

Kerala Small Cause Courts Act, 1957

8 of 1957

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SCHEDULE 1 :- FIRST SCHEDULE

Kerala Small Cause Courts Act, 1957

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An ACT to consolidate and amend the law relating to Courts of Small Causes Whereas it is expedient to consolidate and amend the law relating to courts of Small Causes; BE it enacted as follows:-

CHAPTER 1 PRELIMINARY

1. Short Title, Extent And Commencement :-

- (1) This Act may be called the Kerala Small Cause Courts Act, 1957.
- (2) It extends to the whole of the State of Kerala .
- (3) It shall come into force on such date as the Government may, by notification in the Gazette, appoint. [6].

2. Savings :-

Nothing in this Act shall be construed to affect -
the jurisdiction of any court constituted under the Cochin Village Courts Act, 1118(XII of 1118) or the Madras Village Courts Act, 1888, (I of 1889) as in force in the Malabar district referred to in sub-section (2) of section 5 of the States Reorganisation Act, 1956 (37 of 1956). Or the Travancore Village Panchayat Courts Act, 1090(I of 1090) ; or
any special law other than the Code of civil Procedure, 1908 (5 of 1908).

3. Definition :-

In this Act, unless the context otherwise requires, "Court of Small Causes" means a Court of Small Causes constituted under this Act,

and includes any person exercising jurisdiction under this Act, in any such Court.

CHAPTER 2

CONSTITUTION OF COURTS OF SMALL CAUSES

4. Establishment Of Courts Of Small Causes :-

(1) The Government may, by notification in the Gazette, establish a Court of Small Causes at any place in the State

(2) The local limits of the jurisdiction of a Court of Small Causes shall be such as the Government may define and the Court may be held at such place or places within those limit as the Government may appoint.

5. Judge :-

When a court of Small Causes has been established, there shall be appointed, by notification in the Gazette, a Judge of the Court:

Provide that if the Government so direct, the same person shall be the Judge of more than one such Court.

6. Appointment Of Times Of Sitting In Certain Circumstances :-

(1) A Judge who is the Judge of two or more such Courts may, with the sanction of the District Court, fix the times at which he will sit in each of the Courts of which he is Judge.

(2) Notice of the times shall be published in such manner at the High Court from time to time directs.

7. Additional Judges :-

(1) If the Government so direct, there may be appointed, by notification in the Gazette, Additional Judges of a Court of Small Causes or of two or more such Courts.

(2) An Additional Judge shall discharge such of the functions of the Judge of the Court or Courts as the Judge may assign to him, and in the discharge of those functions shall exercise the same powers as the Judge.

(3) The Judge may withdraw from an Additional Judge any business pending before him.

(4) When the Judge is absent, the senior additional Judge may discharge all or any of the functions of the Judge.

8. Power To Require Two Judges To Sit As A Bench :-

The Government, after consultation with the High Court, may, by notification in the gazette, direct that two Judges of Courts of Small Causes or a Judge and an Additional Judge of a Court of Small Causes shall sit together for the trial of such class or classes of suits or applications cognizable by a Court of Small Causes as may be described in the notification.

9. Decision In Case Heard By A Bench :-

(1) If two Judges or a Judge and an Additional Judge, sitting together under section 8, differ as to a question of law or usage having the force of law, or in construing a document, the construction of which may affect the merits, they shall draw up and refer, for the decision of the High court, a statement of the facts of the case and of the point on which they differ in opinion, and the provisions of section 113 and Order XLVI of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908), shall apply to the reference.

(2) If they differ on any matter other than a matter specified in sub-section (1), the opinion of the Judge who is senior in respect of date of appointment as Judge of a Court of Small Causes, or if one of them is an additional Judge, then the opinion of the Judges sitting with him, shall prevail.

(3) For the purposes of sub-section (2), a Judge permanently appointed shall be deemed to be senior to an officiating Judge.

10. Registrar :-

(1) There may be appointed to a Court of Small Causes an officer to be called the Registrar of the Court,

(2) Where a Registrar is appointed, he shall be the chief ministerial officer of the Court.

(3) The government may, by notification in the gazette, confer upon a Registrar, within the local limits of the jurisdiction of the Court, the jurisdiction of a Judge of a Court of Small Causes for the trial of suits of which the value does not exceed twenty rupees.

