). Uma Devi Vs. Anand Kumar, (2025) 5 SCC 198 (Para 13)
(ii). Suraj Lamp & Industries (P) Limited Vs. State of Haryana, (2012) 1 SCC 656 (Paras 15 &17)

6. **Sale deed got executed by a person belonging to Scheduled Caste without permission of Collector u/s 157-AA would be void:** Section 157-AA of the U.P. ZA & LR Act specifically provides that no person belonging to the Scheduled Caste having become Bhumidhar with transferable rights u/s 131-B of the U.P. ZA & LR Act shall have the right to transfer the land by way of sale, gift, mortgage or lease to a person other than a person belonging to Scheduled Caste and such transfer, if any, shall be in the following order of preference:
   (a) landless agricultural laborer
   (b) Marginal Farmer
   (c) Small Farmer, and
   (d) A person other than a person referred to in Clauses (a), (b) & (c).
   If before execution of the sale deed, no permission from the competent authority i.e. Assistant Collector, was obtained, then the sale-deed would be void and the purchaser on the basis of such sale deed would not acquire any right in the land purchased by him through such sale-deed. See: Prem Chandra Vs. Addl. Commissioner (Admin), Lucknow Mandal and Others, 2015 (129) RD 417

7. **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. 1st ADJ, (2001) 3 SCC 24

(ii) Chheda Singh vs. Town Area Committee, Akbarpur, (1999) 1 SCC 266 (Three Judge Bench)

(iii) Ram Padarath vs. 2nd ADJ, Sultanpur, 1989 AWC 290 (All) (F.B.)

(iv) Kishori Prasad vs. 3rd ADJ, Varanasi, AIR 2003 All 58

8. **Cancellation of a document, whether registered or unregistered, can be sought:** A document, whether registered or unregistered, can be cancelled by the court. See: Deccan Paper Mills Company Limited Vs. Regency Mahavir Properties, (2021) 4 SCC 786 (Para 22) (Three-Judge Bench)

9. **Use of an unregistered document requiring registration:** A document required by law to be registered, if unregistered, is inadmissible as evidence of a transaction affecting immovable property. But it may be admitted as evidence of collateral facts, or for any collateral purpose, that is, for any purpose other than that of creating, declaring, assigning, limiting or extinguishing a right to immovable property. Courts should have in mind the following factors with regard to the admissibility of an unregistered document:

(i)document required to be registered, if unregistered, is not admissible into evidence under Section 49 of the Registration Act.

(ii) Such unregistered document can however be used as an evidence of collateral purpose as provided in the Proviso to Section 49 of the Registration Act.

(iii)A collateral purpose must be independent of, or divisible from the transaction to the effect which the law required registration.

(iv) collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating any right, title or interest in immovable property of the vale of one hundred rupees and upwards.

(v) If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using t as a collateral purpose. See: K. B. Saha Vs. Development Consultant Limited, (2008) 8 SCC 564 (Paras 33& 34)

(12)
Compromise & Procedure

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).*

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

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

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

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)

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)

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**

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: Vipan Aggarwal Vs Raman Gandotra, (2023) 10 SCC 529.**

(13)
Representative Suit

1. **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).**

(14)
Trust Property & & Jurisdiction of Civil Court

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**

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**

3. **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**

(15)
Wakf Property & Jurisdiction of Civil Court

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.

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).**

3. **Hiba (Gift) by Muslim and its requirements:** A written document recording the gift does not become a formal instrument of gift. Even an oral gift that fulfills the three necessary conditions is to be treated to be a valid gift. Following are the essential requirements of a valid gift i.e. Hiba of moveable or immovable property made by a Muslim to a Muslim or non-Muslim:

(i) a clear manifestation of wish to give on the part of the donor
(ii) acceptance of the gift on the part of the done
(iii) taking possession of the subject-matter of gift by the done.

See: **Dharmrao Vs. Syeda Arifa Praveen, (2026) 3 SCC 460 (Paras 53 to 54.5)**

(16)
Proceeding Before Executive Magistrate & Jurisdiction of Civil Court

1. **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).**

(17)
Inherent power of Civil Court u/s 151 CPC

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**

2. **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)

3. **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 a 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

4. **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)

5. **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

6. 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)**

7. 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**

8. 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.**

(18)
Restoration of Suits & Proceedings

1. **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**

(19)
Retrospective and prospective Application of amended law

1. **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 waqs 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.

