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## **STAGES OF CIVIL SUIT**



# CHAPTER 1

## INTRODUCTION

As per Black's Law Dictionary - "Civil Procedure" means, body of law concerned with the methods, procedures and practices used in civil litigation. Laws can be divided into two groups:

- (i) Substantive law
- (ii) Procedural law

Substantive law determines rights and liabilities of parties and procedural or adjective law prescribes practice, procedure and machinery for the enforcement of those rights and liabilities. Procedural law is thus an accessory to substantive law. The Civil Procedure Code consolidates and amends the law related to the procedure of the Courts of Civil jurisdiction. On the other hand the Code of Civil Procedure is an adjective law. It neither creates nor takes away any right. It is intended to regulate the procedure to be followed by Civil Courts. The students need to be familiar with the essentials of the basic procedural laws of the Country. It is necessary for them to keep in view the requirement of the procedural law in handling of civil matters.

In *Ghanshyam Dass v. Dominion of India (1984)* it was held that "The Civil Procedure Code, 1908 neither creates nor takes away any right. It is intended to regulate the procedure to be followed by the Civil Courts".

### DIFFERENCE BETWEEN SUBSTANTIVE AND PROCEDURAL LAW

Substantive Law	Adjective Law
1. It determines the rights and liabilities of the parties.	1. It Provides machinery for enforcement of rights and liabilities i.e. it prescribes – practice, procedure & machinery
2. It Define, create or confer substantive legal rights or legal status.	2. It provides legal machinery for the enforcement of legal rights and liabilities.
3. Procedural & substantive laws are complementary to each other.	3. It is also an accessory to substantive law.
4. Examples – Indian Contract Act, 1872, Transfer of Property Act, 1882, Indian Penal Code, 1860, etc.	4. Examples – Indian Evidence Act, 1872, Limitation Act, 1963, Civil Procedure Code, 1908, Criminal Procedure Code, 1973 etc.
5. Generally, prospective in operation.	5. Generally, retrospective but Civil Procedure Code is prospective and not retrospective.

## **AIM AND SCOPE OF CIVIL PROCEDURE CODE, 1908**

The Civil Procedure Code consolidates and amends the law relating to the procedure of the Courts of Civil jurisdiction. The Code neither affect any special or local laws nor does it supersede any special jurisdiction or power conferred or any special form of procedure prescribed by or under any other law for the time being in force. The Code is the general law so that in case of conflict between the Code and the special law the latter prevails over the former. Where the special law is silent on a particular matter the Code applies, but consistent with the special enactment.

The object of the Code generally is to create jurisdiction while the rules indicate the mode in which the jurisdiction should be exercised. Thus the main object of this civil procedure code is to consolidate and amend the laws relating to the procedures of the Court of Civil Judicature. The main aim of the CPC is to facilitate justice and seek an end to the litigation rather than provide any form of punishments and penalties.

## **SCHEME OF THE CODE**

The Civil Procedure Code consists of two parts.

- (i) In sections- 158 Sections are given in the first part
- (ii) In orders- The rules and orders in Schedule I form the second part. It contains 51 orders.

Thus the above two parts should be read together and in case of any conflict between the sections and the rules, the former must prevail.

## **HISTORY OF CIVIL PROCEDURE CODE 1908**

- To give uniformity to Civil Procedure, Legislative Council of India enacted Code of Civil Procedure, 1858, which received the assent of Governor-General on 23 March 1859.
- The Code however, was not applicable to the Supreme Court in the Presidency Towns and to the Presidency Small Cause Courts. It did not meet the challenges and was replaced by Code of Civil Procedure Code, 1877.
- Still it did not fulfill the requirements of time and large amendments were introduced in 1882 i.e. The Code of Civil Procedure, 1882 was introduced.
- With passing of time it is felt that it needed flexibility for timeliness and effectiveness. To meet these problems Code of Civil Procedure, 1908 was enacted.
- After that it has been amended number of times. The Code of Civil Procedure was substantially amended in the year 2002. The main purpose of the Amendment of the code was to ensure speedy disposal of civil cases governed under the Act.
- Keeping in view the establishment of Commercial Court and the provisions thereof, Civil Procedure Code (Amendment) Act, 2016 was enacted. These provisions are applicable to

commercial disputes of specified value. The act clarified that the provisions of the Civil Procedure Code as amended by the Act would have an overriding effect over any rules of the High Court or of the amendments made by the state government concerned.

- The Code of Civil Procedure, 1908 was further amended in the year 2018. It omitted the special status on JAMMU AND KASHMIR.

CODE AND AMENDMENTS	DATE OF ENFORCEMENT
1908	1 JANUARY 1909
1976	1 FEBRUARY 1977
1999	1 JULY 2002
2002	1 JULY 2002
2015	23 OCTOBER 2015
2018	31- DECEMBER 2019

## **OBJECT OF AMENDMENTS**

Object of Amendments is to keep procedural law in tune with changing needs of society and even technological advances.

## **PART-WISE BREAKDOWN OF CIVIL CODE:-**

- Sections 1 to 8 are preliminary in nature. Section 1 provides for commencement and applicability of the Code. Section 2 is a definition clause and a legal dictionary of important terms which are used in the body of the Code. Sections 3 to 8 deal with constitution of different types of courts and their jurisdiction thereby.
- Part I (Sections 9 to 35B) and Orders I to XX of the First Schedule deal with suits. Section 9 enacts that a civil court has jurisdiction to try all suits of a civil nature unless they are barred expressly or implied. Whereas Section 10 provides for Stay of Suit (Res Sub-Judice), Section 11 deals with a well-known Doctrine of Res Judicata. Sections 13 and 14 relate to Foreign Judgments.
- Sections 15 to 21A regulate the Place of Suing. They lay down rules as to jurisdiction of courts and objections as to jurisdiction. Sections 22 to 25 make provisions for transfer and withdrawal of suits, appeals and other proceedings from one court to another.
- Orders I to IV deal with institution and frame of suits, parties to suit and recognised agents and pleaders. Order V contains provisions as to issue and service of summons. Order VI, deals with pleadings. Orders VII and VIII relate to Plaints, Written Statements, Set-Offs and Counter-Claims. Order IX requires parties to the suit to appear before the court and enumerates consequences of non-appearance. It also provides the remedy for

setting aside an order of dismissal of the suit to a plaintiff and of setting aside an ex-parte decree against a defendant.

