
Sheristadar's Handbook

Part-I (Judicial)

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SHERISTADAR'S HANDBOOK

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PUBLISHER'S NOTE

This booklet is aimed at guiding the Sheristadars, Head Clerks and Peskars of Civil Courts while dealing with Civil Suits/Cases especially for scrutiny of the Pleadings. While every effort has been taken to avoid any mistake or omission, this publication is supplied/distributed with condition that neither the Compiler nor the Publisher shall be held liable for any mistake or omission that might have crept into the contents inadvertently.

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How can the spread of COVID-19 be slowed down or prevented ?

As with other respiratory infections like the flu or the common cold, public health measures are critical to slow the spread of illnesses. Public health measures are everyday preventive actions that include:

- ✓staying home when sick;
- ✓covering mouth and nose with flexed elbow or tissue when coughing or sneezing. Dispose of used tissue immediately;
- ✓washing hands often with soap and water; and ✓cleaning

INTRODUCTION

Plaint checking is a vital part in the process of civil litigation. In absence of an uniformly prescribed and consolidated chapter dealing with the checking of a Pleading/Plaint or Petition in the CPC/GR&CO; for all the High Courts, Court officials are used to devising their own way, in consonance with various standing orders and statutory provisions of their respective high courts, for checking a Plaint. No doubt, it lacks an uniform approach in dealing with the process. As such, an uniform procedure for checking a plaint/Pleading is felt necessary. So far as our own high court is concerned, as per resolution number 3787, dated 14.03.1990 the Sheristadar shall check Plaint/Appeal and place before the P.O. for rectification of the defects, if any. The CPC does not specifically speak about any formal provision, which mandates that every plaint should be checked by the office and placed before the Presiding Officer for further orders regarding rectification of defects. Of course, **Rule 145** of GRCO Civil (vol-1) provides that the application for execution shall ordinarily be put up before the P.O. for orders on the day following the day of its presentation with all defects. Similarly, the provisions under order VI & VII of the CPC imply that the basic requirements regarding pleadings must be complied with and needless to say that the Court or any officer duly authorized by the court shall point out the defects and place the same before the P.O. for necessary rectification. The procedure prescribed under the newly introduced e-courts project also provides that the Plaint should be scrutinized in line with the requirements of the check slip (see **Annexure-A**) and only after rectification of defects, it is to be registered. The scrutiny slip is limited to some of the formal defects only. The [High Court Rules](#) prescribed by Punjab & Haryana High Court also mandate that Plaint should be examined before admission. In a Judgment (vide [WRIT PETITION NO. 1849 OF 2018](#)) the Bombay High Court (Bench at Aurangabad) has held that “the trial court shall place such suits in objection category and shall not proceed with the said suits, until there is a proper compliance of Order VII, rule 3 of the CPC”.

CHAPTER-1

(HOW TO CHECK A PLEADING/PLAINT)

Civil statutes and procedural laws, frequently used for reference are increasingly high. This chapter is aimed at compacting all relevant rules touching the process of checking a Pleat/Pleading. Broadly speaking, while checking a Pleat/Pleading, the office note should point out all/any irregularity or deficiency involving the following aspects. At the same time, the scrutiny must be limited to formal objections and should not encroach upon legal points, which should be decided by the Court on merit and very often after hearing both the parties.

- A. Jurisdiction(Under the CPC, Orissa Civil Courts Act and other relevant special statutes)
- B. Valuation and Court fee calculation(under the Court Fees Act (Orissa Amendments)& Suits valuation Act)
- C. Limitation(under the Limitation Act and relevant special Acts)
- D. Compliance of other miscellaneous instructions (*under CPC with special reference to order VI & VII, GR. & CO. (civil & criminal), Family Courts Act & relevant Rules, Indian Stamp Act, Court Fees Act, M.V.Act & Odisha Motor Vehicles (Accidents Claims Tribunal) Rules, 2018, Advocates' & Advocate's Clerks welfare fund Act etc) including standing orders of Hon'ble High Court of Orissa.*

To understand it better, all the above points have been further discussed keeping in view various standing orders as well as judicial pronouncements.

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CHAPTER-2

(Jurisdiction)

Each court has its territorial jurisdiction notified in the official gazette. Special Acts do define the subject wise jurisdiction as to which court would have jurisdiction to try cases under that specific statute. Jurisdiction of a Court related with the value of the suit or the pecuniary jurisdiction also decides the trial court of a suit having specific value. Jurisdiction of a court to entertain the suit/case should be decided at the entry level/point. In this context, jurisdiction would ordinarily involve four main factors i.e. i) Territorial jurisdiction, ii) Pecuniary jurisdiction, iii) subject wise jurisdiction and iv) Appellate Jurisdiction.

i) Territorial jurisdiction:

Territorial jurisdiction of the court divides the court on vertical basis. The suit/case must come under the territorial jurisdiction of the court dealing with the suit/case. The territorial jurisdiction of a court will be determined by the territory in which the subject matter related to the suit is situated in and the subject matter can be any property, immovable as well as movable. The point is very well defined in the chapter “**Place of suing**” i.e. section 15 to 20 of the CPC. The provisions, as far as territorial jurisdiction is concerned, in toto state that:

General principle: [Sec. 15 of the C.P.C.](#) lays down that every suit has to be instituted in the court of the lowest grade.

Sec.16-Suits to be instituted where the subject matter is situate.

[As per sec. 16 of the C.P.C.](#) - subject to pecuniary and other limitations prescribed by law, suits for recovery of immovable property without rent, suits for **partition** of immovable property, suits based on mortgage or charge on immovable property, suits for determination of right or interest in immovable property , suits for compensation for wrong to immovable property and suits for recovery of movable property under distraint or attachment, have to be instituted in the court within the local limits of whose jurisdiction the property is situate. There is a proviso to Sec.16 of CPC which says that a suit to obtain relief respecting, or compensation for wrong to immovable property held by the defendant, when the relief sought for in the suit can be obtained through personal obedience of the defendant, the same can be filed either in the court in whose jurisdiction the property is situate or in the court, in whose local jurisdiction the defendant resides, carries on business or personally works for gain.

Sec.17-When immovable property is situate in the jurisdiction of different courts.

[Under Section 17 of the C.P.C.-](#), when the immovable property is situated within the jurisdiction of different Courts, suit in respect thereof can be filed in any of the courts, but as per the proviso there under, in respect of the value of the subject matter of the suit, the entire claim is cognizable by such court.

Sec. 18-When it is uncertain as to in whose local limits of jurisdiction of two or more courts the immovable property is situate.

[As per Section 18\(1\) of the C.P.C.](#), - the suit can be filed in any one of those courts and the only condition is that the court entertaining the suit has to record a statement about the alleged uncertainty, but the proviso thereunder stipulates that the Court that entertains the suit must be competent as regards the nature and value of the suit to exercise the jurisdiction.

Sec.19-Suit relating to compensation for wrongs to persons or movables.

[Sec.19 of the C.P.C.](#) says the suit can be filed either in the Court in whose jurisdiction the alleged wrongs were committed or in the Court in whose jurisdiction the defendant resides, or carries on business, or personally works for gain.

Sec.20 of the C.P.C.- Suits other than those referred to in Sections 16 to 19 to be instituted.

As per Sec. 20 of the CPC, such other suits have to be instituted in the Court in whose jurisdiction the defendant resides, or carry some business or personally works for gain or the cause of action wholly or in part arises.

Golden Rule of place of suing:-

There are three rules relating to the jurisdiction of the Court:

- a) Every suit must be instituted before the lowest competent court.
- b) No court shall entertain any suit the value of which exceeds the pecuniary limits.
- c) No court shall entertain any suit the cognizance of which is expressly or impliedly barred.

ii) Pecuniary/monetary jurisdiction

Pecuniary jurisdiction of the court divides the court on vertical basis. The monetary limit i.e. the suit value that is triable by a particular class of civil court has been provided under the Orissa Civil Courts Act. At present, the pecuniary limit of suit value triable in the courts of Civil judge (Junior Division) in Odisha is limited to Rs.50,000/- whereas the courts of Senior Civil Judge can try suits involving valuation exceeding Rs.50,000/-. A court cannot entertain a suit exceeding its pecuniary jurisdiction as provided under section 6 of the C.P.C., which reads as:

“Save in so far as is otherwise expressly provided, nothing herein contained shall operate to give any Court jurisdiction over suits the amount or value of the subject-matter of which exceeds the pecuniary limits (if any) of its ordinary jurisdiction.”