(20)
Amendment of Pleadings

1. **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

2. **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

(21)
Impleadment of Parties

1. **Transferee pendente lite can be impleaded as party**: Transferee pendente lite can be impleaded as party to, a suit under Order 1, rule 10 CPC. See: Yogesh Goyanka Vs Govind,(2024) 7 SCC 524.

2. **Plaintiff being dominus litis cannot be forced to add someone as party to suit unless necessary:** A litigant who has instituted the suit (for recovery of service charges from tenant) is the dominus litis and it is for him to choose his adversary. He cannot be compelled to add a party to defend a suit against his wishes. See: Judgment dated 06.01.2026 of the Supreme Court passed in Nak Engineering Company Pvt Ltd Vs. Tarun Keshrichand Shah

(22)
Review & its Scope

1. **Grounds for review:** A judgment or order can be reviewed under Order 47, rule 1 CPC on following grounds:
(i) new matter/evidence discovered is of such nature which could change the judgment
(ii) such new matter/evidence was not within the knowledge of the party seeking review
(iii) same could not be produced before court even after due diligence. See: **Neethu B Vs. Rajesh Kumar, (2025) 10 SCC 436** (Para 13)

2. **Extent of power of court in review on production of new document not produced earlier:** Court can under Section 114 read with Order 47 of the CPC consider any document with intrinsic worth having bearing on lis decided earlier which was not on record because despite due diligence, the same could not be produced earlier, and if the same had been produced earlier, outcome of the case could have been different. See: Maharashtra State Transport Corporation Vs. Mahadeo Krishna Naik, (2025) 4 SCC 321 (Paras 38 &39)

(23)
Stay Order & its Operation

1. **Execution of order not to be stayed merely because some writ, revision, appeal or other petition have been filed by the opposite party against the order of the lower Court:** It is the settled proposition of law that merely because some writ, revision, appeal or other petition have been filed by the opposite party against the order of the lower Court, the concerned court / authorities cannot refuse to implement, honour and execute the order of the court unless the operation of the same is stayed by some competent / superior court as has been ruled by the Hon'ble Supreme Court in the cases reported in (i) State of Orrisa Vs. Madan Gopal Rungta, 1951 SCR 28 and (ii) Siliguri Municipality Vs. Amalendu Das (1984) 2 SCC 436.

(24)
Exhibition of Documents

1. **Exhibited documents and their admissibility in evidence:** Explaining the provisions of Sections 17, 61, 62 of the Evidence Act together, it has been held by the Supreme Court that mere production and marking of a document as exhibit is not enough. Execution of the document has to be proved by admissible evidence. But where documents produced are admitted by the signatories thereto and then marked as exhibits, no further burden to lead additional evidence to prove the writing and its execution survives. See:
   (i) G.M. Shahul Hameed Vs. Jayanthi R. Hegde, (2024) 7 SCC 719 (Paras 23 & 24)
   (ii) Jagmail Singh Vs. Karamjit Singh, (2020) 5 SCC 178
   (iii) Narbada Devi Gupta Vs. Birendra Kr. Jaiswal, (2003) 8 SCC 745
   (iv) Smt. Sudha Agarwal Vs. VII ADJ, Ghaziabad, 2006 (63) ALR 659 (Allahabad)
   (v) R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami, (2003) 8 SCC 752
   (vi) Sait Tarajee Vs. Khimchand Vs. Yelamarti Satyam, AIR 1971 SC 1865.
   (vii) Judgment dated 03.01.2017 of the Division Bench of the Allahabad High Court in Civil Appeal No. 790/2008, New Okhla Industrial Development Authority Vs. Kendriya Karmachari Sahkari Grih Nirman Samiti Ltd..

2. **Mere exhibition of a document not sufficient:** Mere admission of a document in evidence does not amount to its proof. In other words, mere marking of exhibit on a document does not dispense with its proof which is required to be done in accordance with law. See:
(i) G.M. Shahul Hameed Vs. Jayanthi R. Hegde, (2024) 7 SCC 719(Paras 23 & 24)
(ii)LIC of India Vs. Ram Pal Singh Visen, (2010) 4 SCC 491.

3. **Non-exhibition of documents only a procedural lapse:** Non-exhibition of documents is only a procedural lapse. Non-exhibition of documents cannot disentitle a claim when otherwise sufficient evidence is adduced and the documents established the fact in controversy. See: Vimla Devi Vs National Insurance Company Limited, (2019) 2 SCC 186.

4. **Document brought on record but not proved cannot be read:** Document brought on record but not proved cannot be read in evidence. See: Nand Ram Vs. Jagdish Prasad, (2020) 9 SCC 393.