- Order X enjoins the court to examine parties with a view to ascertaining matters in controversy in the suit. Orders XI to XIII deal with Discovery, Inspection and Production of documents and also admissions by parties. Order XIV requires the court to frame issues and Order XV enables the court to pronounce judgment at the first hearing in certain cases.
- Orders XVI to XVIII contains provisions for summoning, attendance and examination of witnesses and adjournments. Order XIX empowers the court to make an order or to prove facts on the basis of an affidavit of a party.
- (Part II) and Order XXXVIII provide for arrest of a defendant and attachment before judgment. Order XXXIX lays down procedure for issuing temporary injunction and passing interlocutory orders. Order XL deals with appointment of receivers. Order XXV provides for security for costs.
- Order XXIII deals with withdrawal and compromise of suits. Order XXII declares effect of Death, Marriage or Insolvency of a party to the suit.

After the hearing is over, the court pronounces a judgment. Section 33 and Order XX deal with judgments and decrees. Section 34 makes provision for interest. Sections -35, 35A, 35B and Order XXA deal with costs.

- Sections 75 to 78 (Part III) and Order XXVI make provisions as to issue of Commissions. Sections 94 and 95
- Parts IV and V (Section 79-93) and Orders XXXVII lay down procedure for suits in special cases, such as, Suits by or against Government or Public Officers (Section 79 to 82 and Order XXVII); Suit by or against soldiers, sailors and airmen (Order XXXVIII); Suits by or against corporations (Order XXXIX); Suits by or against Partnership Firms (Order XXX); Suits by or against Trustees, Executors and Administrators (Order XXXI); Suits by or against Minors, Lunatics and Persons of Unsound Mind (Order XXXII); Suits relating to Mortgages (Order XXXIIA ); Suits by Indigent Persons (paupers) (Order XXXV); Suits relating to mortgages (Order XXXIIA); Suits by Indigent Persons (paupers) (Order XXXV); Friendly Suits (Section 90 and Order XXXVI ); Summary Suits (Order XXXVII); Suits relating to Public Nuisances (Section 91) and Section 89 provides suits relating to Settlement of Disputes outside the court through Arbitration, Conciliation, Mediation and LokAdalats.

- Parts VII and VIII (section 96 and 115) and Orders XLI to XLVII contain detailed provisions for Appeals, Reference, Review and Revision. Section 96 to 99A and Order XLI deal with first Appeal. Section 100 to 103 Order XLII provides the law relating to Second Appeals. Sections 104 to 108 and Order XLIII contains provisions as to appeals from Orders. Section 109, 112 and Order XLV provides for appeals to the Supreme Court. Order XLIV enacts special law concerning Appeals by Indigent Persons (paupers). Section 113 and Order XLVI pertain to reference to be made to a High Court by a subordinate court when a question of constitutional validity of an Act arises. Section 114 and Order XLVII permit review of judgments in certain circumstances. Section 115 confers revisional jurisdiction on High Courts over subordinate courts.
- PART IX- special provisions relating to the high courts not being the court of a judicial commissioner
- Part X (section 121 to 131) enables High Courts to frame Rules for regulating their own procedure and the procedure of civil courts subject to their superintendence.
- Part XI (Section 132 to 158) relates miscellaneous proceedings. Explanation to Section 141 as added by the Amendment Act of 1976 clarifies that the expression “proceeding “ would not include proceedings under Article 226 of the Constitution, Section 144 embodies the doctrine of restitution and deals with the power of the court to grant relief of restitution in case a decree is set aside or by a superior court.
- Section 148A as inserted by the Code of Civil Procedure (Amendment) Act, 1976 is an important provision which permits a person to lodge a caveat in a suit or proceeding instituted or about to be instituted against him. It is the duty of the court to issue notice and afford an opportunity of hearing to a caveator to appear and oppose interim relief sought by an applicant.
- Section 148 to 153A confer inherent powers in every civil court. Section 148 enables court to enlarge time fixed or granted by it for doing any act. Section 149 authorizes a court to permit a party to make up deficiency of court –fees on plaint, memorandum of appeal, etc. Section 151 is a statutory provision. It saves inherent powers in every court to secure the ends of justice and also prevent the abuse of process of the court. Section 152 to 153A empowers a court to amend judgments, decrees, orders and other records arising from accidental slip or omission.
- Section 153-B as added by the Amendment Act of 1976 expressly declares that the place of trial shall be open to the public. The proviso, however, empowers the Presiding Judge,



if he thinks fit, to order that the general public or particular person shall not have access to the court.

### **PREAMBLE OF CIVIL PROCEDURE CODE, 1908**

It is an act to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature.

WHEREAS it is expedient to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature: It is hereby enacted as follows:

### **TITLE, COMMENCEMENT AND EXTENT – SECTION 1**

- This Act may be cited as the Code of Civil Procedure, 1908.
- It shall come into force on the first day of January, 1909.
- It extends to the whole of India (**the word Jammu and Kashmir was omitted by Act 34 of 2019**) **EXCEPT**- the State of Nagaland and the tribal areas.

Thus presently this code is applicable upon whole India including Jammu and Kashmir and excluding the State of Nagaland and the tribal areas.

In the case of *PremLalaNahata v. Chandi Prasad Sikaria (2007)* the Hon'ble Supreme Court held that "The Code consolidates and amends the laws relating to the procedure of the courts of Civil Judicature. No doubt it also deals with substantive rights. But its essential object is to consolidate the law relating to civil procedure"

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## DEFINITIONS

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Section 2 of Civil Procedure Code provides definitions relating to the civil law. In which some important definitions are:

### **DECREE, ORDER AND JUDGEMENT**

#### **DECREE SECTION 2(2)**

Section 2 (2) - "DECREE" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 144, but shall not include—

- (a) any adjudication from which an appeal lies as an appeal from an order, or
- (b) any order of dismissal for default.

**Explanation—**A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final.

Thus according to Section 2(2), C.P.C, 1908, the essential elements of decree are as follows:-

1. There must be a judicial determination (adjudication) of matter in dispute.
2. Such adjudication must have been done in a suit, by instituting a plaint.
3. The adjudication must have determined the rights of parties with regard to substantive as well as procedural rights with regard to all or any of the matters present in controversy in that suit.
4. Such determination must be final and conclusive as regards the court which passes it.
5. And there has to be a formal expression of such adjudication.

