

Gujarat Civil Courts Act, 2005

21 of 2005

[23rd March, 2005]

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An Act to consolidate and amend the law relating to Civil Courts in the State of Gujarat. It is hereby enacted in the Fifty-sixth Year of the Republic of India as follows :

CHAPTER 1 PRELIMINARY

1. Short title, extent and commencement :-

- (1) This Act may be called the Gujarat Civil Courts Act, 2005 .
- (2) It extends to the whole of the State of Gujarat.
- (3) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

2. Definitions :-

In this Act unless the context otherwise requires,

- (a) "appointed date" means the date appointed under sub-sec. (3) of Sec. 1;
- (b) "civil court" means a court of a District Judge, a court of the Senior Civil Judge or a court of Civil Judge;
- (c) "Code" means the Code of Civil Procedure, 1908 (5 of 1908).
- (d) "district" means a revenue district or such local area as the State Government may, from time to time, notify to be a district for the purposes of this Act;
- (e) "Government" means the Government of Gujarat;
- (f) "High Court" means the High Court of Gujarat;

(g) "judicial officer" means a Judge of a court of District Judge, a Judge of a court of Senior Civil Judge or a Judge of a court of Civil Judge;

(h) "notification" means a notification published in the Official Gazette;

(l) "Official Gazette" means Gujarat Government Gazette;

(j) "prescribed" means prescribed by rules made under this Act;

(k) "service" means the judicial service of the State.

CHAPTER 2

ESTABLISHMENT AND CONSTITUTION OF CIVIL COURTS

3. Classes of civil courts :-

In addition to the courts established under any other law for the time being in force, there shall be following classes of civil courts in the State, namely :

(a) court of a District Judge;

(b) court of a Senior Civil Judge;

(c) court of a Civil Judge.

4. Establishment of courts of District Judges :-

(1) There shall be established by the State Government, in consultation with the High Court, by notification, in each district, a court of a District Judge.

(2) Each court of a District Judge shall be presided over by a Judge to be called the Principal District Judge.

(3)

(i) When the business pending before a court of a District Judge so requires, the State Government may, in consultation with the High Court, appoint to that court one or more Judges to be called as Additional District Judges, for such period as it deems necessary.

(ii) The Additional District Judge appointed under this sub-section shall, subject to the general or special orders of the High Court, discharge all or any of the functions of a District Judge under this Act or any other law for the time being in force which the Principal District Judge may assign to him and in the discharge of those functions, he shall exercise all the powers of the court of a District

Judge.

5. Establishment of courts of Senior Civil Judges :-

(1) There shall be established by the State Government, in consultation with the High Court, by notification, in each district, a court of Senior Civil Judge :

Provided that the State Government may, in consultation with the High Court establish a court of a Senior Civil Judge for a part of a district and specify the local limits of its jurisdiction.

(2) Each court of a Senior Civil Judge shall be presided over by a Judge to be called as Principal Senior Civil Judge.

(3)

(i) When the business pending before a court of a Senior Civil Judge so requires, the Government may, in consultation with the High Court, fix by notification, the number of judges to be called as Additional Senior Civil Judges, for such period as it deems necessary.

(ii) An Additional Senior Civil Judge so appointed shall, subject to the general or special orders of the Principal District Judge, discharge all functions of a Senior Civil Judge under this Act or any other law for the time being in force which the Principal Senior Civil Judge may assign to him and in the discharge of those functions he shall exercise all the powers of Senior Civil Judge.

6. Establishment of courts of Civil Judges :-

(1) There shall be established by the State Government, by notification, in each district such number of courts of Civil Judges as may be fixed by the State Government in consultation with the High Court and specify the local limits of jurisdiction of each such court.

(2) Each court of a Civil Judge shall be presided over by a Judge to be called as Principal Civil Judge.

(3)

(i) When the business pending before a court of Civil Judge so requires, the State Government may, in consultation with the High Court, appoint to that court one or more Judges to be called as Additional Civil Judges for such period as it deems necessary.