5. **Stage of raising objection against the admissibility of an exhibited document:** Objection as to admissibility of a secondary documentary evidence produced u/s 65 of the Evidence Act can be classified as **(i)** objection that the document sought to be proved is itself inadmissible, and **(ii)** objection directed not against the admissibility of the document but against the mode of proof thereof on the ground of irregularity or insufficiency. Objection under category **(i)** can be raised even after the document has been marked as "an exhibit" or even in appeal or revision, but the objection under category **(ii)** can be raised when the evidence is tendered but not after the document has been admitted in evidence and marked as an exhibit. See:
(i) Ranvir Singh vs. Union of India, 2005 (4) AWC 3152 (SC)
(ii) R.V.E. Venkatachala Gounder vs. Arulmgu Viswasaraswami & V.P. Temple, (2003) 8 SCC 752

6. **Sale deed, whether original or certified copy, is not a public document:** What Section 74 of the Evidence Act, 1872 provides is that public records kept in any State of private documents are public documents, but private documents of which public records are kept are not in themselves public documents. A registered document, therefore, does not fall under either Clause (e) or (f) of Section 65 of the Evidence Act. The entry in the register book is a public document, but

the original is a private document. A deed of sale is a conveyance. A deed of conveyance or other document executed by any person is not an act nor record of an act of any sovereign authority or of any official body or tribunal, or of any public officer, legislative, judicial and executive. Nor is it a public record kept in a State of any private documents. A sale deed (or any other deed of conveyance) when presented for registration under the Registration Act is not retained or kept in any public office of a State after registration on completion of the process of registration. An original registered document is not therefore a public record kept by a State of a private document. Consequently, a deed of sale or other registered document will not fall under either of the two classes of documents described in Section 74 as " public document". Any document which is not a public document is a private document. Hence, any registered conveyance or any other registered document is not a public document but a private document. Moreover, a certified copy of a registered instrument is also not a public record of a private document under Section 74 (2) of the Evidence Act, 1872 for the reason that original has to be returned to the party under Section 61 (2) of the Registration Act, 1908. Thus, the factum of registration of what is otherwise a private document inter partes does not clothe the document with any higher legal status by virtue of its registration. See: Deccan Paper Mills Company Limited Vs. Regency Mahavir Properties, (2021) 4 SCC 786 (Para 22) (Three-Judge Bench)

7. **Secondary/certified copy of sale deed not admissible in evidence:** A sale deed is not a public document and therefore its certified copy is not admissible in evidence unless an explanation is given u/s 65 of the Evidence Act in support of non-availability of the original sale deed. See: Dr. Gurmukh Ram Madan vs. Bhagwan Das Madan, 1998 (2) ARC 517 (SC)

8. **Certified copy of sale deed is admissible in evidence:** A certified copy of a sale deed can be filed to prove ownership and possession over the disputed property. See: Ved Prakash Rastogi Vs. Nagar Palika Budaun, AIR 2008 All 27.

(25)
Fraud, Concealments, Misleading Facts & Duty of Courts

1. **Court can refuse to examine the case of the party on merits if it misleads the court and does not place before it all the material facts:** If a party does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits and such a party requires to be dealt with for contempt of court for abusing the process of the court. See: Kusha Vs. State of Odisha, (2024) 4 SCC 432.

(26)
Mistakes & Duty of Courts

1. **An act should be done in the manner prescribed or not at all :** Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and other methods of performance are necessarily forbidden. This rule squarely applies where the whole aim and object of the legislature would be plainly defeated if the command to do the thing in a particular manner did not imply a prohibition to do it in any other way. See:
   (i).State of Kerala Vs. Kerala Rare Earth & Minerals Ltd., (2016) 6 SCC 323 (Three-Judge Bench),
   (ii). Ram Chandra Keshav Adke Vs. Govind Toti Chavare, AIR 1975 SC 915 (Three-Judge Bench).

2. **Power must be exercised in the manner prescribed by law :** Where law requires a thing to be done in a certain manner, it has to be done in that manner or not at all. A power must be exercised in the manner provided by law. See :
   (i) Dhananjaya Reddy Vs State of Karnataka, (2001) 4 SCC 9
   (ii) State of UP Vs. Singhara Singh, AIR 1964 SC 358.
   Note : *It was a case where the Magistrate had not obtained the signature of the accused on his confessional statement recorded u/s 164(4) of the CrPC.*

3. **Exercise of power in a manner other than prescribed by law is necessarily forbidden:** It is settled law that where law requires a thing to be done in a certain manner or where a power is given to do a certain thing in a certain manner, the thing must be done in that way or manner or not at all and other methods of performance are necessarily forbidden. This is what the maxim "ex pressio unius est exclusio alterius" means. See:

(i).J. Jayalalithaa Vs State of Karnataka, (2014) 2 SCC 401.