#### **ESSENTIALS OF DECREE**

##### **1. ADJUDICATION-**

It means judicial determination of the matter in dispute. Hence, if the decision is of administrative in nature, then it cannot be considered as a decree. The adjudication must be about any or all of the matters in controversy in the suit. The court should resolve the matter of controversy through its own, by applying the facts and circumstances of the case therein. The matter in dispute should be judicially determined.

***KandapazhaNadar v. Chitraganiammal, [AIR 2007 SC 1575]***the Supreme Court held that order allowing withdrawal of suit, without liberty to file fresh suit, is without any adjudication thus does not constitute "decree".

***Deep Chand v. Land Acquisition Officer***, the adjudication should be made by the officer of the Court and if it is not passed by an officer of the court then it is not a decree.

## **2. SUIT –**

The Adjudication must have been given in a suit, which is commenced by filing a plaint in a civil court. Without a civil suit there lies no decree. The term “suit” for this context can be understood as “any civil procedure which has been instituted by the presentation of a plaint”. There are several specific provisions which enable certain applications to be treated as suits such as proceedings under the Hindu Marriage Act, the Indian Succession Act etc. They are suits by virtue of a Statute and the decisions given thereby are considered to be decrees. Section 2(2) does not include execution proceedings and rejection of an application for leave to sue as an Indigent Person.

***Hansraj Gupta v Official Liquidators of the Dehradun-Mussoorie Electric Tramways Co. Ltd AIR 1933 PC 63***-It was held that “a civil proceeding instituted by presentation of plaint”.

## **3. RIGHTS OF PARTIES IN CONTROVERSY –**

The rights of parties which are in controversy must be determined by a formal adjudication. The rights determined under this circumstance are substantial rights and not procedural rights. The parties to the rights in controversy should be the plaintiffs and defendants and, if an order is passed upon the application made by a third party who is a stranger to suit then it is not a decree. An order rejecting the application of a poor plaintiff to waive the court costs is not a decree because it does not determine the right of the party in regards to the matters alleged in the suit. Dismissing a suit for default in appearance of the plaintiff is not a decree. However, dismissing a suit on merits of the case would be a decree. Interlocutory orders on matters of procedure which do not decide the substantive rights of the parties are not decrees.

## **4. FORMAL EXPRESSION**

There must be a formal expression of adjudication which means all the requirements of form must be complied with. The adjudication should be expressed formally and such formal expression should be given in the manner prescribed by law. The decree should be drawn separately and it should follow the judgment. A mere comment of the judge cannot be a decree. No appeal lies the judgment if the decree is not formally drawn upon the judgment.

## **5. CONCLUSIVE DETERMINATION**

The determination must be final and conclusive as regards the court which passes it. An order dismissing an appeal summarily under order 41 of the Code is Decree. The expression “matters in controversy” refers to the subject-matter of the suit with respect to which any relief is sought and such matter which has been brought up for adjudication before the Court by the pleading. Thus, an interlocutory order which does not decide the rights of the parties

finally is not a decree, e.g. an order refusing an adjournment, etc. The crucial point which requires to be decided in such a case is whether the decision is final and conclusive in essence and substance.

### **CLASSES OF DECREE:-**

There are mainly 3 kinds of Decree. But in this we will discuss all types of decrees as mentioned blow:

- (i) Preliminary
- (ii) Final and
- (iii) Partly Preliminary and Partly Final
- (iv) Deemed decree
- (v) Consent decree
- (vi) Ex-parte decree
- (vii) Decree passed in appeal
- (viii) Conditional decree

### **Preliminary decree -**

A preliminary decree is passed in those cases in which court has first to adjudicate upon the right of the parties and then to stay its hands for the time being, until it is in a position to pass final decree in the suit. A preliminary decree is only a stage of working out the rights of the parties which are to be finally adjudged by a final decree.

**EXAMPLES-** But the list is not exhaustive.

- Suit for possession and mesne profit--O.20 R.12
- Administration Suit-- O 20 R.13
- Suit for pre-emption-- O 20 R.14
- Suit for dissolution of partnership-- O 20 R.15
- Suit for foreclosure of mortgage-- O 34 R 2-3
- Suit for sale of mortgage property-- O 34 R 4-5.
- Suit for redemption of mortgage-- O 34 R 7-8

### ***Mool Chand v. Director Consolidation (1995) 5 SCC 631***

Preliminary decree is only a stage in working out the rights of parties which are to be finally adjudicated by a final decree.

### **Final decree -**

A final decree is one which completely disposes of a suit and finally settles all questions in controversy between parties and nothing further remains to be decided thereafter. A decree may be said to be final in following two ways -

- a) When within the prescribed period No appeal is filed against the decree or the matter has been decided by the decree of the highest Court; and
- b) When the decree, so far as regards the court passing it, completely disposes of the Suit.  
E.g. a suit for the recovery of money, past mesne profit, future mesne profits at a particular rate, without directing any future proceeding.

In *BikobaDeoraGaikwad v. HirabaiMarutiraoGhorgare*, (2008) 8 SCC 198 case the Court observed that “A decree, therefore may denote final adjudication between the parties and against which appeal lies, but only when a suit is completely disposed of thereby a final decree would come into being. There cannot be any doubt whatsoever that a decree may be partly preliminary and partly final.

### **Characteristics of Final Decree:**

1. Final decree is executable:
2. In some suits final decree can be passed without passing a preliminary decree:
3. It settles matter in controversy:
4. It carries fulfillment of the primary decree:
5. Court can pass more than one final decree:

### **Partly preliminary and partly final decree -**

As above said a decree may be partly preliminary and partly final. A preliminary decree is one which declares the rights and liabilities of the parties leaving the actual result to be worked out in further proceedings. Then as the result of further inquiries conducted pursuant to the preliminary decree, the rights of the parties are fully determined and a decree is passed in accordance with such determination which is final. A decree may be said to be final in following two ways –

- (a) Where the time for appeal has expired without any appeal being filed against the preliminary decree or the matter has been decided by the highest court.
- (b) When the time for Appeal has expired without any appeal being filed against the preliminary decree the same stands completely disposed of.