(4) The Registrar shall try such suits cognizable by him as the Judge may, by general or special order, direct.

11. Duties Of Ministerial Officers :-

(1) The ministerial officer of a Court of Small Causes shall, in addition to any duties mentioned in this Act, or in any other enactment for the time being in force, as duties which are or may be imposed on any of them, discharge such duties of a ministerial nature as the Judge directs.

(2) The High court may make rules consistent with this Act, and with any other enactment for the time being in force, conferring and imposing on the ministerial officers of a court of Small Causes such powers and duties as it thinks fit, and regulating the mode in which powers and duties so conferred and imposed are to be exercised and performed.

CHAPTER 3

JURISDICTION OF COURTS OF SMALL CAUSES

12. Cognizance Of Suits By Courts Of Small Causes :-

(1) A court of small Causes shall not take cognizance of the suits specified in the Schedule as a suits excepted from the cognizance of a Court of small Causes.

(2) Subject to the exceptions specified in the Schedule and to the provisions of any enactment for the time being in force, all suits of a civil nature of which the value does not exceed five hundred rupees shall be cognizable by a Court of Small Causes.

(3) subject as a foresaid, the Government may, by notification in the gazette, direct that All suits of a civil nature of which the value does not exceed one thousand rupees shall be cognizable by a Court of Small Causes mentioned in the notification.

13. Exclusive Jurisdiction Of Courts Of Small Causes :-

Save as expressly provided by this Act or by any other enactment for the time being in force, a suit cognizable by a court of Small Causes shall not be tried by any other Court having jurisdiction within the local limits of the jurisdiction of the Court of Small Causes by which the suit is triable.

CHAPTER 4

PRACTICE AND PROCEDURE

14. Application Of The Code Of Civil Procedure :-

(1) The procedure prescribed in the Code of Civil Procedure, 1908 (5 of 1908), shall save in so far as is otherwise provided by that Code or by this Act, be the procedure followed in a Court of Small

causes in all suits cognizable by it in all proceedings arising out of such suits:

Provided that an applicant for an order to set aside a decree passed *ex parte* or for a review of judgment shall, at the time of presenting his application, either deposit in the Court the amount due from him under the decree or in pursuance of the judgment, or give such security for the performance of the decree or compliance with the judgment as the Court may, on a previous application made by him in this behalf, have directed.

(2) Where a person has become liable as surety under the proviso to sub-section (1), the security may be realized in the manner provided by section 145 of the Code of Civil Procedure, 1908 (5 of 1908).

15. Trial Of Suits By Registrar :-

(1) suits cognizable by the Registrar under section 10, sub-section (3) and (4), shall be tried by him, and decrees passed therein shall be executed by him, in like manner in all respects as the Judge might try the suits and execute the decrees, respectively.

(2) The Judge may transfer to his own file, or to that of the additional Judge if an Additional Judge has been appointed any suit or other proceeding pending on the file of the Registrar.

16. Admission, Return And Rejection Of Plaints By Registrar :-

(1) When the Judge of a court of small Causes is absent, and an Additional Judge has not been appointed or having been appointed, is also absent, the Registrar may admit a plaint, or return or reject a plaint for any reason for which the Judge might return or reject it.

(2) The Judge may, of his own motion or on the application of a party, return to reject a plaint which has been admitted by the Registrar or admit a plaint which has been returned or rejected by him:

Provided that where a party applies for the return or rejection or the admission of a plaint under this sub-section, and his application is not made at the first sitting of the Judge after the day on which the Registrar admitted, or returned or rejected, the plaint, the Judge shall dismiss the application unless the applicant satisfies him that there was sufficient cause for not making the application at that sitting.

17. Passing Of Decrees By Registrar On Confession :-

(1) If, before the date appointed for the hearing of a suit, the defendant or his agent duly authorised in that behalf appears before the Registrar and admits the plaintiffs claim, the registrar may, if the Judge is absent, and an Additional Judge has not been appointed or, having been appointed, is also absent, pass against the defendant, upon the admission, a decree which shall have the same effect as a decree passed by the Judge.

(2) Where a decree has been passed by the registrar under sub-section (1), the Judge may grant an application for review of judgment, and re-hear the suit on the same conditions, on the same ground and in the same manner, as if the decree had been passed by himself.

