

BENGAL, AGRA AND ASSAM CIVIL COURTS ACT, 1887

12 of 1887

[11th March, 1887]

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An Act to consolidate and amend the law relating to Civil Courts in Bengal, [the North-Western Provinces and Assam]. Whereas it is expedient to consolidate and amend the law relating to Civil Courts in Bengal, [the North-Western Provinces and Assam]; It is hereby enacted as follows :

CHAPTER 1 Preliminary

1. Title, extent and commencement :-

(1) This Act may be called the Bengal, ¹[Agra] and Assam Civil Courts Act, 1887.

(2) It extends to the territories ²[which were on the 11th of March,

1887] respectively administered by the Lieutenant-Governor of Bengal [the Lieutenant Governor of the North-Western Provinces and the Chief Commissioner of Assam,] except such portions of those territories as for the time being are not subject to the ordinary civil jurisdiction of the High Courts ³ * * *; and

(3) It shall come into force on the first day of July, 1887.

1. Word subs. by Act 16 of 1911.

2. Words and figures subs. by the Government of India (Adaptation of Indian

3. Words omitted by Act 20 of 1890.

2. Savings :-

(1) [Repeal of Acts 6 of 1871 and 19 of 1887.]Rep. by section 2 and Schedule I of the Amending Act, 1891 (12 of 1891).

(2) ¹ * * * All Courts constituted, appointments, nominations, rules and orders made, jurisdiction and powers conferred and lists published under the Bengal Civil Courts Act, 1871, or any enactment thereby repealed, or purporting expressly or impliedly to have been so constituted, made, conferred and published, shall be deemed to have been respectively constituted, made, conferred and published under this Act; and

(3) Any enactment or document referring to the Bengal Civil Courts Act, 1871, or to any enactment thereby repealed, shall be construed to refer to this Act or to the corresponding portion thereof.

1. Word repealed by Act 12 of 1891

CHAPTER 2

Constitution of Civil Courts

3. Classes of Courts :-

There shall be the following classes of Civil Courts under this Act, namely:

(1) the Court of the District Judge;

(2) the Court of the Additional Judge;

(3) the Court of the 5[Civil Judge (Senior Division)]; and

(4) the Court of the 5a[Civil Judge (Junior Division)].

4. Number of District Judges, 6a[Civil Judges (Senior

Division) and Civil Judges (Junior Division)] :-

The [State Government] may alter the number of the District Judges, [Civil Judges (Senior Division) and Civil Judges (Junior Division)] now fixed.

5. . :-

Number of Munsifs.]Rep. by sec. 2 and Schedule, Part I, of the Decentralization Act, 1914 (4 of 1914).

6. Vacancies among District or 6a[Civil Judges (Senior Division)] :-

(1) Whenever the office of District Judge or [Civil Judges (Senior Division)] is vacant by reason of the death, resignation or removal of the Judge or other cause, or whenever (an increase in the number of District or [Civil Judges (Senior Division)] has been made under the provisions of section 4), the [State Government or, as the case may be, the High Court] may fill up the vacancy or appoint the Additional District Judges or 6a[Civil Judges (Senior Division)], * * * * *).

(2) Nothing in this section shall be construed to prevent a 7[State Government] from appointing a District judge or 6a[Civil Judge (Senior Division)] to discharge, for such period as it thinks fit, in addition to the functions devolving on him as such District Judge or 6a[Civil Judge (Senior Division)] all or any of the functions of another District Judge or 6a[Civil Judge (Senior Division)], as the case may be.

7. . :-

Vacancies among Munsifs.]Omitted by para. 3 and the 1st Schedule of the Government of India (Adaptation of Indian Laws) Order, 1937.

8. Additional Judges :-

(1) When the business pending before any District Judge requires the aid of Additional Judges for its speedy disposal, the [State Government] may, [having consulted] the High Court, [* * * *] appoint such Additional Judges as may be requisite.

(2) Additional Judges so appointed shall discharge any of the functions of a District Judge which the District Judge may assign to them, and, in the discharge of those functions, they shall exercise the same powers as the District Judge.

9. Administrative control of Courts :-

Subject to the superintendence of the High Court, the District Judge shall have administrative control over all the Civil Courts under this Act within the local limits of his jurisdiction.