Regarding jurisdiction, it is to be kept in mind that jurisdiction cannot be conferred by agreement between the parties vide Judgment in the case of [Rai Bahadur Basakha Singh & Sons ... vs Indian Drugs & Pharmaceutical ... on 5 January, 1979](#). [AIR 1979 Delhi 220]

In a suit for partition the value of the Plaintiff's share (in case the plaintiff is dispossessed of his share in the joint property) determines the pecuniary jurisdiction of the court but not that of the entire property vide the Judgment in the case of [*Neelavathi And Ors vs M. Natarajan And Ors on 30 November, 1979*](#). [AIR 1980 SC 691]

iii) Original/subject wise jurisdiction:

Original jurisdiction decides whether the court has jurisdiction to entertain a suit/case of that nature on the basis of the statutes. Section 9 of CPC deals with the jurisdiction of civil courts in India. It says that 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. Courts with original jurisdiction can conduct trial of such cases and these courts are called courts of first instance.

To explain it better, A civil Court has jurisdiction to try a suit, if two conditions are fulfilled:

i) The suit must be of a civil nature; and

ii) The cognizance of such a suit should not have been expressly or impliedly barred.

a) Suit of civil nature

i. Meaning: - in order that a civil court may have jurisdiction to try a suit, the first condition which must be satisfied is that the suit must be of a civil nature. The word 'civil' has not been defined in the code. But, according to the dictionary meaning, it pertains to private rights and remedies of a citizen as distinguished from criminal, political, etc. The expression 'civil nature' is wider than the

expression 'Civil proceedings'. Thus, a suit is of a civil nature if the principal question therein relates to the determination of a civil right and enforcement thereof. It is not the status of the parties to the suit, but the subject matter & relief sought for in the suit, which determines whether or not the suit is of a civil nature.

Special jurisdiction—under certain enactments. Courts of Subordinate Judges have no jurisdiction at all to take cognizance of proceedings under those enactments. For example suits under the Special Marriage Act, under the Companies Act, 1956, the Indian Divorce Act, 1869, etc., are triable by the District Judge/Family Court. There are proceedings under certain other enactments of which subordinate Judges can take cognizance only if specifically empowered in that behalf (see e.g., [Section 4-A of the Guardians and Wards Act, 1890](#), [Section 388 of the Indian Succession Act](#) etc.) The Orissa High Court in its notification dated 14.11.1961 has notified that the Munsifs/Principal, Civil Judges can entertain cases under chapter X of the Indian Succession Act for issue of Successions Certificate. Similar notification dated 14.11.1961 has also been made by the Law Deptt. Govt. of Odisha in respect of Insolvency Petitions.

One more provision noteworthy is that when a Family Court is established under the Family Courts Act, 1984, under section 8 of the Act, the jurisdiction of the District Judge, Senior Civil Judge and the Judicial Magistrate working in that particular area upon all such cases as defined to be triable by the Family Court, shall cease.

Very often it so happens that a party files a suit with a prayer to enforce his right but which is guaranteed under the constitution.

Such a petition would come under the writ jurisdiction of the High Court/Supreme Court only. Therefore, it is very important to differentiate between the suits which relate to a civil nature and that relate to writ jurisdiction of the High Court/Supreme Court under the constitutional power.

Some examples where the civil court does have jurisdiction as is barred under some special statutes:

- i) Disputes under SARFAESI Act-Under Section 34 of the SARFAESI Act, 2002, the jurisdiction of Civil Court is barred and so Civil Courts shall have **no jurisdiction**.
- ii) Dispute regarding claims of energy charges on reports submitted by Vigilance wing of the electricity distribution authority shall be decided by the Committee formed for the purpose and so Civil Courts would have **no jurisdiction**. The specific provision under The Electricity Act, 2003 is-

Section 145 of the Electricity Act. (Civil courts not to have jurisdiction): No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an assessing officer referred to in section 126 or an appellate authority referred to in section 127 or the adjudicating officer appointed under this Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Sometimes a confusion may arise as to if a civil court can extend its jurisdiction under sec. 151 of the CPC. In [K.K. Velusamy v. N. Palaanisamy](#) [2011(11) SCC 275], the Supreme Court of India held that Section 151 does not confer any special jurisdiction on Civil Courts,

but only provides for the exercise of discretionary power to secure the ends of justice, in accordance with law. This means that a court cannot pass any such order that may be prohibited under any law in order to secure the ends of Justice.

One more point may be noted that when the main relief is cognizable by revenue court and ancillary relief by civil court then suit shall be cognizable by revenue court. But if the main relief is cognizable by civil court and ancillary relief by revenue court then suit shall be cognizable by civil court only. See [Chhedhi vs. Smt. Indrapati](#), [AIR 1972 All 446]

Regarding industrial disputes, the Supreme Court in the case of [“Premier Automobiles Ltd vs Kamlekar Shantaram Wadke decided on 26 August, 1975”](#) laid down the following principles as relevant to the jurisdiction of civil courts in association with industrial disputes:

- 1) If a conflict is not an industrial conflict, nor does it correlate to the enforcement of any other right under the industrial dispute act, the remedy lies only in civil court.
- 2) If a conflict is an industrial conflict emerging out of a right or liability under the general or public law, the jurisdiction of the court is an alternative left to the person involved to decide his remedy for the support which is sufficient to be given in a particular remedy.
- 3) If an industrial dispute relates to the implementation of the right or a duty organized under the act, then the only remedy available is to get adjudication under the act.

iv) Appellate Jurisdiction:

Every statute defines its appellate authority. Against decree, as defined under Section 2(2), regular First Appeal is provided under Section 96, C.P.C. First Appeal under Section 96 C.P.C. shall normally be admitted and not dismissed in limine vide *Union of India v. K. V. Lakshman* AIR 2016 SC 3139.

Against certain orders passed in a suit before its final decision also appeal is provided under Section 104 read with Order 43, Rule 1 C.P.C. These appeals are called Miscellaneous Appeals or First Appeals from Orders i.e. FAO. The second appeal lies to the High Court only if it involves a substantial question of law. Accordingly, the office note shall point out if the appeal has been filed in the proper court.

Remember: Point 1-While preparing an office note on a Plaint or Petition, the first and foremost point to be dealt with should be 'whether the court has jurisdiction (territorial, pecuniary and subject wise) to try the suit/case/Petition'. Regarding cause of action, in the case of [S.N.Kasilingam vs S.N.M.Ramachandran \(on 5 December, 2008\)](#) Hon'ble High Court of Madras remarked that "while the court scrutinize the plaint, it has to ascertain whether the plaint created an illusion of cause of action by clever drafting and the role played by the pleading with reference to cause of action is the major element in a suit to be considered under Order 7 Rule 11 of C.P.C." Hence the office note may also scrutinize whether there exists a valid cause of action.

(In case of suits/cases under special acts, the jurisdiction matter in some of the specific cases has been dealt in Chapter V.)

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CHAPTER-III

(Limitation)

Limitation Act prescribes the period of limitation for filing of a Suit/Appeal/case and procedure for computation of the period of limitation. As such, the office note should examine as to whether the Suit/Appeal/case has been filed within the period of limitation as prescribed by the Limitation Act or other special Acts relevant for the purpose. The salient features of the Limitation act may be of great help in this regard.

Sec.3: Bar of limitation.

(1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.

(a) A longer period of 12 years has been prescribed for various kinds of suits relating to immovable property, trusts and endowments.

(b) A period of 3 years has been prescribed for suits relating to accounts, contracts, and declarations, suits relating to decrees and instruments and suits relating to movable property.

(c) A period varying from 1 to 3 years has been prescribed for suits relating to torts and miscellaneous matters and for suits for which no period of limitation has been provided elsewhere in the Schedule to the Act.

Extension of limitation: [Section 5 of the Limitation Act](#) for extension of time is applicable for Appeals & Applications (other than EP) only.

Sec. 12(4) of The limitation act provides that

In computing the period of limitation for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded. (Explanation.—In computing under this section the time requisite for obtaining a copy of a decree or an order, any time taken by the court to prepare the decree or order before an application for a copy thereof is made shall not be excluded.)

Sec.03(4) provides that where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court re-opens.

[Section 14 of the Limitation act](#) is also important which deals with exclusion of time of proceeding bona fide in court without jurisdiction.

Effect of acknowledgment in writing.—

Sec.18(1)- Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

Limitation Act cannot be called in aid to supplement the provisions of the Special Act ([Gopal Sardar vs Karuna Sardar on](#)

[9 March, 2004](#), [(2004) 4 SCC 252]. However, regarding various petitions, specific limitations have been provided under the Limitation Act, with some exceptions, such as;

In [Shub Karan Bubna's case](#), some significant observations have also been made by Hon'ble Supreme Court regarding limitation for filing a petition for final decree: "The Code does not contemplate filing an application for final decree. Therefore, when a preliminary decree is passed in a partition suit, the proceedings should be continued by fixing dates for further proceedings till a final decree is passed. Since it is the duty and function of the court, performance of such function does not require a reminder or nudge from the litigant."

