

## **Jammu And Kashmir Civil Procedure Code, 1977**

### **10 of 1977**

#### CONTENTS

1. Short Title, Extent And Commencement
2. Definitions
3. Subordination Of Courts
4. Savings
5. Application Of The Code To Revenue Courts
6. Small Cause Courts
7. Stay Of Suit
8. Resjudicata
9. Bar To Further Suit
10. When Foreign Judgment Not Conclusive
11. Presumption As To Foreign Judgment
12. Court In Which Suits To Be Instituted
13. Suit To Be Instituted Where Subject-Matter Situate
14. Bar On Suit To Set Aside Decree On Objection As To Place Of Suing
15. To Whom Court Application Lies
16. General Power Of Transfer And Withdrawal
17. Institutions Of Suits
18. Service Of Summons Of A Court In India In The Jammu And Kashmir State
19. Saving Of Present Right Of Appeal

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An Act to Consolidate and amend the laws relating to the procedure of the courts of Civil Jurisdiction. Whereas it is expedient to consolidate and amend the laws relating to the procedure of the Courts of Civil Jurisdiction ; It is hereby enacted as follows :-

#### **1. Short Title, Extent And Commencement :-**

- (i) This Act may be cited as code of Civil Procedure (Act X of 1977).
- (ii) It extends to the whole of Jammu and Kashmir State. It shall come into force on the 1st of April, 1977.

#### **2. Definitions :-**

In this Act, unless there is anything repugnant in the subject or context,-

- (a) "Code" includes rules;
- (b) "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 regards 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 determination of any question within section 144, but shall not include -
  - (i) any adjudication from which an appeal lies as an appeal from an order, or
  - (ii) any order for dismissal for default.
- (c) "decree -holder" means any person in whose favor a decree has been passed or an order capable of execution has been made;
- (d) "District" means the local limits of the jurisdiction of a principal Civil Court or original Jurisdiction (herein after called a "District Court");
- (e) "Foreign Court" means a Court situate beyond the limits of India which has no authority in India and is not established or continued by the Central Government of India;
- (f) "Foreign Judgment" means the Judgment of a foreign Court";
- (g) "Government Pleader" includes any officer appointed 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;
- (h) "Judge: means the presiding officer of a Civil Court;
- (i) "Judgment" means the statement given by the Judge of the grounds of a decree or order;
- (j) "Judgment -debtor" means the person against whom a decree has been passed or an order capable of execution has been made;
- (k) "legal representative" 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;
- (l) "mesne profits" of a property means 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;
- (m) "movable property" includes growing crops;

- (n) "order" means the formal expression of any decision of a Civil Court which is not a decree;
- (o) "pleader" means any person entitled to appear and plead for another in Court, and includes an advocate , a vakil and any attorney of the High Court.
- (p) "Prescribed " means prescribed by the rules;
- (q) " Public Officer" means a person falling under any of the following descriptions, namely :-
- (i) every Judge;
  - (ii) Omitted;
  - (iii) Every commissioned or gazetted officer in the military forces of the Union;
  - (iv) Every officer of a Court of justice whose duty is as such officer, to investigate or report on any matter of law or fact, or to make any authorities, to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order, in the court, and every person especially authorized by a Court of justice to perform any of such duties;
  - (v) Every person who holds any office, by virtue of which he is empowered to place or keep any person to confinement;
  - (vi) Every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offender to justice, or to protect the public health , safety or convenience;
  - (vii) 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 any matter affecting the pecuniary interest of the Government, or to prevent any infraction of any law for the protection of the pecuniary interests of the Government ; and
  - (viii) Every officer in the service or pay of the Government or, remunerated by fees or commission for the performance of any public duty.
- (r) "Rules" means rules and forms contained in the First Schedule or made under section 122;
- (s) "share in a Corporation" shall be deemed to include stock, debenture stock, debenture or bonds ; and
- (t) "Signed" save in the case of a judgment or a decree , includes stamped.

### **3. Subordination Of Courts :-**

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 Court and every Court of small causes is subordinate to the High Court and district Court.

### **4. Savings :-**

(1) In the absence of any specific 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 time being in force.

(2) In particular and without prejudice to the generality of the proposition contained in subsection (1) , nothing in this code shall be deemed to limit or otherwise affect any remedy which a landholder or landlord may have under any law for the time being in force for the recovery of rent of agricultural land from the produce of such land.

### **5. Application Of The Code To Revenue Courts :-**

(1) Where any revenue Courts are governed by the provisions of this Code in those matter of procedure upon which any special enactment applicable to them is silent, may ,by notification in the Government Gazette , declare that any portions of those provisions which are not expressly made applicable by this code shall not apply to those courts , or shall not apply to them with such modifications as may be prescribed.

(2) "Revenue Court" in sub-section (1) means a Court having jurisdiction under any local law to entertain suits or other proceedings relating to the rent, revenue or profits of land used for agricultural purposes, but does not include a Civil Court having original jurisdiction under this Court to try such suits or proceedings as being suits or proceedings of a civil nature.