10. Temporary charge of District Court :-

(1) In the event of the death, resignation or removal of the District Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence from the place at which his Court is held, the Additional Judge, or, if an Additional Judge is not present at that place, the senior [Civil Judge (Senior Division)] present thereat, shall, without relinquishing his ordinary duties, assume charge of the office of the District Judge, and shall continue in charge thereof until the office is resumed by the District Judge or assumed by an officer appointed thereto.

(2) While in charge of the office of the District Judge, the Additional Judge or 13a[Civil Judge (Senior Division)], as the case may be, may, subject to any rules which the High Court may make in this behalf, exercise any of the powers of the District Judge.

11. Transfer of proceedings on vacation of office of 13a[Civil Judge (Senior Division)] :-

(1) In the event of the death, resignation or removal of a [Civil Judge (Senior Division)], or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence from the place at which his Court is held, the District Judge may transfer all or any of the proceedings pending in the Court of the [Civil Judge (Senior Division)] either to his own Court or to any Court under his administrative control competent to dispose of them.

(2) Proceedings transferred under sub-section (1) shall be disposed of as if they had been instituted in the Court to which they are so transferred : Provided that the District Judge may re-transfer to the Court of the [Civil Judge (Senior Division)] or his successor any proceedings transferred under sub-section (1) to his own or any other Court.

(3) For the purposes of proceedings which are not pending in the Court of the [Civil Judge (Senior Division)] on the occurrence of an event referred to in sub-section (1), and with respect to which that Court has exclusive jurisdiction, the District Judge may exercise all or any of the jurisdiction of that Court.

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13. Power to fix local limits of jurisdiction of Courts :-

(1) The [State Government] may, by notification in the Official Gazette, fix and alter the local limits of the jurisdiction of any Civil Court under this Act.

(2) If the same local jurisdiction is assigned to two or more [Civil Judge (Senior Division) or to two or more Civil Judges (Junior Division),] the District Judge may assign to each of them such civil business cognizable by the 13c[Civil Judge (Senior Division) or Civil Judge (Junior Division),] as the case may be, as, subject to any general or special orders of the High Court, he thinks fit.

(3) When civil business arising in any local area is assigned by the District Judge under sub-section (2) to one of two or more [Civil Judge (Senior Division) or to one of two or more Civil Judges (Junior Division),] a decree or order passed by the [Civil Judge (Senior Division) or Civil Judges (Junior Division),] shall not be invalid by reason only of the case in which it was made having arisen wholly or in part in a place beyond the local area if that place is within the local limits fixed by the 13d[State Government] under sub-section (1).

(4) A Judge of a Court of Small Causes appointed to be also a [Civil Judge (Senior Division) or Civil Judge (Junior Division),] is a [Civil Judge (Senior Division) or Civil Judge (Junior Division),] as the case may be, within the meaning of this section.

(5) The present local limits of the jurisdiction of every Civil Court under this Act shall be deemed to have been fixed under this section.

14. Place of sitting of Courts :-

(1) The 13e[State Government] may, by notification in the Official Gazette, fix and alter the place or places at which any Civil Court under this Act is to be held.

(2) All places at which any such Courts are now held shall be deemed to have been fixed under this section.

15. Vacations of Courts :-

(1) Subject to such orders as may be made [* *] [* *] by the

[State Government] [* *] the High Court shall prepare a list of days to be observed in each year as closed holidays in the Civil Courts.

(2) The list shall be published in the [Official Gazette].

(3) A judicial act done by a Civil Court on a day specified in the list shall not be invalid by reason only of its having been done on that day.

16. Seals of Courts :-

Every Civil Court under this Act shall use a seal of such form and dimensions as are prescribed by the [State Government].

17. Continuance of proceedings of Courts ceasing to have jurisdiction :-

(1) Where any Civil Court under this Act has from any cause ceased to have jurisdiction with respect to any case, any proceeding in relation to that case which, if that Court had not ceased to have jurisdiction, might have been had therein may be had in the Court to which the business of the former Court has been transferred.

(2) Nothing in this section applies to cases for which provision is made [in sections 36, 37 and 114 of, and rule 1 of Order XLVII in Schedule I to the Code of Civil Procedure, 1908], or in any other enactment for the time being in force.

CHAPTER 3

ORDINARY JURISDICTION

18. Extent of original jurisdiction of District or 19[Civil Judge (Senior Division)] :-

Save as otherwise provided by any enactment for the time being in force, the jurisdiction of a District Judge or [Civil Judge (Senior Division)] extends, subject to the provisions of section 15 of the Code of Civil Procedure [, 1908,] to all original suits for the time being cognizable by Civil Courts.