Accordingly, there would be no limitation for filing a petition for final decree in a suit for partition.

Note: In an unprecedented move, the Hon'ble Apex court extended the period of limitation for filing of suits/Appeals/Petitions in any court of India w.e.f. 15th March 2020 till further order/s to be passed by this Court in the proceedings owing to COVID-19 Pandemic, vide judgment in "[SUO MOTU WRIT PETITION \(CIVIL\) No\(s\).3/2020](#)" disposed of on 23.3.2020.

Remember: Point 2-While preparing an office note on a Pleading or Petition, the next point to be dealt with should be whether the suit/case/Petition is filed in time in terms with the provisions of the Limitations Act or other relevant special Act.

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CHAPTER-IV

(Suit valuation and Court fee calculation)

Court fees Act & Indian Stamp Act

Calculating the court fee payable in a Suit/petition requires basic understanding of the Court Fees Act and the Suits Valuation Act. The office note must verify the calculation of court fees payable keeping in view the Court fees (Orissa amendment) Act as well as stamp duty payable on the documents in terms of the Indian Stamp (Orissa amendment) Act. Applicability of Ad-valorem/Fixed Court fee/surcharge in a particular suit is to be assessed from the averment in the Plaint.

Some important points for assessment of court fee payable in terms of [Sec. 7 of the C. F. Act](#) may be as follows:

a) In cases where the prayer involves substantial relief of recovery of possession/money/possession etc ad-valorem court fee is payable as per schedule-I read with Orissa Court-fees (Surcharge Amendment) Act, 1947. In other cases, fixed court fee is payable as per schedule -II of the act.

Moreover, this question has to be decided by reading Section 7 of the Act along with [Sec.8 of the Suits Valuation Act](#). This latter section provides that, where in any suits other than those referred to in Court Fees Act Sec.7, para 5,6,9, and para 10 (d), court fees are payable ad valorem under the Act, the value determinable for the computation of court fees and the value for the purposes of jurisdiction shall be the same.

b) COURT FEE PAYABLE IN PARTITION SUITS- TIPS

Court fee payable in a suit for partition would mainly depend upon the **substance** of the suit rather than the form. As such, one may come across three situation ; i) A partition suit where parties are in joint possession and claim for a mere division of the property, ii) a declaration suit which is a Title suit in the guise of a partition suit i.e. when the parties have made a Family settlement for partition on consent and claim for a decree declaring the settlement paper as true and binding upon all the parties and iii) a partition suit where one or more of the parties are ousted from possession and claim for allotment of his share by way of partition.

An [article](#) published in the *legalblogs.in* explains the position as follows:

“After examining the decision of Supreme Court in [S.Rm. Ar. S. Sp. Sathappa Chettiar v. S. Rm. Ar. Rm. Ramanathan Chettiar AIR 1958 SC 245](#), Neelavathi & Ors. v. N. Natarajan & Ors. AIR1980 SC 691, Jagannath Amin v. Seetharama (dead) by LRs & Ors. 2007(1) SCC 674 and Commercial Aviation and Travel Co. v. Vimla Panna Lal AIR 1988 SC 1636 this Court in CS(OS) No. 2642/2008 and IA No. 10367/2010 decided on 4th March, 2011 summarized the legal position in this regard as under:

(ii) If the plaintiff claims to be in joint possession of the suit property, he has to pay a fixed Court fee in terms of Article 17(vi) of Court-fees Act.

(iii) If the averments made in the plaint show that the plaintiff has been completely ousted from possession and is not in possession of any part of the suit property, he is required to claim possession and also pay ad valorem Court fee on the market value of his share in the suit property.

The fact has been made crystal clear in Court Fees Act (Orissa Amendment) vide Sec. 7(vi)(A) of the Act."

c) Other references:

Ref- [Satheedevi vs Prasanna & Anr on 7 May 2010 SCI](#),[(2010) 5 SCC 622]

In Nisheet Bhalla (supra), this Court while referring to Prakash Wati (supra), which had discussed the Supreme Court"s dicta held as under:

"12. From a reading of all these three judgments, it is clear that normally if joint possession is pleaded by the plaintiff on the basis that he is the co-owner of the property, the Court-fee to be paid would be fixed Court-fee presuming the joint possession and even if the person is not in actual possession. However, if from the reading of the pleadings it becomes clear that the plaintiff was excluded from such possession, then he is unable to pay the ad valorem court-fee on the market value of his share. That is held by the Supreme Court also where it is stated that „the general principle of law is that in the case of co-owners, the possession of one is in law possession of all, unless ouster or exclusion is proved."

Orissa High Court: [Sadananda Sahu vs State Of Orissa on 18 January, 1961](#), [AIR 1962 Orissa 102]

d) For Succession Certificate:

The court fee payable in a succession case is to be deposited in shape of cash while filing the petition. However, judgment law ([Smt. Usha And Ors. vs State on 26 November, 1991](#)), [AIR 1993 MADHYA PRADESH 41] says that it can be deposited even after the party succeeds in the petition, if so allowed by the party and an order may be then made specifically for filing of the court-fees of the requisite amount as prescribed under Article 12, Schedule I, Court-fees Act, for issuance of the certificate in accordance with the judgment passed.

For a Review Petition, the payment of court fee is provided in article 4 and 5 of Sch.-I of the Court fees act.

Exemption of Court fee :(under section 35 of the Act)

S. R. O. No. 63/2013, dated 30.1.2013—In exercise of the powers conferred by Section 35 of the Court Fees Act, 1870 (VII of 1870) and in supersession of the notification of the Government of Odisha in the Law Department No. 8244—II-J-15/1993-L., dated the 7th June 1994, published in extraordinary issue No. 670, dated the 10th June 1994 of the Odisha Gazette. The State Government do hereby remit in the whole of the State of Odisha as fees mentioned in Schedules I and II to the Act payable for filing, instituting cases of proceedings other than proceedings for grant of succession certificate, letters of administration and probate of will annexed to it or without will annexed, in any Court by the following categories of persons, namely.....

Remember the provision is **not applicable** for Successions Certificates, letters of administration and probate of will.

Women, irrespective of any nationality, are exempted from paying Court fee in terms of SRO No. 575 of 1994 issued by the Government of Orissa under Section 35 of the Court Fees Act, 1987[Sanjay Kumar Das v. Munmum Patnaik, 2018 SCC OnLine Ori 445, decided on 21-12-2018]

e) Rule 406 of Court Fees Act: When the application for the required stamp is made to a licensed vendor of Court fee stamps and such vendor is unable to furnish a single stamp of the required value, he shall give a certificate to that effect in the form below, which must be affixed to the document and filed with it: **(FORM OF CERTIFICATE)**

"Certified that a single stamp of the value of Rs..... required for this document is not available but that, in lieu thereof, I have furnished a stamp of the next lower value available, and made up the deficiency by the use of one or more adhesive/impressed stamps of the next lower values available required to make up the exact amount of the fee".

However, Certificates are not required in similar circumstances from official vendors, but they shall as far as practicable follow the above instructions.

f) Exemption of court fee in certain documents has been defined in sec. 19 of the Court Fees Act.

g) Indian Stamp Act

Stamp duty payable on any instrument is regulated under Indian stamp act. **Impounding** is provided u/sec. 33 of the

Indian stamp act and Procedure for impounding an unstamped documents provided in sec. 38 & 40 of the act

(Impounding of insufficiently stamped documents):

It shall be the duty of the court to impound the insufficiently stamped documents, once it is brought to the notice of Court, as has been held by the Hon'ble Apex court in para 22 in the case of "Omprakash vs. Laxminarayan & Ors" decided on 7 October, 2013 [(2014) 1 SCC 618]

22. We have noticed heretofore that Section 33 of the Act casts a statutory obligation on all the authorities to impound a document. The court being an authority to receive a document in evidence is bound to give effect thereto.

Stamp duty payable on a final decree for partition is defined under article 45 of the Sch.-I of the Act

Some of the crucial points provided under section 7 of the Court Fees Act are consolidated in the following tabular form vide **(Annexure-II)**:

Remember: Point 3-While preparing an office note on a Complaint or Petition, the next point to be dealt with should be whether the suit/case/Petition is duly valued and court fee payable under Court Fees act (Orissa Amendment with surcharge) has been duly filed.