### **Appeal from final decree when no appeal from preliminary decree -**

According to Section 97 of the Civil Procedure Code, Where any party aggrieved by a preliminary decree after the commencement of this Code does not appeal from such decree, he shall be precluded from disputing its correctness in any appeal which may be preferred from the final decree.

## **CAN THERE BE MORE THAN ONE PRELIMINARY AND ONE FINAL DECREE?**

“No rule contemplates more than one preliminary decree and one final decree in one suit. In fact, the code nowhere contemplates more than one final decree in one suit.” A decree may be partly preliminary and partly final. It is settled law that there can be more than one preliminary decrees in a suit. Similarly, there can be more than one final decree in a suit.

**Finally, in *Shankar V. Chandrakant*, AIR 1995 SC 1211**, the Supreme Court Said “It is settled law that more than one final decree can be passed.

“A preliminary decree is one which declares the rights and liabilities of the parties leaving the actual result to be worked out in further proceedings. Then, as a result of the further inquiries, conducted pursuant to the preliminary decree, the rights of the parties are fully determined and a decree is passed in accordance with such determination which is final. Both the decrees are in the same suit.

The Supreme Court in the case of ***Phoolchand v. GopalLal***, held that nothing in the Code of Civil Procedure prohibits passing of more than one preliminary decree if the circumstance requires or if required by the Court. But, it should be noted that this decision was given by the Court regarding partition suits.

<b>Preliminary decree</b>	<b>Final decree</b>
<ol style="list-style-type: none"><li>1. Further proceedings necessary to dispose of the suit finally.</li><li>2. Only some or one of the controversial matters is disposed of.</li><li>3. It ascertains what to be done.</li><li>4. It is independent.</li><li>5. In partition and partnership suit several preliminary decrees may be passed.</li></ol>	<ol style="list-style-type: none"><li>1. It disposes of the suits finally.</li><li>2. Rights and liabilities are finally adjudicated.</li><li>3. It states the result of preliminary decree.</li><li>4. It is dependent on the preliminary decree and subordinate to preliminary decree.</li><li>5. Only one. [<i>Shanker v. Chanderkant</i> (AIR 1995 SC)]</li></ol>

## **DEEMED DECREE**

There is one other type of decree known as Deemed Decree. The term “deemed” is generally used to create a statutory fiction for the purpose of extending the meaning which it does not expressly cover. An adjudication which fails the test of Section 2(2) of the Code cannot be said to be a decree, however by the help of legal fiction certain orders are deemed to be decree.

- a) Rejection of plaint under Order VII, Rule 11,
- b) Determination of question under section 144 (Restitution)

- c) Order XX, Rule 98 and 100 of the Code of Civil Procedure are considered to be deemed decree.

### **CONSENT DECREE**

A consent decree is a decree that is brought about the agreement between both the parties. It is the result and the reason for such adjudication is the consent of the parties.

### **EX-PARTE DECREE**

A decree passed in the absence of the defendant is an ex-parte decree.

### **DECREE PASSED IN APPEAL**

It is a decree passed in continuation of litigation between the parties by the appellate court.

### **CONDITIONAL DECREE**

It is a decree with certain built conditions that form the part of the decree is called conditional decree.

### **ORDERS WHICH AMOUNT TO A DECREE:**

- Order of abatement of suit;
- Dismissal of appeal as time barred;
- Dismissal of suit or appeal for want of evidence or proof;
- Modification of scheme under Section 92 of the Code;
- Order holding appeal not maintainable;
- Rejection of plaint for non-payment of court fees;
- Granting or refusing to grant costs or installments;
- Order refusing one of several reliefs
- Order holding that there is no cause of action;
- Order holding that the right to sue does not survive;

### **ORDERS WHICH DO NOT AMOUNT TO A DECREE:**

- Dismissal of appeal for default;
- Appointment of Commissioner to take accounts;
- Order of remand;
- Order granting or refusing interim relief;
- Rejection of application for condonation of delay;
- Order directing assessment of mesne profits;
- Dismissal of suit under Order 23 Rule 1;
- Order holding an application to be maintainable;



- Order refusing to set aside sale;
- Return of plaint for presentation to proper court;

## **CONTENTS OF A DECREE**

A decree always follows the judgment, it contains:

1. **The suit's number** – Every suit has a particular number and it should be mentioned in the decree.
2. **The names, description and registered addresses of the parties** – Every decree shall have the names of all the parties of that particular suit, the proper description of the parties of the suit, and the registered addresses of all the parties of the suit.
3. **The particulars of the parties claims or defence** – Every decree shall contain the details of the claims and the defences the parties are claiming as an outcome of the said suit.
4. **The relief or the remedy granted to the aggrieved party** – The decree should in particular mention about the relief granted to the particular party as a remedy and not a reward.
5. **The total amount of cost incurred in the suit-**
  - by whom; or
  - out of what property; and
  - in what portions are they paid or are to be paid.
6. **The judgement's date of pronouncement or delivery date of the judgement** – The decree should mention the date on which the judgement was delivered followed by the decree.
7. **The judge's signature on the decree** – The judge's signature is an essential and indispensable element of any decree. The signature of the judge delivering the judgement is an essential requisite.

## **DRAWING UP OF A DECREE**

Rule 6A Order XX of Code of Civil Procedure, 1908 states that a decree shall be drawn within 15 days from the date of the judgment. An appeal can be preferred without filing a copy of a decree if it is not drawn within 15 days of the judgment.

## **JUDGMENT SECTION 2(9)**

“Judgment” means the statement given by the Judge of the grounds of a decree or order.

A judgment contains facts of the case, the issues involved, the evidence brought by the parties, finding on issues (based on evidence and arguments). Every judgment shall include a



summary of the pleadings, issues, finding on each issue, ratio decidendi and the relief granted by the court. Thus, a Judicial determination putting an end to the action by any award or redress to one party or discharge of the other as the case may be is judgment. The judgment should be signed and dated by the judge while declaring it in the open court.