(ii) An Additional Civil Judge so appointed shall, subject to the general or special orders of the Principal District Judge, discharge all the functions of a Civil Judge under this Act or any other law for the time being in force which the Principal Civil Judge may assign to him and in the discharge of those functions he shall exercise all the powers of a Civil Judge.

7. Location of civil court :-

(1) The place or places, at which every civil court under this Act shall be held, shall be fixed, and may from time to time, be altered by the State Government, in consultation with the High Court.

(2) The place or places so fixed for a civil court under sub-sec. (1) may be within or outside the local limits of the jurisdiction of that court.

8. Seal of a civil court :-

Every civil court under this Act shall use a seal which shall bear thereon the State Emblem and shall be, in such form of such dimensions and with the name of the court in such language or languages, as the High Court may, in consultation with the State Government, by order, determine.

9. Existing courts, their location and seals to be deemed to be established, fixed and determined under this Act :-

(1) The Courts of District Judges, existing immediately prior to the appointed date, shall, with effect from the appointed date, be deemed to be Courts of District Judges established under this Act.

(2) The Courts of Civil Judge (Senior Division), existing immediately prior to the appointed date shall, with effect from the appointed date, be deemed to be Courts of Senior Civil Judges established under this Act.

(3) The Courts of Civil Judge (Junior Division) existing immediately prior to the appointed date shall, with effect from the appointed date, be deemed to be Courts of Civil Judges established under this Act.

(4) The place at which a civil court deemed to be established under sub-sections (1) to (3) is being held immediately prior to the appointed date shall be deemed to be the place fixed under said sub-sec. (1) of Sec. 7.

(5) The seal in use, in a civil court deemed to be determined under sub-secs, (1) to (3), immediately prior to the appointed date may continue to be used until an order is made by the High Court under Sec. 8.

10. Posting of District Judges, Senior Civil Judges and Civil Judges :-

(1) No person other than a person belonging to the cadre of District Judge in the judicial service of the State of Gujarat shall be eligible to be posted as a Principal District Judge or as an Additional District Judge.

(2) No person other than a person belonging to the cadre of Senior Civil Judge in the judicial service of the State of Gujarat shall be eligible to be posted as a Principal Senior Civil Judge or as an Additional Senior Civil Judge.

(3) No person other than a person belonging to the cadre of Civil Judge in the judicial service of the State of Gujarat shall be eligible to be posted as a Principal Civil Judge or as an Additional Civil Judge.

CHAPTER 3

JURISDICTION OF CIVIL COURTS

11. Local limits of jurisdiction :-

(1) The State Government may, in consultation with the High Court, by notification, fix and vary, from time to time, the local limits of jurisdiction of any civil court under this Act.

(2) The local limits of jurisdiction of a civil court, existing immediately prior to the appointed date, shall be deemed to be the local limits of jurisdiction of that court.

12. Jurisdiction of a court of District Judge :-

(1) A Court of District Judge shall be the principal Civil court of original jurisdiction within the local limits of its jurisdiction.

(2) Subject to the provisions of the Code, the jurisdiction of a court of District Judge shall extend to all original suits and proceedings of a civil nature.

(3) A Court of District Judge shall, subject to the general control of the High Court, have control over all other civil courts within the local limits of its jurisdiction.

13. Jurisdiction of a court of Senior Civil Judge :-

The jurisdiction of the court of a Senior Civil Judge shall extend to all original suit and proceedings of a civil nature, subject to such rules as the High Court may, from time to time make in this behalf.

14. Jurisdiction of a court of Civil Judge :-

The jurisdiction of a Court of Civil Judge shall extend to all original suits and proceedings of a civil nature, not otherwise excluded from the jurisdiction of a Court of Civil Judge by any other law, the value of the subject matter of which does not exceed two lakh rupees or such other sum as the High Court may, from time to time specify.

15. Appeals :-

(1) Appeals from the decrees and orders passed by a Court of District Judge in original suits and proceedings of civil nature shall, when such appeals are allowed by law, lie to the High Court.