(ii) Dhananjaya Reddy Vs. State of Karnataka, (2001) 4 SCC 9 (para 23)

(iii) Ram Chandra Keshav Adke Vs. Govind Joti Chavare, AIR 1975 SC 915

(iv) State of UP Vs. Singhara Singh, AIR 1964 SC 358

4. **Procedure other than statutory procedure cannot be adopted even if there is unanimous understanding of Central and State Governments :** A procedure other than statutory procedure cannot be adopted even if there is unanimous understanding of the Central Government and the State Governments on a non-statutory procedure. All methods other than statutory methods are necessarily forbidden. What cannot be done directly cannot be done indirectly to defeat statutory scheme. See **:** Manohar Lal Sharma Vs. Principal Secretary & Others, (2014) 9 SCC 516 (Three-Judge Bench).

5. **What could not be done directly cannot be done indirectly also** : It is well recognized principle of law that what could not be done directly can also not be done indirectly. See :

(i) H.H. Maharajadhiraj Madhav Rao Jiwaji Rao Sindia Bahadur Vs. Union of India, AIR 1971 SC 530 (Eleven-Judge Bench)

(ii) Madanlal Fakir Chand Dudhedia Vs. Shree Changdev Sugar Mills Ltd. AIR 1962 SC 1543

(iii) M/s. Taxi Owners United Transport Vs. State Transport Authority, Orissa, AIR 1983 SC 281.

6. **Procedural irregularities not to be allowed to defeat the ends of justice :** Non compliance with any procedural requirement relating to a pleading, memorandum of appeal or application for substt. or other relief should not entail automatic dismissal or rejection unless the relevant statute or rule so mandates—Procedural defects or irregularities which are curable should not be allowed to defeat the substantive rights or to cause injustice. Procedure, a hand-maiden to

justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use. Procedural law is not to be tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice.

(a) The mortality of justice at the hands of law troubles a Judge's conscience and points an angry interrogation at the law reformer.

(b) The object is to expedite the hearing and not to scuttle the same.

(c) Justice delayed may amount to justice denied, but justice hurried may amount to justice buried.

(d) Actus curiae neminem gravabit (an act of court shall prejudice no man)

(e) Lex non cogit ad impossibilia (the law does not compel a man to do what he cannot possibly perform) See:

(f) (i).Ashok Kumar Kalra Vs. Surendra Agnihotri, (2020) 2SCC 394 (Three-Judge Bench).

(ii).Shaikh Salim Haji Abdul Khayumsab vs. Kumar & ors., 2006 (1) ARC 334 (SC)

(iii).Uday Shankar Triyar vs. Ram Kalewar Prasad Singh, 2006 (1) ARC 1 (SC) (Three-Judge Bench)

7. **Procedural defects when fatal :** The procedural defects or lapses would not vitiate the proceedings except under the following circumstances:

(i) where the statute prescribing the procedure, also prescribed specifically the consequence of non-compliance.

(ii) where the procedural defect is not rectified even after it is pointed out and due opportunity is given for rectifying it.

(iii) where the non-compliance or violation is proved to be deliberate or mischievous.

(iv) where the rectification of defect would affect the case on merits or will affect the jurisdiction of the court.

(v) in case of memorandum of appeal, there is complete absence of authority and the appeal is presented without the knowledge, consent and authority of the appellant. See : Uday Shankar Triyar vs. Ram Kalewar Prasad Singh, 2006 (1) ARC 1 (SC) (Three-Judge Bench).

8. **Procedural lapses when not to defeat substantive justice ? :** Non compliance with any procedural requirement relating to a pleading, memorandum of appeal or application for substitution or other relief should not entail automatic dismissal or rejection unless the relevant

statute or rule so mandates. Procedural defects or irregularities which are curable should not be allowed to defeat the substantive rights or to cause injustice. Procedure is a hand-maiden to justice and the same should never be made a tool to deny justice or perpetuate injustice by any oppressive or punitive use. The **recognized exceptions** to this principle are as under :

(i) Where the statute prescribing the procedure also prescribed specifically the consequence of non-compliance.