### **6. Small Cause Courts :-**

The following provisions shall not extend to courts constituted under the Small Cause Courts Act, or to Courts exercising the jurisdiction of a small Court of Small Causes under that Act, that is to say :-

(a) So much of the Body of The Court as relates to :-

(i) suits expected from the cognizance of a Court of Small Causes;

- (ii) the execution of decrees in such suit;
- (iii) the execution of decree against immovable property ; and
- (b) The following sections, that is to say- Section 9, Section 91 and 92, Section 94 and 95 so far as they authorize or relate to -
  - (i) orders for the attachment of immovable property ,
  - (ii) injunctions,
  - (iii) the appointment of a receiver of immovable property, or
  - (iv) the interlocutory orders referred to in clause (e) of section 94 and sections 96 to 112 and 115.

### **7. Stay Of Suit :-**

No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in the state having jurisdiction to grant the relief claimed.

### **8. Resjudicata :-**

No Court shall try any suit or issue in which the matters directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim litigating under the same title, in a Court competent to try such subsequent suit or other suit in which such issue has been subsequently raised , and has been heard and finally decided by such court.

### **9. Bar To Further Suit :-**

where a plaintiff is precluded by rules from instituting a further suit in respect of any particular cause of action, he shall not be entitled to institute a suit in respect of such cause of action in any court to which the code applies.

### **10. When Foreign Judgment Not Conclusive :-**

A foreign conclusive shall not be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except :-

- (a) where it has not been pronounced by a Court of competent jurisdiction;
- (b) where it has not been given on the merits of the case;
- (c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or refusal to recognize the law of the state in cases in which such law is applicable;

- (d) where the proceedings in which the judgment was obtained are opposed to natural justice;
- (e) where it has been obtained by fraud;
- (f) where it sustains a claim founded on a breach of any law in force in the state.

**11. Presumption As To Foreign Judgment :-**

The Court shall presume upon the production of any document purporting to be a certified copy of a foreign judgment, that such judgment was pronounced by a Court of competent jurisdiction, unless the contrary appears on the record; but such presumption may be displaced by proving want of jurisdiction.

**12. Court In Which Suits To Be Instituted :-**

Every suit shall be instituted in the Court of the lowest grade competent to try it.

**13. Suit To Be Instituted Where Subject-Matter Situate :-**

Subject to the pecuniary or other limitations prescribed by any law , suits -

- (a) for recovery of immovable property with or without rent or profits,
- (b) for the partition of immovable property,
- (c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property,
- (d) For the determination of any other right to or interest in immovable property,
- (e) For compensation for wrong to immovable property,
- (f) For the recovery of movable property actually under distraint or attachment, Shall be instituted in the Court within the local limits of whose jurisdiction the property is situate.

**14. Bar On Suit To Set Aside Decree On Objection As To Place Of Suing :-**

No suit shall lie challenging the validity of a decree passed in a former suit between the same parties, or between the parties under whom they or any of them claim, litigating under the same title , on any ground based on an objection as to the place of suing.

**15. To Whom Court Application Lies :-**

- (1) where the several Courts having jurisdiction are subordinate to the same appellate Court, an application under section 22 shall be made to the appellate Court.

(2) Where such Courts are subordinate to different appellate Courts, the application shall be made to the High Court.

**16. General Power Of Transfer And Withdrawal :-**

(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court or District Court may at any stage-

(a) transfer any suit, appeal or any proceeding pending before it for trial or dispose to any Court subordinate to it and competent to try or dispose of the same, or

(b) withdraw any suit, appeal or other proceeding pending in other court subordinate to it, and

(i) try or dispose of the same; or

(ii) transfer the same for trial or dispose to any Court subordinate to it and competent to try or dispose of the same; or

(iii) retransfer the same for trial or disposal to the Court from which it was drawn.

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section(1), the Court which may subject to any special directions in the case of an order for transfer, either retry it or proceed from the point at which it was transferred.

(3) For the purpose of this section :-

(a) Court of Additional and Assistant Judges shall be deemed to be subordinate in the District Court;

(b) "Proceeding" includes a proceeding for the execution of a decree or order.

(4) The Court trying any suit transferred or withdrawn under this section from a Court of small cases shall, for the purposes of such suit, be deemed to be a court of small cases.

(5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it.

**17. Institutions Of Suits :-**

Every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed.

**18. Service Of Summons Of A Court In India In The Jammu And Kashmir State :-**

If a summons or other process is received for service by a court in the Jammu and Kashmir state from a court situate in a state in India, such court shall upon receipt thereof, proceed as if it has

been received by other Court and shall return the summons or other process to the Court of issue together with the record of its proceedings with regard thereto.

**19. Saving Of Present Right Of Appeal :-**

Nothing in this code shall effect any present right of appeal which shall have accrued to any party at its commencement.