(2) Appeals from the decrees and orders passed by a Court of Senior Civil Judge in original suits and proceedings of civil nature shall, when such appeals are allowed by law, lie

(a) to the Court of the District Judge of the district when the amount or value of the subject matter of the original suit or proceedings is less than five lakhs of rupees or such other sum as the High Court may, from time to time, specify;

(b) to the High Court in other cases.

(3) Appeals from the decrees and orders passed by a Court of Civil Judge in suits or proceedings of a civil nature, shall, when such appeals are allowed by law, lie to the Court of District Judge of the district :

Provided that the High Court may, in consultation with the State Government, by notification, direct that such appeals against decrees and orders may lie to the Court of Senior Civil Judge when the amount or value of the subject matter of the suit or proceeding is less than one lakh of rupees and thereupon appeals shall be preferred accordingly.

(4) The provisions of this section will apply to all decrees and orders made after the appointed date irrespective of the fact whether the suits or proceedings in which they are made were instituted before or after the appointed date.

16. Power to require witness or party to make oath or affirmation :-

Every civil court under this Act shall require a witness or party to any suit or other proceedings pending in such court to make such oath or affirmation as is prescribed by the law for the time being in force.

17. Investment of small cause powers to courts of Senior Civil Judges or Civil Judges :-

(1) The High Court may, by notification, invest, with such restrictions as it shall from time to time determine, any Court of Senior Civil Judge or a Court of Civil Judge, with the jurisdiction for the trial of suits cognizable by a Court of Small Causes established under the Provincial Small Cause Courts Act, 1887 (9 of 1887), upto such amount as it may deem proper.

(2) The High Court may, by notification withdraw or alter whenever it thinks fit such jurisdiction of any Court of Senior Civil Judge or Civil judge, so invested.

(3)

(a) the provisions of the Provincial Small Cause Courts Act, 1887 (9 of 1887), applicable to Courts of Small Causes, shall apply to a court invested under sub-sec. (1) with the jurisdiction of a Court of Small Causes, so far as the exercise of that jurisdiction by those courts.

(b) Nothing in sub-clause (a) shall, with respect to the courts invested with the jurisdiction of a court of Small Causes, apply to suits instituted or proceedings commenced in those courts prior to the date on which they were invested with that jurisdiction.

(4) A court invested with the jurisdiction of a Court of Small Causes under sub-sec. (1) with respect to the exercise of that jurisdiction and the same court with respect to the exercise of its jurisdiction in suits of civil nature which are not cognizable by a Court of Small Causes shall, for the purposes of this Act and the Code be deemed to be different courts.

(5) Notwithstanding anything contained in this Act :

(a) when in the exercise of the jurisdiction of a Court of Small Causes, a court invested with that jurisdiction sends a decree for execution to itself as a court having jurisdiction in suits of a civil

nature, which are not cognizable by a Court of Small Causes, or

(b) when a court in the exercise of its jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes sends a decree for execution to itself as a court invested with the jurisdiction of a Court of Small Causes, the documents mentioned in Rule 6 of Order XXI of the Code shall not be sent with the decree unless in any case the court, by order in writing requires them to be sent.

18. Judges not to try suits in which they are interested, etc.

:-

(1) No judicial officer shall try any suit in which he is a party or personally interested or shall adjudicate upon any proceedings connected with or arising out of such suit.

(2) No judicial officer shall try any appeal against any decree or order passed by himself in any other capacity.

(3) When any such suit, proceedings or appeal referred to in sub-secs. (1) and (2) comes before any such judicial officer, he shall report the circumstances to the court to which he is immediately subordinate. The said superior court shall thereupon dispose of the case in the manner prescribed by Sec. 24 of the Code.

19. Application of the Code :-

The procedure prescribed in the Code shall, save in so far as is otherwise provided by this Act, be followed in all civil courts.

CHAPTER 4

MISCELLANEOUS

20. Temporary vacancy of office of Principal District Judge

:-

In the event of the death of the Principal District Judge or of his being prevented from performing his duties by illness or otherwise or of his absence on leave from the station in which his court is held, the Additional District Judge of the district and if there are more than one Additional District Judges, the senior most among them and if there is no Additional District Judge in the district, the senior most Senior Civil Judge in the district, shall, without interruption to his ordinary duties assume charge of the office of the Court of Principal District Judge and while so in charge perform the duties of the Principal District Judge with respect to the filing of the suits and appeals, receiving pleadings, execution of processes,

return of writs and the like, and shall continue in charge of the said court until the same is resumed by a Judge duly posted thereto.