(ii) Where the procedural defect is not rectified even after it is pointed out and due opportunity is given for rectifying it.

(iii) Where the non-compliance or violation is proved to be deliberate or mischievous.

(iv) Where the rectification of defect would affect the case on merits or will affect the jurisdiction of the court.

(v) In case of memorandum of Appeal, there is complete absence of authority and the appeal is presented without the knowledge, consent and authority of the appellant. See :

(vi) **Uday Shankar Triyar Vs Ram Kalewar Prasad Sing, 2006 (1) ARC 1 (SC) (Three-Judge Bench)** ***(****it was an appeal where vakalatnama signed by the appellant was not presented with the memorandum of appeal and the appeal was dismissed by the Addl. District Judge. The Hon'ble Supreme Court held that permission to sign the vakalatnama should have been granted)*.

(ii) Bihar State Electricity Board Vs. Pohowra Kankanee Collieries Ltd., 1984 (suppl.) SCC 597 *(where vakalatnama was not filed with the memo of appeal)*

(iii) Shastri Yagnapurus Das Ji & Others Vs Muldas Pohundaradas Vaishya & Others, AIR 1966 SC 1119 *(where vakalatnama was in favour of "X" but the memorandum of appeal was signed and filed by "Y")*

9. Procedural law cannot be a tyrant but a servant, not an obstruction but an aid to justice : In the case noted below, the Hon'ble Supreme Court has ruled that the procedural law cannot be a tyrant but a servant, not an obstruction but an aid to justice :

(a) Procedural law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the hand maid and not the mistress, a lubricant, not a resistant in the administration of justice.

(b) The mortality of justice at the hands of law troubles a Judge's conscience and points an angry interrogation at the law reformer.

(c) The object is to expedite the hearing and not to scuttle the same.
(d) Justice delayed may amount to justice denied, but justice hurried may amount to justice buried.
(e) Actus curie heminem gravabit (an act of court should prejudice no man)
(f) lex non cogit ad impossibilia (the law does not compel man to do what he cannot possibly perform) See : Saikh Salim Haji Abdul Khayamsab Vs. Kumar & Others, 2006 (1) ARC 334 (SC)

Note : *It was a case under Order 8, rule 1 CPC for extension of time for filing written statement beyond 90 days.*

10. Lapse of procedure when to be ignored ? : If violation of any procedural law does not cause any prejudice, it has to be treated as directory despite the use of the word "shall". See :
(i). Sugandhi Vs. P.Rajkumar, AIR 2020 SC 5486
(ii).Shivjee Singh Vs. Nagendra Tiwary, AIR 2010 SC 2261.

11. Omission to take signature of witness on his deposition not to render his deposition inadmissible: Where deposition of witness was recorded on commission but signature of the witness was not taken on it, it has been held by a Three-Judge Bench of the Supreme Court that correctness and authenticity of the deposition of the witness could not be disputed for want of signature on his depositions. Defect of not taking signature is not fatal to reception of deposition in evidence. See: Owners and Parties interested in M.V. 'Vali Pero' Vs. Fernandeo Lopez, AIR 1989 SC 2206 (Three-Judge Bench).Note : Section 114(e) of the Evidence Act is also relevant here.

12. Unsigned judgment is valid: Order 20, rule 3 CPC requires that the judgment should be dated and signed by the judge in open court at the time of its pronouncement. In the case noted below where the judgment did not bear signature of the judge, the Supreme Court held that: "As soon as the judgment is delivered, that becomes the operative pronouncement of the court. The law then provides for the manner in which it is to be authenticated and made certain. The rules regarding this differ but they do not form essence of the matter and if there is irregularity in carrying them out, it is curable. Thus, if a judgment happens not to be signed and is inadvertently acted on and executed, the proceedings consequent on it would be valid because the judgment, if it can be shown to have been validly delivered, would stand good

despite defects in the mode of its subsequent authentication**.** See: Surendra Singh Vs. State of Uttar Pradesh, AIR 1954 SC 194.

13. **Unsigned, defective vakalatnama and its correction** : Where in an appeal, the Vakalatnama signed by the appellant was not presented with the memorandum of appeal and the appeal was dismissed by the Addl. District Judge, the Supreme Court held that permission to sign the Vakalatnama should have been granted. See :

(i) Bihar State Electricity Board Vs. Bhowra Kankanee Colliveries Ltd., 1984 (suppl.) SCC 597(vakalatnama was not filed with the memo of appeal)

(ii) Shastri Yagnapurusdasji Vs. Muldal Bhundaradas Vaishya, AIR 1966 SC 1119 (Vakalatnama was in favour of "X" but the memorandum of appeal was signed and filed by "Y").