### **ELEMENTS OF JUDGMENT:**

1. A concise statement of the case.
2. The points for determination.
3. The decision thereon and
4. The reasons for such decision

Whereas the judgments of Court of Small Causes need not contain more points for determination and The Supreme Court in *Surendra Singh v. State of Uttar Pradesh 1954 SCR 330: AIR 1954 SC 194* has laid down certain basic principles about judgment:

- (1) A judgment embodies the expression of the mind of the Court at the time of pronouncing it in open Court. A draft prepared is not a judgment, however heavily or often it may have been signed. It does not become a judgment, unless it is delivered in open Court with the intention of making it the operative decision of the Court.
- (2) Once pronounced, it becomes a judgment but until signed, the judge may freely alter or amend it or even change it completely without any further formality except notice to the parties and a rehearing on the point of change, should that be necessary.
- (3) But, after it has been signed, it shall not be altered or added to save as provided by section 152 of the Code of Civil Procedure or on review.
- (4) Small irregularities in the manner of pronouncement or the mode of delivery, the manner in which it is to be recorded or the ways in which it is to be authenticated, the signing or the sealing, all the rules designed to secure certainty about its content and matter, do not matter. These can be cured. But what cannot be cured is the 'hard core', e.g., the formal intimation of the decision and its contents formally declared in a judicial way in open Court."

Thus, a judgment contemplates a stage prior to the passing of a decree or an order, and, after the pronouncement of the judgment, a decree shall follow. A judgment of a Court or a Tribunal should contain concise statement of case, points of decisions, the reasons for such decisions and decisions thereupon where the Tribunal failed to assign sufficient or cogent reasons in support of its findings.

### **MANNER OF PRONOUNCEMENT OF JUDGMENT**

The court has to pronounce judgment in open court after completion of hearing, either at that moment or on some other day, after giving due notice to parties or to their pleaders. By the Amendment Act of 1976, it was provided that if a judgment is not pronounced at once, it should be delivered within thirty days from conclusion of hearing and if not practicable, then same to be pronounced within sixty days. The judgment must be dated and signed by the judge as Rule 2 enables a judge to pronounce a judgment which is written but not pronounced by his predecessor. It is not mandatory for a judge to read out the whole judgment. The judge shall put the date on which the judgment was pronounced along with his signature.

It has to be based on grounds and points in the pleadings and not outside the case put forward by the parties. Court needs to record findings on all the points raised by parties and it should not decide any question which does not arise from the pleadings of parties or are unnecessary.

### **COPY OF THE JUDGMENT**

Once the judgment is pronounced the copies of that particular judgment should be immediately made available to the parties on payment of costs as specified, by the party applying for such copy, of such charges as may be specified in the rules and orders made by the High Court (H.C.) Such a rule is specified in Order XX Rule 6-B of the Code of Civil Procedure, 1908.

### **ALTERATION OF A JUDGMENT**

Once a judgment is dated and signed by the judge it can only be altered or amended if:

1. There are arithmetical or clerical errors. (Clerical errors refer to the errors made by clerks and arithmetical errors refer to errors made in numbers such as addition, subtraction, multiplication and division).
2. There are errors due to accidental slips or omissions (these errors take place when some essential element is left unnoticed) (Section 152) on review (Section 114).

### **ORDER SECTION 2(14)**

The term Order has been defined under Section 2(14) of the Code as the formal expression of any decision of a civil court which is not a decree.

#### **Essential elements of order are as follows:**

1. It should be a formal expression of any decision.
2. The formal expression should not be a decree.
3. The decision to be pronounced by a civil court.

Thus, an adjudication of the court which is not a decree is an order. As a general rule, an order of a court is founded on the objective considerations and as such judicial order must contain a discussion of the question at issue and the reasons which led to the passing of the order. Orders are of two kinds:

Appealable orders – Orders against which an appeal lies.

Non appealable orders – Orders against which no appeal lies

### **DISTINCTION BETWEEN DECREE AND ORDER:**

<b>Decree [Section 2(2)]</b>	<b>Order [Section 2(14)]</b>
<ol style="list-style-type: none"><li>1. Only in a suit.</li><li>2. Conclusively adjudicates the rights and liabilities of the parties.</li><li>3. Preliminary/final/partly preliminary and partly final.</li><li>4. Generally one decree is passed in each suit.</li><li>5. It is appealable under Section 96, CPC.</li><li>6. Second appeal on substantial question of law under Section 100.</li></ol>	<ol style="list-style-type: none"><li>1. Suit/Petition/Application</li><li>2. May/may not</li><li>3. Not applicable</li><li>4. Numerous orders are passed in a single proceeding.</li><li>5. Only those orders are appealable which are described under Section 104, Order 43, Rule 1.</li><li>6. No second appeal.</li></ol>

### **DISTINCTION BETWEEN JUDGMENT AND DECREE**

<b>Judgement</b>	<b>Decree</b>
A judgement is based upon facts.	A decree is based upon judgement.
Judgment is made prior to decree.	Decree always follows a judgement.
A judgement contains facts of the case, the issues involved, the evidence brought by the parties, finding on issues(based on evidence and arguments).	A decree contains the outcome of the suit and conclusively determines the rights of the parties with regard to the issues in dispute in the suit.
The definition of the word judgement given in section 2(9) of the Code of Civil Procedure, 1908 does not include the word 'formal'.	The definition of the word decree given in section 2(2) of Code of Civil Procedure, 1908 includes the word 'formal'.
Section 2(9) of the Code of Civil Procedure, 1908 describes the term judgement.	Section 2(2) of the Code of Civil Procedure, 1908 describes the term decree.
Judgment has no types.	A decree is divided into three types.
Judgement may result in a preliminary decree or a final decree or an order by itself, the judgement is always final.	The decree may be a preliminary or final or partly preliminary and partly final.
Judgement leads to the final disposal of the suit after the decree is drawn up.	After passing the decree, the suit stands disposed of since the rights of the parties are finally determined by the court.

### **DECREE –HOLDER SEC. 2(3)**

Sec.2(3) reads: "Decree- holder "means any person in whose favour a decree has been passed or an order capable of execution has been made.

A decree – holder need not necessarily be the plaintiff. A decree for specific performance is capable of execution both by the plaintiff as well as by the defendant. A person who is not a party to the suit but in whose favour an order capable of execution has been passed is also a decree-holder.

### **DISTRICT SEC.2(4)**

"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.

### **FOREIGN COURT SEC. 2(5)**

"Foreign Court" means a Court situate outside India and not established or continued by the authority of the Central Government.

### **FOREIGN JUDGMENT SEC. 2(6)**

(6) "Foreign judgment" means the judgment of a foreign Court.