21. Temporary vacancy of office of Principal Senior Civil Judge or Principal Civil Judge :-

In the event of death, suspension or temporary absence of any Principal Senior Civil Judge or Principal Civil Judge, the Principal District Judge may empower any Senior Civil Judge or Civil Judge in the district to perform such duties of such Principal Senior Civil Judge or Principal Civil Judge, as the case may be, as specified in Sec. 20 either at the place of such court or of his own court, but in very such case the registers and records of the two courts shall be kept distinct.

22. Vacation and holidays :-

(1) The civil courts in the State shall be closed on such days as may be notified by the High Court as public holidays for the whole State or for such area in the State.

(2) The civil courts in the State shall have such number of vacations in each year as the High Court may declare but the total number of days of such vacations shall not exceed thirty days.

(3) Notwithstanding anything contained in this Act or in the Code, the High Court, may, by general or special order appoint the Principal District Judge or an Additional District Judge or a Senior Civil Judge as vacation Judge for the District and for the duration of the adjournment of the court of Principal District Judge in any vacation or any part thereof and regulate the work to be discharged by the vacation Judge.

(4) The local limits of jurisdiction of the vacation Judge shall be the same as those of the Court of Principal District Judge concerned and his jurisdiction shall extend to all suits, appeals and other proceedings pending in or cognizable by any civil court in the district concerned.

(5) The vacation Judge shall hold his court at the place at which court of Principal District Judge is normally held and he shall have administrative control over all the staff of all civil courts in the district.

(6) Notwithstanding the appointment of a vacation Judge every civil court in the district shall, during the period it is adjourned for

any vacation, be deemed to be closed for the purpose of Section 4 of the Limitation Act, 1963 (36 of 1963).

(7) On the reopening of any civil court after any vacation all suits, appeals and other proceedings pending before the vacation Judge shall stand transferred to the civil court concerned in which it would have been instituted or pending but for the appointment of the vacation Judge any decree, order or proceedings passed by the vacation Judge shall be deemed to be a decree, order or proceeding passed by the court concerned.

23. Subordination of civil courts :-

(1) Subject to the other provisions of this Act and the rules and any other law for the time being in force, all civil courts in a district including the staff thereof shall, subject to the control of the High Court, be subordinate to the Court of District Judge.

(2) The civil courts shall maintain such forms, books of accounts, records, registers and the like as may be specified by the High Court in consultation with the State Government.

(3) The State Government may, for discharging its functions and responsibilities, require, through the High Court, the civil courts to furnish to the Government such particulars and information relating to the working of the courts and other matters as may be called for from time to time.

24. Power to invest Senior Civil Judges with jurisdiction under certain Acts :-

(1) The High Court may by general or special order invest any Senior Civil Judge, within such local limits and subject to such pecuniary limitation as may be specified in such order, with all or any of the powers of a District Judge or a Court of District Judge, as the case may be, under the Divorce Act, 1869 (4 of 1869) the Succession Act, 1925 (39 of 1925), the Special Marriage Act, 1954 (43 of 1954), or the Guardians and Wards Act, 1890 (8 of 1890).

(2) Every order made by a Senior Civil Judge by virtue of the powers conferred upon him under sub-sec. (1) shall be subject to an appeal to the High Court where the amount or value of the subject matter exceeds rupees five lakhs or to the Court of District Judge where the amount or value of the subject matter does not exceed rupees five lakhs.

(3) Every order of a Court of District Judge passed on appeal under sub-sec. (2) from the order of a Senior Civil Judge shall be subject to an appeal to the High Court under the rules contained in the Code applicable to appeals from appellate decrees.

25. Fees for process :-

The High Court shall from time to time, with the sanction of the State Government, prescribe and regulate by rules, the fees to be taken for any process issued by any civil court. Such rules may provide for payment of process fee in a lump sum in advance alongwith the plaint.