19. Extent of jurisdiction of 20a[Civil Judge (Junior Division)] :-

(1) Save as aforesaid, and subject to the provisions of sub-section (2), the jurisdiction of a [Civil Judge (Junior Division)] extends to all like suits of which the value does not exceed [fifteen thousand rupees]

.

(2) The State Government may, on the recommendation of the High Court, direct, by notification in the Official Gazette, with respect to any [Civil Judge (Junior Division)] named therein that his jurisdiction shall extend to all like suits of such value not exceeding [thirty thousand rupees] as may be specified in the notification :

Provided that the State Government may, by notification in the Official Gazette, delegate to the High Court its powers under this sub-section.

20. Appeals from District and Additional Judges :-

(1) Save as otherwise provided by any enactment for the time being in force, an appeal from a decree or order of a District Judge or Additional Judge shall lie to the High Court.

(2) An appeal shall not lie to the High Court from a decree or order of an Additional Judge in any case in which, if the decree or order had been made by the District Judge, an appeal would not lie to that Court.

21. Appeals from Civil Judge (Senior Division) and Civil Judges (Junior Division) :-

(1) Save as aforesaid, an appeal from a decree or order of [Civil Judge (Senior Division)] shall be

(a) to the District Judge where the value of the original suit in which or in any proceeding arising out of which the decree or order [sixty thousand rupees], and

(b) to the High Court in any other case.

(2) Save as aforesaid, an appeal from a decree or order of a 25a[Civil Judge (Junior Division)] shall lie to the District Judge.

(3) Where the function of receiving any appeals which lie to the District Judge under sub-section (1) or sub-section (2) has been assigned to an Additional Judge, the appeals may be preferred to the Additional Judge.

(4) The High Court may, with the previous sanction of the [State Government], direct, by notification in the Official Gazette, that appeals lying to the District Judge under sub-section (2) from all or any of the decrees or orders of any [Civil Judge (Junior Division)]

shall be preferred to the Court of such [Civil Judge (Senior Division)] as may be mentioned in the notification, and the appeals shall thereupon be preferred accordingly.

CHAPTER 4

Special Jurisdiction

22. Power to transfer to 26a[Civil Judges (Senior Division)] appeals from 26b[Civil Judges (Junior Division)] :-

(1) A District Judge may transfer to any 26a[Civil Judges (Senior Division)] under his administrative control any appeals pending before him from the decrees or orders of [Civil Judges (Junior Division)].

(2) The District Judge may withdraw any appeal so transferred, and either hear and dispose of it himself or transfer it to a Court under his administrative control competent to dispose of it.

(3) Appeals transferred under this section shall be disposed of subject to the rules applicable to like appeals when disposed of by the District Judge.

23. Exercise by 26c[Civil Judge (Senior Division) or Civil Judge (Junior Division)] of jurisdiction of District Court in certain proceedings :-

(1) The High Court may, by general or special order, authorize any [Civil Judge (Senior Division) or Civil Judge(Junior Division)] to take cognizance of, or any District Judge to transfer to [Civil Judge (Senior Division) or Civil Judge (Junior Division)] under his administrative control, any of the proceedings next hereinafter mentioned or any class of those proceedings specified in the order.

(2) The proceedings referred to in sub-section (1) are the following, namely:

(a) Proceedings under [the Bengal Wills and Intestacy Regulation, 1799]; [* * * *]

(d) proceedings under 29[the Indian Succession Act, 1925,] which cannot be disposed of by District Delegated; and [* * * *]

(3) The District Judge may withdraw any such proceedings taken cognizance of by, or transferred to, a 30a[Civil Judge (Senior Division) or Civil Judge (Junior Division)], and may either himself dispose of them or

transfer them to a Court under his administrative control competent to dispose of them.

24. Disposal proceedings referred to in last foregoing section :-

(1) Proceedings taken cognizance of by, or transferred to, a [Civil Judge (Senior Division) or Civil Judge (Junior Division)], as the case may be, under the last foregoing section shall be disposed of by him subject to the rules applicable to like proceedings when disposed of by the District Judge:

Provided that an appeal from an order of a [Civil Judge (Junior Division)] in any such proceeding shall lie to the District Judge.