### **GOVERNMENT PLEADER SEC.2 (7)**

"Government Pleader" includes any officer appointed by the State Government to perform all or any of the functions expressly imposed by this Code on the Government Pleader and also any pleader acting under the directions of the Government Pleader.

### **HIGH COURT SEC.2(7A)**

"High Court" in relation to the Andaman and Nicobar Islands, means the High Court in Calcutta.

### **INDIA SEC. 2(7B)**

"India", except in sections 1, 29, 43, 44, 4 [44A,] 78, 79, 82, 83 and 87A, means the territory of India excluding the State of Jammu and Kashmir.

### **JUDGE SEC. 2(8)**

"Judge" means the presiding officer of a Civil Court.

## **JUDGMENT-DEBTOR SEC.2 (10)**

"Judgment-debtor" means any person against whom a decree has been passed or an order capable of execution has been made.

## **LEGAL REPRESENTATIVE SEC.2 (11)**

It means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued;

When a person against whom a legal proceeding is going on dies in the middle of the proceeding. In that case, his legal representative represents him in the court but only to that extent for which he is accountable or that portion of the property which has come in his hands

***United India Insurance Co Ltd vs. ShyamRaoMetre and others 2012***

As the definition under section 2(11) of the code reads, it is nowhere described that a legal representative can only be that person who is dependent on the deceased. Any person related to the deceased can be a legal representative.

***Balco National Ultramarine v. NaliniBai, AIR 1989 SC:***

The expression legal representative is inclusive in character. Its scope is very wide.

Following persons are held to be legal representative:

- (a) executors
- (b) administrators
- (c) reversioners
- (d) Hindu coparceners
- (e) residuary legatees etc.

Following persons are not legal representatives:

- (a) a trespasser;
- (b) an executor de-son tort i.e. executor of his own wrong i.e. A person who "takes upon him the office of an executor by intrusion not being so constituted by the testator."
- (c) succeeding trustee;
- (d) official assignee or receiver etc.

## **MESNE PROFITS: SEC-2(12)**

"Mesne profits" of the property are those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received there from, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possessions."

So, Mesne Profits are the profit that the defendant had obtained from the wrongful possession of the property. It is not the profit that the plaintiff would have obtained rather it is the profits

that defendant obtained during the period of wrongful possession of the suit property. In case the defendant had not obtained any profits out of the suit property because of his carelessness, it never means that court will not award any mesne profit to the plaintiff. The very word in the act 'might by ordinary diligence have received' indicates that court will allow the amount that courts find appropriate. There is no straight jacket formula to calculate the amount that to be awarded to the plaintiff as the mesne profit but court will consider every case on individual basis.

**Example** - the defendant is in the wrongful possession of a residential building, in that case the rent applicable in that area along with interest may form part of the amount decreed as mesne profit.

Therefore, the test to ascertain mesne profit is not what the plaintiff has lost by being out of possession but what the defendant gained or might reasonably and with ordinary prudence have gained by such wrongful possession.

***Fateh Chand v. Balkishan Das, AIR 1963 SC*** – The court may mould the amount of mesne profit according to the justice of the case.

- The guiding principles for determination of mesne profits are as follows:-
- The profits must be accounted of by the person in wrongful possession.
- Restoration of status to the decree holder about the possession of property.
- Use to which the decree holder would have put the property if he himself was in possession.

### **MOVABLE PROPERTY SEC-2(13)**

It includes growing crops.

### **PUBLIC OFFICER SEC-2(17)**

Section 2 (17) of the Code defines the term Public Officer as follows:

'Public Officer' means a person falling under any of the following descriptions:

1. Every judge;
2. Every member of an All India Services;
3. Every commissioned or gazetted officer in the military, naval or air forces of the Union while serving under the Government;
4. Every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer an oath, or to interpret, or to preserve order, in the Court and every person specially authorized by a Court of Justice to perform any of such duties;

5. Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;
6. Every officer of the government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;
7. Every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the government, or to execute any revenue process, or to investigate, or to report on, any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interest of the Government;
8. Every officer in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty

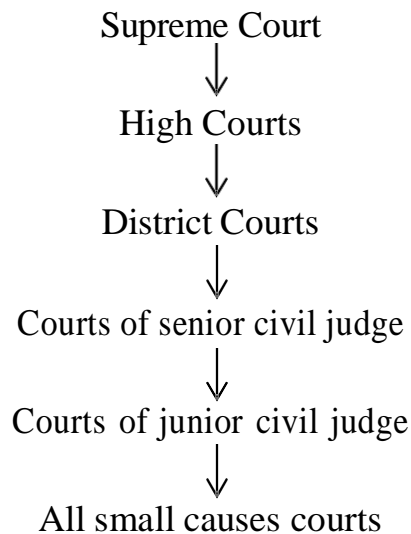
### **SECTION 3- STRUCTURE OF CIVIL COURTS**

Section 3 of the Civil Procedure Code lays down that for the purposes of this Code, the District Court is subordinate to the High Court and every Civil Court of a grade inferior to that of a District and every Court of Small Causes is subordinate to the High Court and District Court.

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## **HIERARCHY OF CIVIL COURTS IN INDIA**



### **SECTION -4 SAVINGS**

In the absence of any provision to the contrary, nothing in this code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force. Nothing in this Code shall affect any remedy which a landholder or landholder may have under any law for the time being in force for the recovery of rent of agriculture land from the produce of such land.

### **SECTION -5 APPLICATION OF CODE TO REVENUE COURTS**

#### **/SMALL CAUSE COURTS**

Sec.5 provides that where any Revenue Courts are governed by the code, in those procedural matters on which any special Act applicable to them is silent, the state government may declare that any portions of these provisions which are not expressly made applicable by the code shall not apply to Revenue Courts, or that they shall apply to such court only with such modification as the State Government may prescribe.

A “revenue court” is a court having jurisdiction under any local law to entertain suits and other proceeding to the rent, revenue or profits of land used for agricultural purpose. It does not include a civil court having original jurisdiction under the Code to try such suits or proceedings as being suits or proceeding of a civil nature.