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Annexure-II
(Section 7 of the Court fees act)

Sec. 7(i)	for Money (damages, compensation, arrears of maintenance, annuities (rent etc.) & other sums payable [also mesne profit-AIR 1917 Pat 79]		Valuation and court fee-According to the amount claimed
Sec. 7(ii)	Maintenance(regular) and annuities		Valuation shall be Ten times <u>(Odisha amendment-5 times in case of maintenance)</u> of the claim payable in one year. Court fee payable shall be on such valuation
Sec. 7(iii)	Other movable property having a market value(other than money)		According to such value on the date of filing
Sec.7(iv)	(a)	In suits for movable property having no market value	According to the amount at which the relief sought is valued in the plaint, in all such suits the plaint shall state the amount at which he values the relief sought for.
	(b)	To enforce a right to share in joint [Omitted by Orissa Act V of 1939]	
	(c)	For declaratory decree with consequential relief	
	(d)	For an injunction	
	(e)	For easement	
	(f)	For accounts	
Sec. 7(iv-a)	Orissa amendment	For cancellation of decree for money or other property having such value	Valuation shall be According to the value of the subject matter of the suit and the court fee payable on that value
Sec.7(v)	Orissa amendment	For possession of land, house and gardens	According to the value of the subject matter(see clauses a 2 d)
Sec.7(vi)		To enforce a right of pre-emption	According to the value of the subject land/house/garden
Sec.7(vi-A)	Orissa amendment	For partition and separate possession of the share of the joint family property	If the plaintiff alleges that he has been excluded from possession, then the market value of the share

Sec.7(vii)		For interest of assignee of land revenue	15times of net profit as such for the year next before the date of presenting the plaint
Sec.7(viii)		For setting aside an attachment of land or interest in land revenue	For the amount for which the land or interest was attached
Sec.7(ix)		To redeem i.e.(1)for recovery of property mortgaged, (2) Mortgagee's suit for foreclosure and (3) Mortgagee's suit for declaring the conditional sale absolute	According to the principal money for which the mortgage executed
Sec.7(x)		For specific performance i.e. E. Contract of sale	According to the amount of consideration
		(b) Contract of mortgage	-do-amount agreed to secure
		(C) Contract of lease	-do- aggregate amount of premium/fine
		(d) of an award	-do- value of property in dispute
Sec.7(xi)		Between landlord and tenant 2. For the delivery by a tenant of the counterpart of a lease	According to the rent of the suit land/house payable for the year next before presenting the plaint.
		3. To enhance the rent of the tenant having the right of occupancy	
		(C) To for the delivery by a landlord of a lease (C)(C) For the recovery of immovable property from a tenant	
		(D) To contest a notice of ejectment	
		(e) To recover the occupancy of [immovable property] from which the tenant has been illegally ejected.	
		(f) For abatement of rent	

N.B: Some additional Points for reference:

- 1) When no provision is made i.e. for a partition suit of joint possession property- Section 17-A of Sch.-II of the act is applicable.
- 2) Declaration without any consequential relief: Article 3-A (i) of Sch.-I of the act.
- 3) As per Circular No.3745, dated 18.04.85 of Hon'ble High Court of Orissa, Appeals preferred against orders u/s. 30 of land acquisition act be registered as money appeals, chargeable with ad-valorem court fee.
- 4) Affidavits of assets and liabilities to be filed in maintenance cases as per Hon'ble Apex court's direction in CRL. Appeal No. 730/2020(RAJNESH ...APPELLANT Versus NEHA & Anr. ...RESPONDENTS, disposed of on 4th November, 2020)

CHAPTER-V

(Proceedings under special Acts)

In Case of Matrimonial Dispute:-

a) Territorial Jurisdiction

The territorial jurisdiction of Matrimonial disputes under Hindu Marriage Act is defined in section 19 of the Hindu Marriage Act, 1955. Similar provisions regarding territorial jurisdictions is also available under sec.31 of the Special Marriage Act, 1954.

In case of a petition u/sec. 125 of the Cr.P.C. , the wife can file the petition at any Place she is residing or where the respondent resides or where the respondent last resided with his wife, or as the case may be, with the mother of the illegitimate child. (Ref: As held by the High Court of Delhi in the case of **Sachin Gupta v. Rachana Gupta.**)Crl. Rev. P. 476/2018, decided on 21st January, 2019

b) Limitation

Regarding Matrimonial cases, a case for divorce is to be filed only after expiry of one year from the date of marriage as provided under Hindu Marriage Act, subject to the exception under sec. 14 of the Act.

Other aspects where a period of separation is mandated before filing of a Petition for Divorce, the same may be referred to while scrutinizing the suit. The provisions are:

Under Hindu Marriage Act-Sec.13 (1) (i-b)Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party—

(i-b) has deserted the petitioner for a continuous period

of not less than two years immediately preceding the presentation of the petition.

Under section 05 of the Rules under Hindu Marriage Act and section 06 of the Rules under Special marriage Act, where adultery has been taken as a ground for divorce, the adulterer shall be made a party subject to exception as defined therein.

The necessary contents of the petition has also been defined in sec. 04 of the Rules

Under Divorce Act. Sec.10 Grounds for dissolution of marriage.

(1) Any marriage solemnized, whether before or after the commencement of the Indian Divorce (Amendment) Act, 2001, may, on a petition presented to the District Court either by the husband or the wife, be dissolved on the ground that since the solemnization of the marriage, the respondent—

(ix) has deserted the petitioner for at least two years immediately preceding the presentation of the petition;

No suit under **sec 6 of the Specific relief act**- No suit under this section shall be brought-

(a) after the expiry of six months from the date of dispossession;

In addition to the above statutory provisions, some judgment laws have extended the concept of territorial jurisdiction in the best interest of the victim:

Woman Driven Out Of Matrimonial Home Can File Case at Place Of Shelter (The bench headed by CJI Ranjan Gogoi said in the case of **Rupali Devi v State of Uttar Pradesh** that besides the place where a woman was living before and after marriage, the place of shelter will also have territorial jurisdiction for filing matrimonial cases)

Under Family Courts Act:

Section 8 of Family Courts Act: Exclusion of jurisdiction and pending proceedings.-Where a Family Court has been established for

any area,- .-Where a Family Court has been established for any area,-"

(a) no district court or any subordinate civil court referred to in sub-section (1) of section 7 shall, in relation to such area, have or exercise any jurisdiction in respect of any suit or proceeding of the nature referred to in the Explanation to that sub-section;

(b) no magistrate shall, in relation to such area, have or exercise any jurisdiction or power under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974);

THE FAMILY COURTS (COURT) RULES, 2010

Rule 5. Institution of Proceedings :

(a) All proceedings instituted before a Family Court shall be by way of an application as per Form No. 1 appended to these rules which should be duly verified by the petitioner.

Interlocutory application in the proceeding to be instituted or already instituted shall be filed in form No.2 after being duly verified by the applicant. The petition in form No. 1 or the interlocutory application in form No. 2 can be in any language falling in Schedule VIII of the Constitution of India.

Rule 6. Filing of Petition —A petition or any other application shall be filed with two copies signed by the parties along with as many copies to be sent to all the respondents by an officer designated for this purpose. One copy of such petition or application shall be forwarded by the designated officer of the Family Court to the Counsellor forthwith.

7. Notice to Respondent—Notice of the proceeding including interlocutory application shall be issued in Form No.3 appended to

these rules along with a copy of the petition/application in respect of matter under Chapter IX of the Cr.P.C for the summons to appear and answer shall be in Form No.4

Rule 28. Contents of the Application—Every petition for guardianship when it is by a person other than the natural parent or natural guardian of the child shall be accompanied by a Home Study Report of the person asking for such guardianship and his/her spouse, if any, prepared by an approved association of social welfare agencies, etc. or a suitably trained social worker, from the list of agencies and/or persons for the purpose of their association with the Court approved by the Government in the rule made under Section 5 of the Act in consultation with the High Court.

Rule 36 of the Family Courts (Orissa) Rules, 1990 provides that:

Filing of a petition: - Every petition or application shall be accompanied by as many clear, authenticated copies thereof as there are respondents to be served and by 3 additional copies for the use of the Court and by such papers as are referred to with petition or application. One copy of such petition or application shall be forwarded by the Chief Ministerial Officer of the Family Court to the principal Counsellor.

Exemption of Court fee in Family Court cases

As per sec. 5(b) of The Family Courts (Court) Rules, 2010, there shall be no court fee or any other fee in respect of any petition or any interlocutory application filed before the Family Court

In case of execution of Arbitral awards:

In Sundaram Finance Ltd. v. Abdul Samad, (2018) 3 SCC 622 ,the

Supreme Court settled the debate on the question as to whether an arbitral award is required to be filed for execution in the court having jurisdiction over the arbitration proceedings or whether it can be directly filed in the court where execution is sought. The bench of Chelameswar J. and Sanjay Kaul J. clarified that an award can straightaway be filed for execution in the court where the assets are located instead of obtaining a transfer of decree from the Court which would have jurisdiction over the arbitral proceedings.