18. Execution Of Decrees By Registrar :-

(1) If the Judge is absent, and an Additional Judge has not been appointed or, having been appointed, is also absent, the Registrar may, subject to any instructions which he may have received from the judge or , with respect to decrees or orders made by an Additional Judge, from the Additional Judge, make any orders in respect of applications for the execution of decrees and orders made by the Court of which he is registrar, or sent to that Court for execution, which the Judge might make under this Act.

(2) The Judge, in the case of any decree or order with respect to the execution of which the registrar has made an order under sub-section (1), or the Additional Judges, in the case of any such decree or order which has been made by himself and with respect to which proceedings have not been taken by the Judge under this sub-section, may, of his own motion, or on application made by a party within fifteen days from the date of the order of the registrar or of the execution of any process issued in pursuance of that order, reverse or modify the order.

(3) The period of fifteen days mentioned in sub-section (2) shall be computed in accordance with the provisions of the Indian Limitation Act, 1908 (9 of 1908), as though the application of the party were an application for review of judgment.

19. Adjournment Of Cases By Chief Ministerial Officer :-

When the Judge of a Court of Small Causes is absent and an Additional Judge has not been appointed or, having been appointed

is also absent, the Registrar or other chief ministerial officer of the Court may exercise from time to time the power which the Court the Court possesses of adjourning the hearing of any suit or other proceeding, and fix a day for the further hearing thereof.

20. Return Of Plaints In Suits Involving Questions Of Title :-

(1) Notwithstanding anything in the foregoing provisions of this Act, when the right of a plaintiff and the relief claimed by him in a Court of Small Causes depend upon the proof or disproof of a title to immovable property or other title which such a Court cannot finally determine, the Court may at any stage of the proceedings return the plaint to be presented to a Court having jurisdiction to determine the title.

(2) When a Court returns a plaint under sub-section (1), it shall comply with the provisions of Order VII, rule 10, of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908), and make such order with respect to costs as it deems just, and the Court, shall, for the purposes of the Indian Limitation Act, 1908 (9 of 1908), be deemed to have been unable to entertain the suit by reason of a cause of a nature like to that of defect of jurisdiction.

21. Appeal From Certain Orders Of Court Of Small Causes :-

Where an order specified in clause (ff) or clause (h) of sub-section (1) of section 104 of the Code of Civil Procedure, 1908 (5 of 1908), is made by a Court of Small Causes, an appeal therefrom shall lie to the District Court on any ground on which an appeal from such order would lie under that section.

22. Revision Of Decrees And Orders Of Courts Of Small Causes :-

The High Court, for the purpose of satisfying itself that a decree or order made in any case decided by a Court of Small Causes was according to law, may call for the case and pass such order with respect thereto as it thinks fit.

23. Finality Of Decrees And Orders :-

Save as provided by this Act, a decree or order made under the foregoing provisions of this Act by a Court of Small Causes shall be final.

24. Subordination Of Courts Of Small Causes :-

(1) A Court of Small Causes shall be subject to the administrative control of the District Court and to the superintendence of the High Court, and shall-

keep such registers, books and accounts as the High Court from time to time prescribes, and

comply with such requisitions as may be made by the District Court, the High Court or the Government for records, returns and statements in such form and manner as the authority making the requisition directs.

(2) The relation of the District Court to a Court of Small Causes, with respect to administrative control, shall be the same as that of the District Court to a Munsiffs Court

25. Vacation :-

The High Court may permit a Court of Small Causes to adjourn from time to time for periods not exceeding in the aggregate sixty days in each year.

26. Seal :-

A Court of Small Causes shall use a seal of such form and dimensions as are prescribed by the Government.

27. Abolition Of Courts Of Small Causes :-

The government may, by notification in the Gazette, abolish a court of Small Causes.

28. Saving Of Power To Appoint Judge Of Court Of Small Causes To Other Office :-

(1) Nothing in this Act shall be construed to prevent the appointment of a person who is a Judge or Additional Judge of a court of small causes to be also a Judge of any other Civil court or to be a Magistrate of any class or to hold any other public office.