## **JURISDICTION OF A COURT**

Term jurisdiction may be defined to be the power or authority of a Court to hear and determine a case and to adjudicate and exercise any judicial power in relation to it. So



jurisdiction means the authority which a Court has to decide matter that is litigated before it. The defect of jurisdiction goes to root of the matters. Such a basic and fundamental defect cannot be cured by consent of parties. If a decree passed by a Court without jurisdiction is a "**Coram non judice**" i.e. case is before a court lacking the authority to hear and decide the case in question.

In *Kiran Singh v. Chaman Paswan*, AIR 1951 SC 340 it was observed that

"It is a fundamental principle that a decree passed by a Court without jurisdiction is a nullity and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction...strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties".

## **KINDS OF JURISDICTION**

Jurisdiction of a Court may be classified into the following categories-

- (i) **Territorial or local jurisdiction** - Every Court has its own local or territorial limits beyond which it cannot exercise its jurisdiction. These limits are fixed by the Government. The District Judge has to exercise jurisdiction within his district and not outside it. The High Court has jurisdiction over the territory of the State within which it is situate and not beyond it. Again, a Court has no jurisdiction to try a suit for immovable property situated beyond its local limits.
- (ii) **Pecuniary jurisdiction** - Section 6 of Code provides that a Court will have jurisdiction only over those suits, the amount or value of the subject matter of which does not exceed the pecuniary limits of its jurisdiction. Some Courts have unlimited pecuniary jurisdiction, e.g. High Courts and District Courts have no pecuniary limitations. But there are other Courts having jurisdiction to try suits up to a particular amount of subject matter.
- (iii) **Jurisdiction over the subject-matter** - Different types of Courts have been allotted different type of work by different statutes. For example, a small cause Court can try only certain suits, such as money suit, based on an oral loan or a bond or promissory note, a suit for price of work done, a suit for recovery of price of goods supplied, but it has no jurisdiction to try the suits for specific performance of contracts, for injunction, for a dissolution of partnership, or suit for partition of immovable property. Similarly, only District Judge has the jurisdiction in respect of testamentary matters such as granting probate or letter of administration, and divorce cases.
- (iv) **Original or Appellate Jurisdiction** - The jurisdiction of a Court may be original or appellate. For example, the jurisdiction of the Court of munsif and small cause Court is only original, while the Court of Civil Judge, District Judge, and High Court also exercise

appellate jurisdiction. In the exercise of its original jurisdiction, a Court entertains original suits, while in the exercise of its appellate jurisdiction it entertains appeals.

## **SECTION 6- PECUNIARY JURISDICTION**

As per section 6 courts are empowered to try any suit on the basis of pecuniary value of it. The jurisdiction of the different Courts is divided on the basis of amount or value of the subject-matter in suit. Some of the Courts have unlimited pecuniary jurisdiction while some have only limited pecuniary jurisdiction. No Court shall exercise jurisdiction over suits, the amount or value of the subject-matter of which exceeds the pecuniary limits (if any) of its ordinary jurisdiction. It is well settled law that consent of parties cannot confer nor take away jurisdiction of a Court.

**For example**, High Court, District Judge and Civil Judge have unlimited pecuniary jurisdiction while Munsifs have limited pecuniary jurisdiction only up to the value of Rs. 10,000/-. Similarly, Small Cause Court Judges have also limited pecuniary jurisdiction conferred on them only up to the value of Rs. 1000/-.

However, by Amendment Act of 1976 **Section 21(2)** of the Code says no objection as to pecuniary jurisdiction will be allowed by any Appellate or Revisional Court unless following three conditions exist:

- I. The objection was taken in the Court of first instance.
- II. It was taken at the earliest possible opportunity and in cases where issues are settled at or before the settlement of issues.
- III. There has been a consequent failure of justice.

So, this shows that a party if so wishes, may waive objection regarding pecuniary jurisdiction of the Court.

## **SECTION 7, 8- PROVINCIAL OR PRESIDENCY SMALL CAUSE COURTS**

Section 7 provides the provisions relating to provincial small cause courts and section 8 talks about presidency small cause courts. As per section 7 of the code these provisions are not applicable to the Provincial Small Cause Courts act 1987, Berar Small Cause Courts law, 1905 as are the following sections: -

1. Section 9
2. Section 91, 92
3. Section 94, 95 (as far as they are authorized or related to-
  - Orders for the attachment of immovable property
  - Injunction
  - The interlocutory orders referred to section 94(e), 96-112, 115

## **ORDERS**

1. Order II rule 1
2. Order X Rule 3
3. Order XV except so much of rule 4 as provides for the pronouncement at once of judgment
4. Order XVIII, Rule 5-12
5. Order XLI- XLV
6. Order XVIII, RULES 2,3,5,6,7
7. Order LI

## **PRESIDENCY SMALL CAUSE COURTS SECTION 8**

Save as provided in section 24, 38-41, 75(a,b,c), 76,77, 157, 158 and by the Presidency Small Cause Court Act, 1882 the provisions in the body of the code shall not extend to any court of small cause established in the towns of Calcutta, Madras and Bombay.



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## CHAPTER 2

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### JURISDICTION OF CIVIL COURTS

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#### **SECTION-9**

Section 9 deals with the jurisdiction of Civil Courts. It says that the Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature except suits of which their cognizance is either expressly or impliedly excluded.

**Explanation I:** A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

**Explanation II:** For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.

Section 9 of the Code describes the nature of suits which a Court has jurisdiction to entertain. It can entertain every suit of a civil nature excepting suits of which its cognizance is either expressly or impliedly barred. Every person has an inherent right to bring a suit of a civil nature. Section 9 of the Code is an enforcement of fundamental principle of law laid down in the maxim **ubi jus ibi remedium** which means that wherever there is a right, there is a remedy. The right and remedy are but the two sides of the same coin and they cannot be separated from each other.

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***SinhaRamanuja v. RangaRamanuja, AIR 1961 SC 1720***-It was held that a Court cannot entertain a suit which is not of a civil nature.

A litigant, thus having a grievance of a civil nature has a right to institution a civil suit in a competent civil Court unless its cognizance is either expressly or implied barred on any statute. So, Section 9 of the code empowers the Courts to try all suits if -

- (i) they are of a civil nature; and
- (ii) Their cognizance is not barred (a) either expressly; or (b) impliedly

The use of "shall" in Section 9 show that it is obligatory upon a civil Court to decide the dispute of civil nature. In order that a civil Court may have jurisdiction to try to suit, the first condition which must be satisfied is that the suit must be of a civil nature. Ordinarily, suit fall under two categories i.e. those which are of a civil nature and those which are not. As a general rule, a civil Court has jurisdiction to try all suits which involve determination of any civil right. The complicated question, that what is a suit of civil nature?"