For petitions under Arbitration Act,

The mode of application (regarding verification etc.) and the contents thereof has been defined in rule 3 and 4 of the Act respectively

In case of MACP cases:

The territorial jurisdiction of the MAC cases has been defined u/sec 166 of the M.V.Act,1988 which provides that the claim petition can be filed at any of the places at the option of the claimant like 1) Tribunal of the area where death resulted, by the L.Rs of deceased, 2)Tribunal of the area in which the accident took place, 3) Tribunal of the area where the claimant resides or carries on business, 4) Tribunal of the area where defendant resides. However, the Hon'ble Apex court in the case of "MALATI SARDAR ...VERSUS...NATIONAL INSURANCE COMPANY LIMITED & ORS. (C.A.No.10 of 2016 arising out of SLP (C) No.27243 of 2015)" hold that "There is no bar to a claim petition being filed at a place where the insurance company, which is the main contesting parties in such cases, has its business ." So the Hon'ble Supreme Court in the above ruling has extended the local jurisdiction for MACT cases.

Limitation

No limitation is provided for filing of MACP cases. [The New India Assurance Co. Ltd vs C. Padma & Anr on 12 September, 2003.](#) [2004(1) JCR 34 (SC)]

Court fee:

In case of MACP cases: filing of Court fee has been provided under section 39 of the Odisha Motor Vehicles (Accidents Claims Tribunal) Rules, 2018;

Rule 39. Fees:— (1) Every application under sub-section (1) of Section 166 of the Act, for payment of compensation shall be accompanied by a fee as shown in column (2) of the table below against the claim mentioned in column (1) thereof in the form of Court fee stamps,

TABLE

Amount of claim (1)	Amount of Court-fee (2)
Up to Rs.5,000/-	Rs.10/-
Above Rs.5,000 up to Rs.50,000/-	$\frac{1}{4}$ per cent of the amount of claim
. Above Rs.50,000/- up to Rs.1,00,000/-	$\frac{1}{2}$ per cent of the amount of claim
Above Rs.1,00,000/-	1 per cent of the amount of claim

For MACP cases: The format of application is provide under Form G- rule 8 and rule 20 Of Odisha Motor Vehicles (Accidents Claims Tribunal) Rules, 2018.

FOR ELECTION PETITIONS:

Specific limitation has been provided for Elections Petitions under special statutes. Sec 31 of Orissa Gram Panchayat Act, 1964 and sec 44-B of the Orissa Panchayat Samiti act provide for limitation for filing of Elections Petitions under the said Acts, which is within 15 days after the election result is declared.

Sec.44-D (1)(c) of Orissa Panchayat Samiti Act and rule 33(1)(C) of Orissa Gram Panchayat Act, 1964 provide that the petition shall be signed by the petitioner and verified as per CPC.

Deposit of security amount has been provided in section 88 of the The Orissa Grama Panchayats Election Rules, 1965 and sec. 44-B of Orissa Panchayat Samiti Act

FOR COMPLAINT UNDER SECTION 138 OF NI ACT**Jurisdiction:**

Considering the ingredients of sec.138 referred above the Hon'ble Apex Court in case of [K. Bhaskaran vs. Shankaran AIR 1999, SC 3762.](#) had given jurisdiction to initiate the prosecution at any of the following places.

1. Where cheque is drawn.
2. Where payment had to be made.
3. Where cheque is presented for payment
4. Where cheque is dishonoured.
5. Where notice is served upto drawer

LIMITATION

➤ Cheque must be presented within 6 months or within validity period whichever is earlier.

- Cheque must be returned unpaid due to insufficient funds or it exceeds the amount arranged.
- Fact of dishonour be informed to the drawer by notice within 30 days.
- Drawer of cheque must fail to make payment within 15 days of receipt of the notice.
- Thereafter the complaint is to be filed within period of 30 days. (as per section 142 of NI act) also as held by Hon'ble Apex court in the case of [M/S. Saketh India Limited And ... vs M/S. India Securities Limited on 10 March, 1999](#)
- Court fee payable on NI Act complaint is provided as per LAW [DEPARTMENT NOTIFICATION dated The 21st February, 2013 \(ODISHA ACT 4 OF 2013\)](#)

Appeal: In appeals under NI Act, [Sec 148\(1\) of NI Act](#)- mandates that the appellant shall deposit such sum which shall be a minimum of twenty percent of the fine or compensation awarded by the trial Court which would be a condition precedent for admission of the appeal.

Remember: Point 4-While preparing an office note on a Plaint or Petition, the next point to be dealt with should be whether all requirements in terms with the provisions of the relevant special Act & Rules have been complied with.

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CHAPTER-VI

(Materials for reference)**PLEADINGS, PETITIONS AND AFFIDAVITS NEEDS TO BE SCRUTINIZED KEEPING IN VIEW THE FOLLOWING POINTS:**

2. Rules regulating the format and contest of pleadings as provided in the GR&CO(Civil)-Volume-I are:

- **Rule 14.** Parties shall where practicable file pleadings, petitions, applications and affidavits in English and type-written.
- **Rule 15.** Every pleading, petition, affidavit, affidavit or application filed in Court shall be

(1) type-written or written on foolscap watermark plain demi-paper (known as pie paper or cartridge paper) one side of the paper only being used and a quarter margin together with at least one inch of space at the top and bottom of each sheet being allowed.

(2) couched in proper language.

(3) dated and signed by the person presenting it and also where necessary, by such other persons as may by law be required to sign such pleading petition, affidavit or application.

(4) signed by the scribe or typist who shall state the capacity in which he writes it.

However a petition for restoration can be filed by the advocate on behalf of the party on the strength of the Vakalatnama, as held by the Hon'ble High Court of Kerala in [Mat.AppealNo. 325 of 2014](#)

- **Rule 16.** Identification of parties - When the person presenting a pleading, affidavit, petition or application is not an advocate, a pleader or a Mukhtar, he shall if so required by the Court be identified.

- **Rule 17.** Contents of pleadings etc.-Every petition or pleading shall state concisely and clearly

- (1) the facts, matter and circumstances upon which the applicant relies,
- 2) the matter of complaint if any and the relief sought or prayer made.

- **Rule 18** Authentication of corrections - Every page in a petition or pleading and every interlineations, alteration, or erasure therein shall be authenticated by the initials of the advocate, pleader or Mukhtar as the case may be, or the recognized agent of the by whom it is presented. In the case of an affidavit such authentication shall be made by the initial of the Commissioner.

- **Rule 19.** Noting valuation on petitions -On every interlocutory application or petition filed in a suit valued at less than Rs 50 the parties shall note the valuation to enable a proper check to be made on the Court-fee paid,

- **Rule 20.** Separate petitions for separate matters - Applications in regard to distinct subject matters shall be made in separate petitions.

- **Rule 21.** Verification of petition - Petitions requiring verification shall be verified in the manner prescribed in Order 6. Rule 15 Civil Procedure Code.

3. ORDER VII Rule 1 CPC. Particulars to be contained in plaint.—The plaint shall contain the following particulars:—

- (a) the name of the Court in which the suit is brought;
- (b) the name, description and place of residence of the plaintiff;

- (c) the name, description and place of residence of the defendant, so far as they can be ascertained;
- (d) where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect;
- (e) the facts constituting the cause of action and when it arose; (f) the facts showing that the Court has jurisdiction;
- (g) the relief which the plaintiff claims;
- (h) where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed, or relinquished; and (i) a statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of court-fees, so far as the case admits.

2.1. In money suits.—Where the plaintiff seeks the recovery of money, the plaint shall state the precise amount claimed.

Order VII, Rule 3. Where the subject-matter of the suit is immovable property.—Where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers.

2.3. Relief to be specifically stated.—Every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for. And the same rule shall apply to any relief claimed by the defendant in his written statement.

Rule 14. Production of document on which plaintiff sues or relies.—

(1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in Court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.

Order VIII, Rule 6-A of CPC: Counter Claim: Regarding checking of Counter Claim:

(4) The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints.

- **Sec. 80 of the CPC: Suits against Govt.** :In suits between individuals and individuals, notice need not be given to the defendant by the plaintiff before filing a suit but under Section 80 it is provided that notice has to be given in a suit against Government or public officer in respect of any act purporting to be done by such public officer in his official capacity, subject to exception as provided under sec. 80(2) of the CPC.
- **Sec. 148-A of CPC: Caveats:** In view of the provisions, the office note should point out, especially in matters of ex-parte orders, whether a Caveats is pending in between the parties for the subject matter of the suit, otherwise, it may not be possible for the Court to comply with the requirements thereof .
- **Vakalatnama: Order 3 , Rule 4(6) of CPC:** Pleader to act on behalf of the party only if the Vakalatnama is accepted. In this regard, the relevant provisions i.e. [Section 27 of the Advocates' Welfare Fund Act, 2001](#) and Section 12(2) of the Orissa Advocates' Clerks welfare fund Act, 2008 provide that in

addition to other requirements, the Vakalatnama shall not be accepted unless affixed with the required welfare Fee stamps.