14. **To perpetuate an error is no heroism:** In the case noted below, it has been held by the Hon'ble Supreme Court that to perpetuate an error is no heroism. To rectify it is the compulsion of the judicial conscience. See : Mayuram Vs. CBI, (2006) 5 SCC 752, (Para 11)

15. **Court bound to rectify its mistake :** Once the court comes to the conclusion that a wrong order has been passed, it becomes the solemn duty of the court to rectify the mistake rather than perpetuate the same. See : State of Orissa Vs. Mamata Mohanty, (2011) 3 SCC 436.

16. **If an order is bad in its inception, it does not get sanctified at a later stage:** It is a settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage. A subsequent action or development cannot validate an action which was not lawful at its inception for the reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order. It would be ironic to permit a person to rely upon a law in violation of which he has obtained the benefits. If an order at the initial stage is bad in law, then all further proceedings consequent thereto will be non est and have to be necessarily set aside. A right in law exists only and only when it has a lawful origin. See: State of Orissa Vs. Mamata Mohanty, (2011) 3 SCC 436 (Para 37).

17. **Observance of principles of natural justice must while rectifying mistakes by Courts :** Observance of principles of natural justice is must while rectifying the mistakes by Courts. See : Saikh Salim Haji Abdul Khayamsab Vs. Kumar & Others, 2006 (1) ARC 334 (SC)

18. **Observance of principles of natural justice must while rectifying mistakes by Courts :** Even when a mistake is to be rectified, principles of natural justice is required to be complied with. See : Shekhar Ghos Vs. Union of India, 2007 (66) ALR 180 (SC).

19. **Providing hearing to the other side must before passing an order against him** : Where a revision filed u/s 115 CPC was allowed by the High Court without issuing notice to the other side and thereafter the review petition wherein this fact was specifically pointed out was also dismissed by the High Court, it has been held by the Hon'ble Supreme Court that the same was grossly against the settled principles of natural justice. The right of a man to be heard in his defence is the most elementary protection and is the essence of fair adjudication. The Hon'ble Supreme Court made following observations in the case noted below :
"Even God did not pass a sentence upon Adam before he was called upon to make his defence. Adam, says God "where art thou, has thou not eaten of the tree whereof I commanded thee that thou should not eat."See : Suresh Chandra Nanhorya Vs. Rajendra Rajak, 2006 (65) ALR 23 (SC**)**

20. **Party not to suffer a wrong occasioned by the inaction or fault on the part of the Court :** It is settled law that no person should suffer for inaction or fault on the part of the court. See :
(i) Jang Sing Vs. Brij Lal, AIR 1966 SC 1631
(ii) Mudit Verma V. Co-operative Tribunal, 2006 (63) ALR 208 (All)(LB)
Note : *It was a case of non-extension of temporary injunction on the date fixed despite application for extension of the same was moved by the party on the date fixed*.

21. **Other party not to suffer for the mistake or negligence committed by the counsel for one party :** It is true that if there is a bona fide mistake or negligence on the part of the lawyers, the party should not be made to suffer. But it is equally true that for the negligence of the counsel of one party, the other party should not suffer. See : Smt. Leela Bhanott Vs. Petrolube India, 2006 (64) ALR 403 (All) (DB) *(Para 32)*
Note : *It was a case of MACP wherein the counsel for the claimant, due to negligence, had failed to take steps and the case remained dismissed for a long time. Then it was held by the Division Bench that the opposite parties cannot be made to suffer and to pay interest for that period.*

22. **Court not to do injustice to other party while doing justice to one party:** In doing justice to one party, the court cannot do injustice to other party. See : Bhagwati Prasad Vs. Chandramaul, AIR 1966 SC 735 (Para 10)

Note : It was a case on other controversies and not on the point of mistake by court. This ruling has been referred to in Standard Chartered Bank Vs. Andhra Bank Financial Services Ltd. (2006) 6 SCC 94 (para 71)

23. **Recall or review of order passed due to error of procedure or mistake :** An order can be recalled or reviewed when proceedings are vitiated by error of procedure or mistake going to the root of the matter and invalidating entire proceedings. See : Kapra Mazdoor Ekta Union Vs. Management of Birla Cotton Mills Ltd., AIR 2005 SC 1782 (Three-Judge Bench).