## **SUIT OF CIVIL NATURE**

The word "civil" has not been defined in the Code. But according to the dictionary meaning it pertains to private rights and remedies of a citizen as distinguished from criminal, political etc. Thus, a suit is of a civil nature if the principal question therein relates to the determination of a civil right and enforcement thereof. It is not the status of the parties to the suit, but the subject-matter of it which determines whether or not the suit is one of a civil nature. The expression "suit of civil nature" will cover private rights and obligations of a citizen. Political and religious questions are not covered by that expression. A suit in which principal question relates to caste or religion is not a suit of a civil nature. But as per Explanation I to Section 9 if the principal question in the suit is of a civil nature (the right to property or to an office) and the adjudication incidentally involves the determination relating to a caste question or to religious rights and ceremonies, it does not cease to be a suit of a civil nature and the jurisdiction of a civil Court is not barred.

**Explanation II, added by the Amendment Act, 1976**, further provides that it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place. Thus in order to fall within the purview of the term 'of civil nature' the suit must be for the enforcement of private rights and obligations of a citizen and not of matters which are purely social.

In view of Section 9 of the Code of Civil Procedure, the enquiry of the Court should be confined to the dispute of a civil nature. Any dispute which is not of a civil nature should be excluded from consideration. The dispute as to right of worship is one of a civil nature within the meaning of Section 9 of the Code and a suit is maintainable for determination of such a right.

***Mansoor Ali v. Taiyabali Mohammad Ali Dawoodi Bohra, 157 IC 302***-The right to remain in the community or to exercise the rights and privileges of the members of the community is a civil one.

***Ratan Singh v. Bali Ram, AIR 1952 Punjab 163***

A suit to establish a person's right to enter a religious place and a suit to restrain the defendant from entering a place of worship both are entertainable as being suits of a civil nature. It is a civil right of every citizen that he should be entitled to carry on his worship in any manner.

## **COGNIZANCE NOT BARRED**

Section 9 C.P.C. provides that Civil Court has jurisdiction to entertain suit of a civil nature unless its cognizance is barred either expressly or impliedly.

### **Cognizance Expressly Barred**

A suit is said to be expressly barred when it is barred by any statute for the time being in force. It is open to a competent legislature to bar jurisdiction of civil courts with respect to a particular class of suits of a civil nature, provided that, in doing so, it keeps itself within the field of legislation conferred on it and does not contravene any provision of the Constitution. Thus, matters falling within the exclusive jurisdiction of revenue courts or under the Code of Criminal Procedure or matters dealt with by special tribunals under the relevant statutes, e.g. by industrial tribunal, income-tax tribunal, revenue tribunal, electronic tribunal, rent tribunal, cooperative tribunal, motor accident claims tribunal, etc., or by domestic tribunals, e.g. Bar Council, Medical Council, University, Club, etc., are expressly barred from the cognizance of a civil court. But if the remedy provided by a statute is not adequate and all questions cannot be decided by a special tribunal, the jurisdiction of a civil court is not barred.

### **Cognizance Impliedly Barred**

A suit is said to be impliedly barred when it is barred by general principles of law. Where a specific remedy is given by a statute, it thereby deprives the person who insists upon a remedy of any other form than that given by the statute. Where an act creates an obligation and enforces its performance in a specified manner, that performance cannot be enforced in any other manner. Similarly, certain suits, though of a civil nature, are barred from the cognizance of a civil court on the ground of public policy. Thus, no suit shall lie for recovery of costs incurred in criminal prosecution or for enforcement of a right upon a Contract hit by Section 23 of the Indian Contract Act, 1872; or against any judge for acts done in the course of his duties. Likewise, political questions belong to the domain of public administrative law and are outside the jurisdiction of Civil Courts. A civil court has no jurisdiction to adjudicate upon disputes of a political nature except which are related to Elections.

### ***Dhulabhai v. State of Madhya Pradesh, [AIR 1969 SC 78; (1968) 3 SCR 662***

This case summarized the following principles relating to the exclusion of jurisdiction of civil courts:

- Where a statute gives finality to orders of 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 a provision, however, does not exclude those cases where the provisions of a particular Act have not been complied with or the statutory tribunal has not acted in conformity with fundamental principles of judicial procedure.
- Where there is an express bar of jurisdiction of a court, an examination of the scheme of a particular act to find the adequacy or sufficiency of the remedies provided may be relevant, but this is not decisive for sustaining the jurisdiction of a civil Court. Where there is no express exclusion, the examination of the remedies and the scheme of a particular act to find out the intent become necessary, and the result of the inquiry may be decisive. In the latter case, it is necessary to see if a 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 tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

- Challenge to the provisions of a 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 decisions of tribunals.
- When a provision is already declared unconstitutional or the constitutionality of any provisions 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.
- Where the particular act contains no machinery for refund of tax collected in excess of constitutional limits or is illegally collected, a suit lies.
- Questions of the correctness of an assessment, apart from its constitutionality, are for the decision of the authorized 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 a particular act. In either case, the scheme of a particular act must be examined because it is a relevant enquiry.
- An exclusion of jurisdiction of a civil court is not readily to be inferred unless the conditions above set down apply.

**Suits of civil nature:** (A Unit of Divine Group of Institutions)

- Suits relating to right to property.
- Suits relating to right to worship.
- Suits relating to taking out of religious procession.
- Suits relating to right to share in offerings.
- Suits for damages for civil wrongs.
- Suits for specific performance of contract.
- Damages for breach of contract.
- Suits for specific reliefs.
- Suits for restitution of conjugal rights.
- Suits for dissolution of marriage.
- Suits for rent.
- Suits for or on account.
- Suits for a right to franchise.
- Suits for a right to hereditary office.
- Suits against wrongful dismissal from service and for salary; etc.

**Suits not of civil nature:**

- Suits involving principally caste question.
- Suits involving purely religious rites or ceremonies.
- Suits for upholding mere dignity or honour
- Suits for recovery of voluntary payments or offerings.
- Suits against expulsion from caste; etc.



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