

India

Code of Civil Procedure

Act No 5 of 1908

[...]

Part I – Suits in General Jurisdiction of the Courts and Res Judicata

9.

Courts to try all civil suits unless barred — The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

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.

10.

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 India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.

Explanation — The pendency of a suit in a foreign Court does not preclude the Courts in India from trying a suit founded on the same cause of action.

11.

Res judicata — No Court shall try any suit or issue in which the matter directly and substantially in issue has been 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 the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I. — The expression ‘former suit’ shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

Explanation II. — For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III. — The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV. — Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V. — Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.

Explanation VI. — Where persons litigate bona fide in respect of public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

Explanation VII. — The provisions of this section shall apply to a proceeding for the execution of a decree and reference in this section to any suit, issue or former suit shall be construed as references, respectively, to proceedings for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII. — An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as *res judicata* in as subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.

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13.

When foreign judgment not conclusive — A foreign judgment shall 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 a refusal to recognise the law of India 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 India.

14.

Presumption as to foreign judgments. — 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.

Place of suing

15.

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

16.

Suits to be instituted where subject-matter situate — Subject to the pecuniary or other limitations prescribed by any law, suits —

- (a) for the 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:

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant, may where the relief sought can be entirely obtained through his personal obedience be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

Explanation. — In this section ‘property’ means property situate in India.

17.

Suits for immovable property situate within jurisdiction of different Courts — Where a suit is to obtain relief respecting, or compensation for wrong to, immovable property situate within the jurisdiction of different Court, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate:

Provided that, in respect of the value of the subject matter of the suit, the entire claim is cognizable by such Court.

18.

Place of institution of suit where local limits of jurisdiction of Courts are uncertain —

(1) Where it is alleged to be uncertain within the local limits of the jurisdiction of which of two or more Courts any immovable property is situate, any one of those Courts may, if satisfied that there is ground for the alleged uncertainty, record a statement to that effect and thereupon proceed to entertain and dispose of any suit relating to that property, and its decree in the suit shall have the same effect as if the property were situate within the local limits of its jurisdiction:

Provided that the suit is one with respect to which the Court is competent as regards the nature and value of the suit to exercise jurisdiction.

(2) Where a statement has not been recorded under sub-section (1), and objection is taken before an Appellate or Revisional Court that a decree or order in a suit relating to such property was made by a Court not having jurisdiction where the property is situate, the Appellate or Revisional Court shall not allow the objection unless in its opinion there was, at the time of the institution of the suit, no reasonable ground for uncertainty as to the Court having jurisdiction with respect thereto and there has been a consequent failure of justice.

19.

Suits for compensation for wrongs to person or movable — Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court, the suit may be instituted at the option of the plaintiff in either of the said Courts.

Illustrations:

(a) A, residing in Delhi, beats B in Calcutta. B may sue A either in Calcutta or in Delhi.

(b) A, residing in Delhi, publishes in Calcutta statements defamatory of B. B may sue A either in Calcutta or in Delhi.

20. Other suits to be instituted where defendants reside or cause of action arises — Subject to the limitations aforesaid, every suit shall be instituted in Court within the local limits of whose jurisdiction —

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

Explanation. — A corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

Illustrations:

(a) A is a tradesman in Calcutta, B carries on business in Delhi. B, by his agent in Calcutta, buys goods of A and requests A to deliver them to the East Indian Railway Company. A delivers the goods accordingly in Calcutta. A may sue B for the price of the goods either in Calcutta, where the cause of action has arisen or in Delhi, where B carries on business.

(b) A resides at Simla, B at Calcutta and C at Delhi A, B and C being together at Benaras, B and C make a joint promissory note payable on demand, and deliver it to A. A may sue B and C at Benaras, where the cause of action arose. He may also sue them at Calcutta, where B resides, or at Delhi, where C resides; but in each of these cases, if the non-resident defendant object, the suit cannot proceed without the leave of the Court.

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Part II – Execution

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44A. Execution of decrees passed by Courts in reciprocating territory —

(1) Where a certified copy of decree of any of the superior Courts of any reciprocating territory has been filed in a District Court, the decree may be executed in India as if it had been passed by the District Court.

(2) Together with the certified copy of the decree shall be filed a certificate from such superior Court stating the extent, if any, to which the decree has been satisfied or adjusted and such certificate shall, for the purposes of proceedings under this section, be conclusive proof of the extent of such satisfaction or adjustment.

(3) The provisions of section 47 shall as from the filing of the certified copy of the decree apply to the proceedings of a District Court executing a decree under this section, and the District Court shall refuse execution of any such decree, if it is shown to the satisfaction of the Court that the decree falls within any of the exceptions specified in clauses (a) to (f) of section 13.

Explanation 1 — ‘Reciprocating territory’ means any country or territory outside India which the Central Government may, by notification in the

Official Gazette, declare to be a reciprocating territory for the purposes of this section; and 'superior Courts', with reference to any such territory, means such Courts as may be specified in the said notification.

Explanation 2. — 'Decree' with reference to a superior Court means any decree or judgment of such Court under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect to a fine or other penalty, but shall in no case include an arbitration award, even if such an award is enforceable as a decree or judgment.

45.

Execution of decrees outside India — So much of the foregoing sections of this Part as empowers a Court to send a decree for execution to another Court shall be construed as empowering a Court in any State to send a decree for execution to any Court established by the authority of the Central Government outside India to which the State Government has by notification in the Official Gazette declared this section to apply.

[...]

Succession Act 1925

Act No 39 of 1925

[...]

Part II Of Domicile

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Section 5. Law regulating succession to deceased person's immovable and moveable property, respectively —

(1) Succession to the immovable property in India of a person deceased shall be regulated by the law of India, wherever such person may have had his domicile at the time of his death.

(2) Succession to the moveable property of a person deceased is regulated by the law of the country in which such person had his domicile at the time of his death.

Illustrations:

(a) A, having his domicile in India, dies in France, leaving moveable property in France, moveable property in England, and property, both moveable and immovable, in India. The succession to the whole is regulated by the law of India.

(b) A, an Englishman, having his domicile in France, dies in India, and leaves property, both moveable and immovable, in India. The succession to the moveable property is regulated by the rules which govern, in France, the succession to the moveable property of an Englishman dying domiciled in France, and the succession to the immovable property is regulated by the law of India.