- **Process: Order V, rule 2 of CPC:** Copy of plaint to be annexed with summons and processes to be in conformity with rule 41 & 41-A of GR & CO (Civil) volume-I. Process is to be written in the language of the Court and filled in by the party.(Rule 42)
 - **Rule 42** of GR & CO(Civil) volume-1. Process to be in the language of the Court.
 - (a) Processes should ordinarily issue in the language of the Court, but processes sent for service at any place where the language is different from that of the. Court issuing them should be accompanied by a translation in the language of such place or in English.
- i) **Pleadings: Order VI, rule 2(2) & 2(3) of CPC:** Every pleading shall be divided into paragraphs and numbered consecutively. Dates, sums and numbers shall be expressed in figures as well as in words.
- **Order 6 Rule 14 of CPC:** Pleading to be signed by the party and his Pleader(if any).
 - **Order 6 Rule 14-A of CPC:** Every pleading to be accompanied with a statement of registered address of both the party. The form of address statement is provided in Gazette notification dated 25.5.1984. vide page 262 of CPC by G.S Ram-2018 edition.
 - **Order 6, rule 15 of CPC:** Every Pleading to be verified by the party and the party shall furnish an affidavit in support of his pleading.

- **Order 6, rule 17-(i) of CPC:** Every application for amendment shall be verified by the party in the manner as laid down in rule 15 hereinbefore.

UNDER GR & CO (CIVIL-1)

- **Rule 485 of GR&CO(Civil) vol-I:** Compromise Petition filed by the Pleader shall not be entertained unless special Vakaltnama is accepted with leave of the Court
- **Rule 190.** Government pleader to file memo instead of Vakalatnama in certain cases.
- **Rule 244.** Noting cause title in order-sheet - The full cause title shall be noted in the first order-sheet or the suit of case. Amendment of cause title, if any, should be incorporated immediately in the first order-sheet.
- **Rule 373.** No process fee for processes issued by Government on its own motion - Notwithstanding the provisions of Rule 372 no fee shall be chargeable for serving and executing any process such as a notice, rule, summons, or warrant of arrest, which may be issued by any Court of its own motion, solely for the purpose of taking cognizance of and punishing any act done, on words spoken in contempt of its authority.

ORISSA HIGH COURT AMENDMENT, New Rule 38 added

Rule 38. (1) An address for service filed under Order 7, Rule 19 order 8, Rule 11. or subsequently altered under Order 7, Rule 22 order 8, Rule 12, shall hold good for all notices of appeals and all appellate proceedings arising out of the original suit or petition.

(2) Every memorandum of appeal shall state the addresses for service

given by the opposite parties in the Court below and notices and processes shall issue from the Appellate Court to such addresses (3) Rules 21 and 22 of Order 7 shall apply so far as may be to Appellate proceedings.

Rule 30. Cause title "of affidavits –

(a) Every affidavit to be used in a Court of Justice shall be entitled "In the Court of (Naming such Court) at"

(b) If there be a cause in Court, the affidavit in support of, or in opposition to, an application respecting it must also be entitled in the cause.

(c) If there be no cause in Courts the affidavit shall be entitled "In the matter of the petition of"

31. Divisions into paragraphs - Every affidavit containing any statement of facts shall be divided into paragraphs and every paragraph shall be numbered consecutively and as nearly as may be shall be confined to a distinct portion of the subject.

EXTRACTS FROM G.R.C.O. (Civil) Vol 1, CHAPTER – XI APPEALS

204. Language of appeal memo - All memoranda of appeal should when practicable in English and type written

205. Relief and value of appeal - Every memorandum et appeal shall clearly specify the relief sought and state the value of the appeal.

NOTE - Valuations for purposes of jurisdiction and for payment of Court-fee, shall be separately shown

206. Statement of the pleader presenting appeal memo or retained after filing of the same - Every memorandum of appeal when signed and presented by a pleader shall, at its foot or when presented by the

party in person or by his recognised agent and a pleaders retained by such party on a separate sheet of paper which shall be annexed to such memorandum of appeal, contain the following statement to be subscribed by the Pleader before he is allowed to present it or to appear to support the appeal-

"I certify that I have examined the record and that in my opinion the grounds of appeal are good and I undertake to appear and support them before the Appellate Court".

Ex- parte injunction

197. Particulars in affidavit in support of ex parte injunction

An Affidavit in support of an ex parte injunction should always state the precise time at which the plaintiff or the person acting for him became aware of the threatened injury. It must also show either that notice to the defendant would be mischievous or that the matter is so urgent that the injury threatened would, if notice were served on the defendant, be experienced before the injunction could be obtained the case of irremedial mischief impending must be made out. Mere allegation of irreparable injury will not be sufficient. The facts on which the allegations are founded must be set forth clearly and specifically in the affidavit.

Revision: It very often creates a confusion as to the revisional jurisdiction the District Judge & High Court under sec. 115 of CPC:

Section 115 of the Code of Civil Procedure as amended does not now permit a revision petition being filed against an order disposing of an appeal against the order of the trial court whether confirming, reversing or modifying the order of injunction granted by the trial

court. The reason is that the order of the High Court passed either way would not have the effect of finally disposing of the suit or other proceedings. The exercise of revisional jurisdiction in such a case is taken away by the proviso inserted under sub-section (1) of Section 115 of the CPC. The amendment is based on the Malimath Committee's recommendations. The Committee was of the opinion that the expression employed in Section 115 CPC, which enables interference in revision on the ground that the order if allowed to stand would occasion a failure of justice or cause irreparable injury to the party against whom it was made, left open wide scope for the exercise of the revisional power with all types of interlocutory orders and this was substantially contributing towards delay in the disposal of cases. The Committee did not favour denuding the High Court of the power of revision but strongly felt that the power should be suitably curtailed.

Bail Applications u/sec 439/438 Cr.P.c.

- 1) The copy of the rejection order in full, not the extract of the order to be enclosed.
- 2) The Hon'ble High Court in their letter no.6973, dated 1.10.1996 have directed that while filing Bail Application u/sec 439 Cr.p.c., a certificate is to be appended on the Bail application to the effect that no other bail application is pending in any other court.

Remember: Point 4-While preparing an office note on a Plaint or Petition, other points to be dealt with should be whether the suit/case/Petition is duly verified (if necessary) and other requirements under Order VI & VII of CPC, relevant provisions of the GR&CO(Civil & Criminal) as well as other special acts have been complied with.

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CHAPTER-VII

(KEY POINTS FOR SCRUTINY OF PLAINT)

Examination of a Complaint/Pleading normally requires a scrutiny in terms of the rules discussed under the foregoing chapters which include Jurisdiction, Limitation, Court fee calculation and other miscellaneous requirements. In this regard, the key points as pointed out in the official website of Govt. of Punjab regarding [“Examination of the Complaint”](#) are noteworthy.

1. **Examination of the complaint:** - On the presentation or receipt of a complaint, the court should examine it with special reference to the following points viz.: -
 - i) Whether the name of court to which the suit is brought is given in the complaint [Order VII, rule 1 (a)];
 - ii) Whether the complaint contains the name, description and place of residence of the plaintiff [Order VII, rule 1 (b)];
 - iii) Whether it contains the name, description and place of residence of the defendant, so far as they can be ascertained [Order VII, rule 1 (c)];
 - iv) Whether any of the parties to the suit are minors and, if so, whether they are properly represented [Order VII, rule 1(d)];
 - v) Whether it contains the facts constituting the cause of action and when it arose [Order VII, rule 1 (e)];
 - vi) Whether the suit is within the jurisdiction of the court or must be returned for presentation to the proper court [Order VII, rule 1(f) and 10];

- vii) Whether the plaint states the relief which the plaintiff claims [Order VII, rule 1(g)];
- viii) Whether it contains the amount allowed or relinquished if the plaintiff has allowed a set off or relinquished a portion of his claim [Order VII, rule 1(h)];
- ix) Whether it contains a statement of the value of the subject-matter of the suit for the purpose of jurisdiction and or court-fees so far as the case admits [Order VII, rule 1(i)];
- x) Whether there is, prima facie, any non-joinder or mis-joinder of parties, or mis-joinder of causes of action;
- xi) Whether the plaint is duly signed and verified;
- xii) Whether the plaint is liable to be rejected for any of the reasons given in Order VII, Rule 11;
- xiii) Whether the documents attached to the plaint (if any) are accompanied by lists in the prescribed form and are in order;
- xiv) Whether the plaintiff has filed a proceeding containing his address for service during the litigation as required by Rule 19 of Order VII as framed by the High Court;