(2) When a Judge or Additional Judge is so appointed, the ministerial officers of his court shall, subject to any rules which the Government may make in this behalf, be deemed to be ministerial

officers appointed to aid him in the discharge of the duties of the other office.

29. Application Of Act To Courts Invested With Jurisdiction Of Court Of Small Causes :-

(1) So much of chapters III and IV as relates to-
the nature of the suits cognizable by courts of Small Causes,
the exclusion of the jurisdiction of other courts in those suits,
the practice and procedure of Courts of small Causes,
appeal from certain orders of those Courts and revision of cases decided by them, and
the finality of their decrees and orders subject to such appeal and revision as are provided by this Act.

applies to courts invested by or under any enactment for the time being in force with the jurisdiction of a court of small Causes so far as regards the exercise of that jurisdiction by those courts.

(2) Nothing in sub-section (1), with respect to courts invested with the jurisdiction of a court of Small causes applies to suits instituted or proceedings commenced in those courts before the date on which they were invested with that jurisdiction.

30. Application Of Act And Code To Court So Invested As To Two Courts :-

A Court invested with the jurisdiction of a Court of Small causes with respect to the exercise of that jurisdiction, and the same Court with respect to the exercise of its jurisdiction in suits of a civil nature which are not cognizable by a court of Small Causes, shall, for the purposes of this Act and the Code of Civil Procedure, 1908 (5 of 1908), be deemed to be different courts.

31. Modification Of Code As So Applied :-

Notwithstanding anything in sections 29 and 30-
when in 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
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

Order XXI, rule 6, of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908), shall not be sent with the decree unless in any case the Court, by order in writing, requires them to be sent.

32. Continuance Of Proceedings Of Abolished Courts :-

(1) Where a Court of small Causes, or a Court invested with the jurisdiction of a court of small causes, has from any cause ceased to have jurisdiction with respect to any case, any proceeding in relation to the case, whether before or after decree, which, if the Court had not ceased to have jurisdiction, might have been had therein, may be had in the Court which, if the suit out of which the proceeding has arisen were about to be instituted would have jurisdiction to try the suit.

(2) Nothing in this section applies to cases for which special provision is made in the Code of Civil Procedure, 1908 (5 of 1908) as extended to courts of small causes or in any other enactment for the time being in force.

32.A. Rules to be laid before Legislative Assembly .-

Every rule made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assembly, while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions and if, before the expiry of the session in which it is so laid or the session immediately following, the Legislative assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.)

33. Repeals :-

The Provincial small cause courts Act, 1887 (9 of 1887), as in force in the Malabar district referred to in sub-section (2) of section 5 of the states Reorganisation Act, 1956 (37 of 1956), and sub-section (3) of section 22 of the Kerala Civil courts act, 1957 (I of 1956), are hereby repealed.

SCHEDULE 1

FIRST SCHEDULE

SUITS EXCEPTED FROM THE COGNIZANCE OF A COURT OF SMALL CAUSES

(See section 12)

A suit concerning any act done or purporting to be done by or by order of the Central Government or the Government ;

a suit concerning an act purporting to be done by any person in pursuance of a judgment or order of a Court or of a judicial officer acting in the execution of his office;

a suit concerning an act or order purporting to be done or made by any other officer of the Government in his official capacity, or by a court of Wards, or by an officer of a court of Wards in the execution of his office;

a suit for the possession of immovable property or for the recovery of an interest in such property;

a suit for the partition of immovable property;

a suit by a mortgagee of immovable property for the foreclosure of the mortgage or for the sale of the property, or by a mortgagor of immovable property for the redemption of the mortgage;

a suit to enforce a charge whether created by contract or by statute or by decree of court;

a suit for the assessment, enhancement, abatement or apportionment of the rent of immovable property;

a suit for the recovery of rent, other than house-rent unless the Judge of the court of Small Causes has been expressly invested by the government with authority to exercise jurisdiction with respect thereto;

a suit concerning the liability of land to be assessed to land revenue ;

a suit to restrain waste ;

a suit for the determination or enforcement of any other right to or interest in immovable property ;

a suit for the possession of an hereditary office or of an interest in such an office, including a suit to establish an exclusive or periodically recurring right to discharge the functions of an office.