26. Mode of conferring powers :-

Except as otherwise provided any powers that may be conferred by the High Court on any person under this Act may be conferred on such person either by name or by virtue of office.

27. Government suits :-

(1) No subordinate court other than the court of a Senior Civil Judge and no Court of Small Cause shall receive or register any suit in which the Government or any officer of the Government in his official capacity is a party.

(2) In every such case, the plaintiff shall be referred to the court of the Senior Civil Judge. Such suit shall be instituted only in the court of the Senior Civil Judge and shall be heard by such Senior Civil Judge subject to the provisions of Sec. 24 of the Code.

28. Constitution of consultative committee :-

The High Court shall constitute a consultative committee for each district, consisting of such number of members and in such manner as may be prescribed, for making suggestions for the infrastructural facilities in the courts, improvement of work culture, co-ordination between the bar, bench and other authorities and for the matter incidental thereto.

29. Power of High Court to make rules :-

(1) The High Court may, after previous publication, by notification, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely :

- (a) the manner in which the proceedings of each civil court shall be kept and recorded;
- (b) regulating the grant of certified copies of papers in civil court;
- (c) regulating the duties and functions of the ministerial officers of the civil courts;
- (d) regulating the issue of licenses by the Principal District Judge of the district to persons to act as petition writers in civil courts in that district and the conduct of business by them and the scale of fees to be charged by them;
- (e) providing a penalty of such amount not exceeding five hundred rupees for breach of the rules made under clause (d) and the authority who could investigate the breach of rules and impose the penalty;
- (f) forms, books, registers, records and accounts to be maintained by the civil courts;
- (g) payment of process fees in lump sum in advance alongwith the plaint or otherwise;
- (h) the manner in which a consultative committee may be constituted for each district;
- (i) any other matter, nor inconsistent with the provisions of this Act which, in the opinion of the High Court, may be prescribed for the effective enforcement of the Act.

30. Repeal and savings :-

(1) On and from the appointed date the Bombay Civil Courts Act, 1869 (Bom. XIV of 1869) in its application to the State of Gujarat, shall stand repealed.

(2) Such repeal shall not affect the previous operation of the enactment so repealed and any thing done or any action taken including the districts formed, limits defined, courts established or constituted, appointments, rules or orders made, functions assigned, powers granted, seals or forms prescribed, jurisdiction defined or vested and notifications or notices issued by or under the provisions of the said Act and deemed to have been done or taken under the provisions thereof shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act

and shall continue in force unless and until superseded by anything done or any action taken under this Act.

(3) Notwithstanding anything contained in sub-sec. (1) or any other provisions of this Act or in the enactment repealed by sub-sec. (1) or in any other law or provision having the force of law, all suits, appeals and proceedings connected therewith, pending before any court, which under this Act have to be instituted or commenced in another court, shall, on the appointed day, stand transferred to such other court and shall be continued and disposed of by such other court in accordance with law as if such suit and proceedings had been instituted or commenced in such other court under this Act.

(4) If there be any doubt as to which court any suit, appeal or proceedings shall stand transferred or as to which court any appeal shall be preferred in accordance with the provisions of this Act the court designated by the High Court shall be the court to which such suit, appeal or proceedings shall be transferred or such appeal shall be preferred, and the decision of the High Court shall be final.

(5) Notwithstanding such repeal, the provisions of Section 7 of the Bombay General Clauses Act, 1904 (Bom. 1 of 1904), shall apply in relation to the repeal of the Bombay Civil Courts Act, 1869 (Bom. XIV of 1869), as if the Act had been an enactment within the meaning of the said Sec. 7.

31. Power to remove difficulties :-

(1) If any difficulty arises in giving effect to the provisions of this Act in consequence of the transition to the said provisions from the provisions of any enactment or law in force immediately before the commencement of this Act, the State Government in consultation with the High Court may by notification; make such provisions as appear to it to be necessary or expedient for removing the difficulty.

(2) No such notification shall be issued after expiry of two years from the date of commencement of this Act.