Regarding proper verification of Plaint: Suppose one NRI residing at Singapore drafts and verifies the Plaint by one Notary of Singapore and his advocate in India files the Plaint in proper court of law. In absence of the notification of the central Govt. the affidavit cannot be accepted. In other words, unilateral recognition by an Indian court of a notarized act done by a foreign notary is impermissible in the absence of reciprocity of recognition as contemplated under section 14 of the Notaries Act, 1952. [Ref: Jaldhi Overseas Pte Ltd vs Bhushan Power & Steel Limited on 4 May, 2017](#)

Of course, I have made a tabular representation of such key points with further details below vide **Annexure-III.**

SUMMARY OF TIPS FOR CHECKING A PLAINT/PLEADING (Annexure-III)

Sl no	subject	points	Reference Act/rule
1	Jurisdiction-of-civil-court	Territorial	Whether the suit is filed in proper court having territorial jurisdiction
2		Pecuniary	Whether the suit is filed in proper court having pecuniary jurisdiction
3		Original	Whether the suit is filed in proper court having original/subject wise jurisdiction
		Appellate	Whether the court is having appellate Jurisdiction.
4	Limitation	Whether the suit/case is filed within the prescribed time limit	Limitation Act/Special statutes
5	Valuation of suit	Whether the suit is valued property	Suits valuation Act
6	Plaint to contain	All particulars as per Order-VII, R-1 CPC	Order-VII, Rule-1 of C.P.C
		Statement of subject matter of suit and Plaintiff's valuation thereof	r.w Sec .8-A of Court Fees Act(Orissa Amendment)
7	Calculation of court fee Payable	Whether C.F paid is correct	Court Fees Act with Orissa amendments
		Whether court fee has been filed in proper denomination	Rule 18 & 19 of Orissa Court fee Rules ,1948
8	Verification in duplicate	Whether Plaint/Petition is duly verified	Or-VI, R-15 of CPC
9		Plaint to be filed in duplicate	Or-IV, R-1of CPC
10	Misc. instructions	process to be signed by adv.	Forms to be filled in by the parties and advocate to be signed on the left margin of the process/form & copy of plaint to annex to summons
11		Party/Scribe to sign	Dated and signed by the person presenting it & scribe
12		corrections	Corrections to be Authenticated
13		Paper/language	Should be typed on Pie- paper in English, signed by the person presenting it/scribe-Separate petitions for separate matters
14		Copy of Documents filed	Copy of document to be authenticated by authentication fee
			Article 7,8 and 9 of Sch-I of Courts Fees Act,1870

15		Stamp duty on Instruments	Unstamped/insufficiently stamped documents to be brought to the notice of court for impounding	Indian stamp act ,1899, sec.33 & 35
16		Adv. Welfare fund fee/Adv. Clerks' welfare fund fee	Adv. Welfare fund fee & Adv. Clerk welfare fund fee to be affixed on vakalatnama/memo of appearance	Orissa advocates welfare fund Act & Orissa advocates Clerks welfare fund Act
17		i) Where the suit is for immovable property-Description of property in the Plaint ---- Order VII, Rule 3 of CPC		
	Addl. Information	ii) Whether the Plaintiff(s) or Defendant(s) is minor or of unsound mind or differently abled- a statement to that effect need to be made in the Plaint		
		iii) Address memo (Order VI, Rule 14-A of CPC), Documents relied upon(if any) to be filed(Order VII, Rule 14 of CPC) &		
		iv) In case of suit against Govt. compliance of sec. 80 of CPC		
		(v) In suits by or against minors/persons of unsound mind, compliance of Order 32 of the CPC		

“Reference: Jurisdiction of civil courts under the CPC”
 authored by Sraddha Ojha and published in official website of
<http://www.legalservicesindia.com>

When a plaintiff prays for one of the two alternatives based on the same cause of action, then Court fee is payable on one of them which is higher in value:-AIR 1953 Ori.89: AIR 1955 Punj.22

Note: In the case of [S.N.Kasilingam vs S.N.M.Ramachandran on 5 December, 2008](#) the Hon'ble High Court of Madras remarked that “while the court scrutinize the plaint, it has to ascertain whether the plaint created an illusion of cause of action by clever drafting and the role played by the pleading with reference to cause of action is the major element in a suit to be considered under Order 7 Rule 11 of C.P.C.” Hence the office note may also scrutinize whether there exists a valid cause of action

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CHAPTER-VIII

(Frequently asked questions & problems)

Q.1. In view of sec.2(2) of HMA, if a petition for dissolution of marriage between two **STs**, should be dismissed at admission stage?

Ans: No. Since **STs** practicing Hinduism since long are coming under HMA & it involves question of fact & law, full trial is necessary.

Q.2. How to calculate the Authentication fee on documents ?

Ans: Article 9 of Sch-I Copy of an revenue or judicial proceeding or order not otherwise provided for by this Act, or copy of any account, statement, report or the like, taken out of any Civil or Criminal or Revenue Court or office, or from the office of any chief officer charged with the executive administration of a Division.

Orissa Court fees (Surcharge) amendment act shall be applicable for calculation of all court fees.

Q.3. When filing of affidavit it compulsory –

Ans: Rule 40 of GR & CO (Civil) volume-1.

Every application under Rule 3, 4, 9 and 11 of Order XXII of the First Schedule to the Code of Civil Procedure shall be supported with an affidavit.

Q.4 What is the period prescribed for disposal of Bail applications ?

Ans: Recently, Hon'ble Supreme Court, in [Aasu vs. state of Rajasthan \(Criminal Appeal NO.511 of 2017 Dt.09-03-2017\)](#) issued a direction that Bail applications shall be disposed of normally within one week.

Q.5. Does the family court possess the jurisdiction to entertain the Petition pertaining to the property dispute?

Ans. The family court can entertain the petition relating to the

property dispute between the parties to a marriage only, but it has no jurisdiction to entertain the applications in case involving a dispute between the brothers, sisters, mothers, fathers etc. concerning property.

Q.6. Whether it was mandatory for the Family Court to frame issues in Family Court Proceedings(civil) ?

Ans: In the light of the provisions of Section 17 and the other provisions of the Act, it is not mandatory for the Family Court to frame issues; however, its judgment must contain a concise statement of the case, the points for determination, the decision thereon and the reasons for such decision. [Ref- F.A. \(M\) No. 56 of 2010.](#)

Q.7. Whether there is any limitation for filing Final Decree petition in a suit for Partition?

Ans: There would be no limitation for filing a petition for final decree in a suit for partition vide [Shub Karan Bubna's case](#), but in other cases like preliminary decree for accounts, sale etc, the limitation shall be three years as per article 137 of the Limitation Act.

Problems

Q:1- 'A' instituted suit against 'B' for declaration of title and recovery of possession in respect of a piece of land by presenting Plaint in a civil court on 6.06.2017. In the Plaint, among other things, it is held that the cause of action for the suit arose on 25.04.2017. After scrutiny of the Plaint, the court registered it as Suit and summons was issued to the Defendant for his appearance on 30.6.2017. On that date, the report of the process server revealed that the Defendant had died on 05.05.2017. The court on the basis of the report dismissed

the suit on the ground that the suit was filed against a dead person
 WHETHER THE ORDER OF DISMISSAL OF THE SUIT IS CORRECT IN
 LAW AND IF NOT, WHAT IS THE PROCEDURE UNDER LAW THE
 COURT SHOULD HAVE FOLLOWED ?

Ans: The fact that by the date of institution of the suit, Defendant was dead would show the defect in the institution of the suit. Since the suit is filed for declaration of title and recovery of possession, and the cause of action allegedly arose prior to the death of the Defendant, the cause of action survives and consequently, the plaintiff should have been given opportunity to bring the legal representatives of the deceased Defendant on record. A full bench of Allahabad High Court in WALI Md. KHAN Vs. ISHAQ ALI KHAN AIR 1931 ALLAHABAD p507 held that defect or irregularity in the institution of suit is curable.

Q:2- 'A' is the owner of an extent of 1 acre land situated in Srikakulam. 'B' is resident of Srikakulam and carries on business in the same place. A is running his business in Visakhapatnam. On 01.07.2017, A entered into an Agreement with 'B' for sale of his 1 acre of land situated in Srikakulam. 'B' filed suit against A in the court at Visakhapatnam for specific performance of the agreement. 'A' filed Written Statement contending that the Court has no jurisdiction to entertain the suit. On a preliminary issue as to jurisdiction, the Court held that it has jurisdiction to entertain the suit. WHETHER THAT DECISION IS CORRECT IN LAW ?