(2) An appeal from the order of District Judge on the appeal from the order of a [Civil Judge (Junior Division)] under this section shall lie to the High Court if a further appeal from the order of the District Judge is allowed by the law for the time being in force.

25. Power to invest 31[Civil Judges (Senior Division) and Civil Judges (Junior Division)] with Small Cause Court jurisdiction :-

The [State Government] may, by notification in the Official Gazette, confer, within such local limits as it thinks fit, upon any [Civil Judge (Senior Division) or [Civil Judge (Junior Division)]], the jurisdiction of a Judge of a Court of Small Causes under the provincial Small Cause Courts Act, 1887, for the trial of suits, cognizable by such Courts up to such value not exceeding [seven thousand and five hundred rupees] in the case of a [Civil Judge (Senior Division)] or [five thousand rupees] in the case of a [Civil Judge (Junior Division)] as it thinks fit, and any withdraw any jurisdiction so conferred :

Provided that the 33a[State Government] may, by notification in the [Official Gazette], delegate to the High Court its powers under this section.

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CHAPTER 7
Supplemental Provisions

36. Power to confer powers of Civil Courts on officers :-

(1) The [State Government] may invest with the powers of any Civil Court under this Act, by name or in virtue of office,

(a) any officer in the [Chota Nagpur, ambalpur], Jalpaiguri or Darjeeling district [or in any part of the territories administered by the Chief Commissioner of Assam, except the district of Sylhet,] or,

(b) after consultation with the High Court, any officer serving in any other part of the territories to which this Act extends and belonging to a class defined in this behalf by the [State Government] * * * * *

(2) Nothing in [sections 4, 5 ,8, 10 or 11] applies to any officer so invested, but all the other provisions of this Act shall, so far as those provisions can be made applicable, apply to him as if he were a judge of the Court with the powers of which he is invested.

(3) Where, in the territories mentioned in clause (a) of sub-section (1), the same local jurisdiction is assigned to two or more officers invested with the powers of a ¹ [Civil Judge (Junior Division)] the officer invested

with the powers of a District Judge may, with the previous sanction of the [State Government], delegate his functions under sub-section (2) of section 13 to an officer invested with the powers of a [Civil Judge (Senior Division)] or to one of the officers invested with the powers of a [Civil Judge (Junior Division)].

(4) Where the place at which the Court of an officer invested with powers under sub-section (1) is to be held has not been fixed under section 14, the Court may be held at any place within the local limits of its jurisdiction.

1. Words and brackets subs, by W.B. Act 26 of 1996.

37. Certain decisions to be according to law :-

(1) Where in any suit or other proceeding it is necessary for a Civil Court to decide any question regarding succession, inheritance, marriage or caste, or any deligious usage or institution, the Muhammadan law in the cases where the parties are Muhammadans, and the Hindu law in cases where the parties are Hindus, shall form the rule of decision except in so far as are Hindus, shall form the rule of decision except in so far as such law has, be legislative enactment, been altered or abolished.

(2) In cases not provided for by sub-section (1) or by any other law for the time being in force, the Court shall act according to justice, equity and good conscience.

38. Judges not to try suits in which they are interested :-

(1) The presiding officer of a Civil Court shall not try any suit or other proceeding to which he is a party or in which he is personally interested.

(2) The presiding officer of an appellate Civil Court under this Act shall not try an appeal against a decree or order passed by himself in another capacity.

(3) When any such, proceeding or appeal as is referred to in sub-section (1) or sub-section (2) comes before any such officer, the officer shall forthwith transmit the record of the case to the Court to which he is immediately subordinate, with a report of the

circumstances attending the reference.

(4) The superior Court shall thereupon dispose of the case under [section 24 of the Code of Civil Procedure, 1908].

(5) Nothing in this section shall be deemed to affect the extraordinary original civil jurisdiction of the High Court.

39. Subordination of Courts to District Court :-

For the purposes of the last foregoing section the presiding officer of a Court subject to the administrative control of the District Judge shall be deemed to be immediately subordinate to the Court of the District Judge, and, for the purposes of the Code of Civil Procedure 39[1908], the Court of such an officer shall be deemed to be of a grade inferior to that of the Court of the District Judge.

40. Application of Act to State Courts of Small Causes :-

(1) This section and sections 15, 32, 37, 38 and 39 apply to Courts of Small Causes constituted under the Provincial Small Cause Courts Act, 1887.

(2) Save as provided by that Act, the other sections of this Act do not apply to those Courts.