a suit to enforce payment of any allowance or fees paid to families or individuals by the Government, or of cesses or other dues with the cesses or other dues when the cesses or dues are payable to a person by reason of his interest in immovable property or in an hereditary office or in a shrine or other religious institution ;

a suit to recover from a person to whom compensation has been paid under the Land Acquisition Act for the time being in force, the whole or any part of the compensation ;

a suit for the specific performance or rescission of a contract ;

a suit for the rectification or cancellation of an instrument ;

a suit to obtain an injunction ;

a suit relating to a trust, including a suit to make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust, and a suit by co-trustee to enforce against the estate of a deceased trustee a claim for contribution ;

a suit for a declaratory decree ;

a suit instituted under Order XXI, rule 63, or Order XXI, rule 103, of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) ;

a suit to set aside an attachment by a Court or a revenue authority, or a sale, mortgage, lease or other transfer by a Court or a revenue authority or by a guardian ;

a suit for property which the plaintiff has conveyed while insane ;

a suit to alter or set aside a decision, decree or order of a Court or of a person acting in a judicial capacity ;

a suit to contest an award ;

a suit upon a foreign judgment as defined in the Code of Civil Procedure, 1908 (5 of 1908), or upon a judgment obtained in India ;

a suit to compel a refund of assets improperly distributed under section 73 of the Code of Civil Procedure, 1908 (5 of 1908) ;

a suit under section 360 or section 361 of the Indian Succession Act, 1925 (39 of 1925), to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets ;

a suit for a legacy or for the whole or a share of a residue bequeathed by a testator, or for the whole or a share of the property of an intestate ;

a suit –

for a dissolution of partnership or for the winding up of the business of a partnership after its dissolution ;

for an account of partnership transactions ; or

for a balance of partnership account, unless the balance has been struck by the parties or their agents ;

(31) a suit for an account of property and for its due administration under decree ;

any other suit for an account, including a suit by a mortgagor, after the mortgage has been satisfied, to recover surplus collections received by the mortgagee, and

a suit for the profits on immovable property belonging to the plaintiff which have been wrongfully received by the defendant ;

a suit for a general average loss or for salvage ;

a suit for compensation in respect of collision between ships ;

a suit on a policy of insurance or for the recovery of any premium paid under any such policy ;

a suit for compensation –

for loss occasioned by the death of a person caused by actionable wrong ;

for wrongful arrest, restraint or confinement ;

for malicious prosecution ;

for libel ;

for slander ;

for adultery or seduction ;

for breach of contract of betrothal or promise of marriage ;

for inducing a person to break a contract made with the plaintiff ;

for obstruction of an easement or diversion of a water-course ;

for an act which is or save for the provisions of Chapter IV of the Indian Penal Code (45 of 1860), would be an offence punishable under Chapter XVII of the said Code ;

for illegal, improper or excessive distress, attachments or search or for trespass committed in or damage caused by the illegal or improper execution of any distress, search or legal process ;

for improper arrest under the Code of Civil Procedure 1908 (5 of 1908) or in respect of the issue of an injunction wrongfully obtained under the said Code ; or

for injury to the person in any case not specified in the foregoing sub- clauses of this clause ;

a suit by a Muhammadan for exigible (muajjal) or deferred (muwjjal) dower ;

a suit for the restriction of conjugal rights for the custody of a minor or for a divorce ;

a suit relating to maintenance ;

a suit for arrears of land revenue, village expenses or other sums payable to the representative of a village-community or to his heir or other successor in title ;

a suit for profits payable by the representative of a village-community or by his heir or other successor in title after payment of land revenue, village expenses and other sums ;

a suit for contribution by a sharer in joint property in respect of a payment made by him of money due from a co-sharer, or by a manager of joint property or a member of an undivided family in respect of a payment made by him on account of the property or family ;

a suit by one of several joint mortgagors of immovable property for contribution in respect of money paid by him for the redemption of the mortgaged property ;

a suit against the Government to recover money paid under protest in satisfaction of a claim made by a revenue authority on account of an arrear of land revenue or of a demand recoverable as an arrear of land revenue ;

a suit to recover property obtained by an act which is or save for the provisions of Chapter IV of the Indian Penal Code (45 of 1860), would be, an offence punishable under Chapter XVII of the said Code ;

a suit, the cognizance whereof by a Court of Small Causes is barred by any enactment for the time being in force.