24. **Judicial order passed in favour of one party not to be recalled or modified without notice to that party :** A judicial order passed in favour of one party cannot be recalled or modified without notice to that party. See : Rejendra Singh Vs. Upper Collector (Admin) Aligarh & Others, 2006 (5) ALJ 740 (All).

Note : *In this case, the Tehsildar Iglas, Aligarh, had recalled his order without notice to the party in whose favour the order was passed and the revision against that order was also dismissed by the ADM (Admin), Aligarh.*

25. **No review or recall of order passed in criminal cases due to bar of Section 362 CrPC:**Due to the absolute bar of Section 362 CrPC (now Section 403 BNSS, 2023), no criminal court can review or recall its own judgment or order. Even the High Court cannot review or recall an order u/s 482 CrPC. See :

(i) State of Kerala Vs. M.M. Manikantan, AIR 2001 SC 2145 (Three-Judge Bench)
(ii) Sunita Jain Vs. Pawan Kumar Jain, 2008 (61) ACC 355 (SC)
(iii) Adalat Prasad Vs. Rooplal Jindal, (2004) 7 SCC 338 (Three-Judge Bench)
(iv) Minu Kumari Vs. State of Bihar, 2006 (55) ACC 541 (SC)
(v) Hari Singh Mann Vs. Harbhajan Singh Bajwa, AIR 2001 SC 43
(vi) Bindeswari Prasad Singh Vs. Kali Singh, AIR 1977 SC 2432.

26. **Party not coming with clean hands not entitled to any relief** : A litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands is not entitled to any relief, interim or final. See :

(i) Dalip Singh Vs. State of UP, (2010) 2 SCC 114.

(ii) Krishna Kumar Vs. State of UP, 2010 (70) ACC 279 (All)(LB)(Para 7)

27. **Equitable doctrines not to apply in the event of fraud etc :** It is settled law that in the event of fraud or deceits etc. being played by a person, all equitable doctrines cease to apply to the case of such fraudster as has been ruled by the Hon'ble Supreme Court. *No person should be allowed to keep an advantage which he has obtained by fraud. Fraud can disqualify a man from job.See:*

(i).District Primary School Council, West Bengal Vs. Mritunjoy Das and others, 2011 (3) SLJ 239

(ii).Ram Preeti Yadav Vs. UP Board of High School and Intermediate Education & others, (2003) 8 SCC 311

28. **Fraud to vitiate even the most solemn act of the authority:** It has been repeatedly laid down by the Supreme Court that fraud vitiates even the most solemn act. See: (i) State of AP Vs. T. Suryachandra Rao, 2005 (33) AIC 761 (SC), (ii) Bhavrao Dagdu Paralkar Vs. State of Maharashtra, 2005 (4) AWC 3460 (SC), (iii) N. Khosla Vs. Rajlakshmi, 2006 (63) ALR 534 (SC) and (iv) M/s Reliance Salt Ltd. Vs. M/s Cosmos Enterprises & Others, 2007 (66) ALR 653 (SC).

29. **Advantage obtained by a person by playing fraud not to be allowed to be retained: N**o person should be allowed to keep an advantage which he has obtained by fraud. Fraud can disqualify a man from job. See: (i) District Primary School Council, West Bengal Vs. Mritunjoy Das and Others, 2011 (3) SLJ 239 and (ii) Ram Preeti Yadav Vs. UP Board of High School and Intermediate Education & Others, (2003) 8 SCC 311.

30. **Appointment obtained by fraud is non est:** An appointment obtained by fraud is non est. Fraud is anathema to all equitable principles and any affair tainted with fraud could not be perpetuated or saved by application of any equitable doctrine. See: (i) Ram Chandra Singh Vs. Savitri Devi, (2003) 8 SCC 319 and (ii) Rajinder Singh Vs. Delhi

Transport Corporation & Others, 2011 (3) SLJ 33(CAT) (Principal Bench, New Delhi).

31. **Appointment procured on false Caste Certificate liable to be terminated :** where the appointee had secured his appointment on the basis of false Caste Certificate, which on verification by the Scrutiny Committee, was found to be false after 10 years of her joining the service and a long time was taken by the Scrutiny Committee to verify the same, it has been held by the Hon'ble Supreme Court that both the counts as above do not validate the Caste Certificate and the consequent illegal appointment because long service on a fraudulent appointment can be no defence. Similarly in the case of Arshad Jamil Vs. State of Uttarakhand & others, 2011 (3) SLJ 367 (SC), it has been ruled by the Hon'ble Supreme Court that an appointment based on wrong Caste Certificate can be terminated.See: Ram Chandra Singh Vs. Savitri Devi, (2003) 8 SCC 319

32. **Second application after rejection of the first application as not pressed can be moved** : If the initial application having some technical flaws was dismissed as not pressed, the same does not operate as res judicata and a second application can be moved for decision on merits. See : Jagmohan Malhotra Vs. Jai Kumar Misra, 2005(2) AWC 1812 (All)

33. **Amendment like correction of Section in complaint to be allowed :** Where the complainant had mentioned a wrong Section in the complaint and moved an application for amending the same but the Magistrate rejected the application, it has been held by the Allahabad High Court that the Magistrate ought to have allowed the application. Complaint could not have been dismissed merely for wrong mentioning of Section. See : 1980 ACC 19 (All).

34. **Non-mentioning or wrong mentioning of law in petition or order and its consequences:** It is well-settled principle of law that non-mentioning or wrong mentioning of a provision of law (in the petition or order) does not invalidate an order in the event it is found that a power therefor exists. It is settled law that once it is found that the power exists, the exercise of power under a wrong provision will not render the order illegal or invalid. Non-mentioning or wrong-mentioning of a statutory provision under which power was exercised

and order was passed, would not vitiate the order for which there was a source under general law or a statute law. See: (i).Pradeep Ram Vs. State of Jharkhand, AIR 2019 SC 3193. (ii) P.K. Palanisamy Vs. N. Arumughm, 2009 (77) ALR 122 (SC), (iii) T. Nagappa Vs. Y.R. Muralidhar, (2008) 5 SCC 633, (iv) M.T. Khan & Others Vs. Govt. of Andhra Pradesh & Others, AIR 2004 SC 2934 (para 16), (v) High Court of Gujarat Vs. Gujarat Kisan Mazdoor Panchayat, (2003) 4 SCC 712 and (vi) Kishun Singh Vs. State of Bihar, (1993) 2 SCC 16

35. **Action taken by authority within its jurisdiction not invalid for mentioning a wrong Section or other provision of law in its order:** It is well-settled that if an authority has jurisdiction to take particular action, mere mention of incorrect provision or non-mention of correct provision does not make the action without jurisdiction unless the authority has no jurisdiction in the matter. See: Kaushalya Kanya Inter College, Moradabad Vs. State of UP, 2005 (2) AWC 1383 (Allahabad).

36. **A wrong decision made earlier in some other case cannot be applied to another case:** It is also settled legal proposition that Article 14 of the Constitution does not envisage for negative equality. In case a wrong benefit has been conferred upon someone inadvertently or otherwise, it may not be a ground to grant similar relief to others. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and, therefore, cannot be enforced by a citizen in Court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior Court for repeating or multiplying the same irregularity or illegality or for passing a similar wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible. See: (i) Basawaraj Vs. The Special Land

Acquisition Officer, AIR 2014 SC 746 and (ii) Chaman Lal Vs. State of Punjab, AIR 2014 SC 3640.

37. **Amendment in procedural law during the pendency of the case to apply retrospectively to all pending proceedings :** No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner prescribed for the time being by or for the court in which the case is pending and if by any Act of parliament the mode of procedure is altered, he has no other right than to proceed according to the altered mode. In other words, a change in the law of procedure operates retrospectively and unlike the law relating to vested rights is not only prospective. See :

(i) Shiv Shakti Co-operative Housing Society Vs. Swaraj Developers, 2003(3) AWC 2198 (SC)

(ii) Anant Gopal Sheoray Vs. the State of Bombay, AIR 1958 SC 915 (Three-Judge Bench)

(iii) Rani Kusum (Smt.) V. Kanchan Devi (Smt.) (2005) 6 SCC 705

38. **Observance of procedural law amended during the pendency of proceedings :** Well settled that when both the parties have led evidence on the point in issue, the burden of proof loses it's importance and it is the duty and function of court to appreciate the evidence led by both the parties and to arrive at a finding on the basis of appreciation of evidence. See : (i) N.B. Calholies vs. Thuklam Parlo, AIR 1959 SC 31, (ii) Laxman Prasad vs. Ram Kumar Singh, 1993 (II) LCD 728 (LB), (iii) Dhanesara vs. Smt. Sabira, 2005 iz0fu0i0 63 ¼fllfoy½ (LB) and (iv) Arumugham vs. Sundarmbal, 1993(3) AWC 2/104 (SC) (NOC)

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