Ans. As per the decision of the Apex Court in HARSHAD CHIMANLAL, suit for specific performance has to be filed only in the court in whose territorial jurisdiction the suit property is situate.

Q.3 – In a case, the Asst. Sessions Judge convicted the main accused A u/sec 376/366 IPC and sentenced to undergo RI for seven years for the offence U/sec. 376 IPC and RI for three years u/sec 366 IPC with further direction to run the sentences consecutively whereas other three accused (b, C and D) were convicted and each sentenced to undergo three years RI for the offence u/sec 366 IPC only. Now, if the main convict does not prefer an appeal and only the convicts B,C and D prefer a joint appeal against the judgment and sentence of three years u/sec 366 IPC, where would they prefer their appeal; before the Sessions Judge or the High Court ?

Ans: Under the provisions of sec 374 (2) of Cr.P.C,- Any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other Court in which a sentence of imprisonment for more than seven years has been passed against him or against any other person convicted at the same trial], may appeal to the High Court.

Since the co-convict (A) has been sentenced to RI for 10 years, these three convicts (B,C,D) had to prefer their appeal before the High Court only.

Q.4 The sole plaintiff, being woman, had been exempted from paying Court fee in a suit. During trial, on the death of the Lady-Plaintiff, one male LR is substituted. Whether the plaintiff is liable to pay court fee now?

Ans:- Yes. Vide [Mangilal Vs. Rameshchandra & Ors](#) [2003(1)MPLJ290]

Q.5. Where a succession Certificate was issued by the Court infavour of the applicant but before the certificate was acted upon the

applicant died and his legal heir applied for fresh succession certificate with respect to the same property. Whether fresh court fee would be payable on the total value of debt or security mentioned in the application?

Ans. An application for the certificate must be accompanied by a deposit of court fee and on the death of the holder of the certificate, if a fresh application is made, the court fee has to be paid over again. (Re Saroja Bashini, 20 CWN1125) However, payment of court fee is not a condition precedent to the maintainability of the petition and it could be paid at the time of issuance of the certificate also. (Usha & Ors. vs. State of Orissa, AIR 1998 Ori. 146).

Therefore, in the present case fresh court fee will be paid for issuing succession certificate on application of the heir of deceased applicant. The court fee paid by previous applicant will not be adjusted against the court fee liable to be paid in subsequent application.

Q.6. In a partition suit, during final decree suppose it was held that the property is incapable of being divided in two equal shares or that the division by metes and bounds was not possible. Therefore, the mode suggested was to sell the property and then divide sale proceeds in equal shares. Then, if stamp duty is payable to enforce the sale order?

Ans:- An order of sale in a partition suit passed under Section 8 of the Partition Act is an instrument of Partition under Section 2(15) of the Stamp Act and requires to be stamped in accordance with Article 45 of the Schedule thereof.

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CHAPTER-IX

(Other Misc. Provisions of general importance)

1. Preparation of Daily Cause List

Rule-8 of the GR & CO (Civil) & Criminal (vol-1) reads as follows:

Rule 8. Daily cause lists - A daily list of cases shall be posted in some conspicuous place in every court house for the information of the parties and their pleaders. The cases should as far as possible, be arranged in the order in which they are likely to be taken up. Execution and Miscellaneous cases may be shown either in the same list or in a separate list. The said list shall be prepared and posted on the preceding working day at 4.30 P.M. or in the case of morning sittings before 12 A.M. In the list, the cases will be sufficiently described by their number, year and class. At the close of each day, the Peshkar shall prepare four copies of advance daily cause lists in prescribed forms in a bound book of printed lined perforated pages with the help of carbon papers showing therein the cases fixed for the next day. One copy of the list shall be posted in the Court's notice board and another sent to the Secretary or ministerial employee or any other person authorized by the local Bar Association for being posted in the notice board of the Bar Association. The remaining two copies should be kept by the Peshkar for his next day's use. At the close of the following day; he shall fill up the adjourned dates in the two copies of advance daily cause lists retained by him. He will then post one of these advance daily cause list in the Court's notice board and take down the copy which was posted on the preceding day and will take down the copy which was posted on the preceding day and

will send the other copy to the Secretary or ministerial employee of the Bar Association for publication in the notice board of the Association. He will further prepare four copies of advance daily cause lists shall be sent to the Secretary, Bar Association through the Despatch Register in which the dated signatures of the recipient will be obtained.

The provision is meant for communicating the progress of each case to the litigant public through the lawyers concerned. Let us analyse the requirements of the provision and common practices in the state judiciary. The provision mandates that

1. Four copies of the cause list are to be prepared on the previous day. **For example**, let us say that on 02.12.2020, four copies of advance cause list shall be prepared by the Peskar for the cases posted on 03.12.2020.
2. The copy shall be prepared in English by the Peskar and signed by the P.O.
3. One copy shall be sent to the Bar through Peon Book and the other shall be hung in Court's notice Board for information of the litigant public.
4. The other two copies shall be retained by the Peskar for use on the next day i.e. on 3.12.2020.
5. On the next day i.e. on 3.12.2020, next dates of adjournments in the above two copies shall be filled up by the Peskar. One copy shall be sent to the Bar through Peon Book and the other shall be hung in Court's notice Board for information of the litigant public.
6. At the same time four advance copies, as described in item no. 1,

shall be prepared and one copy each shall be sent to the BAR and Court's notice Board respectively.

Presently, automated cause list is generated by CIS, the software used for updating data in Courts of the Judiciary. The Dealing Assistants concerned should understand the relevant rules to use it for the benefit of the litigant public.

2. Drawing up Decree:

Rule 128 of GR & CO (Civil) vol-I: Language of decrees - Decrees of District and [Civil Judge (Sr. Division)] should ordinarily be drawn up in English. Decrees of [Civil Judge (Jr. Division)], should also drawn up in English wherever possible.

Rule 129. Manner of drawing up decrees - Decrees should be drawn up in such a manner that in order to the understanding and execution of them, it may not be necessary to refer to any other document or paper whatever.

Note 1 - Petitions of compromise, maps prepared by the direction of or accepted by the Court and other similar papers necessary to illustrate the terms of the order passed shall be embodied in the decree. In drafting compromise decrees, all the terms of the compromise of including matters extraneous to the subject-matter of the suit should be recited by introducing a schedule to the decree. But the operational portion of the decree shall deal only with the subject-matter of the suit by fully describing the same.

2. The particulars of the claims and the date of institution of the suit shall appear in the decree.

3. Where different valuations are put for purposes of jurisdiction and for payment of Court fees, both values should be stated in the decree.

The amount claimed as mesne profits should be separately shown. In case of an appellate decree valuations as given in the decrees of the first Court should also be embodied.

4. In drawing up decrees interest, if any, allowed by the Court should clearly shown and also the period for which and the rate at which interest has been allowed.

Rule 131. Manner of calculating costs in the decree - In drawing up decrees costs are to be very carefully calculated. Where "proportionate costs" are allowed such costs shall bear the same proportion to the total costs as the successful part of the claim bears to the total claim. When "corresponding costs" or "costs according to success" are decreed, the assessment is to be made as if the suit had been originally brought at an amount representing the value of the successful part of the claim. The inclusion or exclusion of the cost of stamp paper in the final decree for partition is within the discretion of the Court.

Rule 132. Charging costs of affidavits - In determining how the cost of affidavits should be borne by the parties to the suit, Court should have special regard to the circumstances under which they were admitted. When an affidavit has been allowed for the convenience of one of the parties, or of one of his witnesses the costs so incurred not form costs in the suit and be charged against the opposite party.

Rule 133. Exclusion of stamps on adjournment petitions from costs - In absence of a specific direction by the Court to the contrary, the stamps on adjournment petitions should not form part of the taxed costs of the suit or proceeding.

Rule 134. When adjournment costs to be included in the decree - Where adjournment costs have been paid into Court under Head (h) of Account Rule 595, the fact of such payment should be noted on the order-sheet by the Sheristadar. It will thus be possible to see from the order-sheet what sum, if any, still remains unpaid. All costs of which payment has not been noted under the foregoing orders must be entered in the decree as costs of the suit.

Rule 137. Notifying decrees prepared - As soon as a decree has been drawn up, the Court shall cause a notice to be exhibited on the notice-board stating that such decree has been drawn up and that it may be perused by the parties or their pleaders within three days from the date of posting the notice.

Rule 138. Exhibition and destruction of decree notice - The notice shall be exhibited for one week and thereafter shall be preserved in the office. The notices for the quarter shall be destroyed at the end of the succeeding quarter.

Rule 139. Signing or objecting to the decrees by the party - When such notice has been posted any party or his pleader may before the expiry of the time prescribed in the last preceding rule peruse the decree and either sign it or if it is incorrectly prepared bring the matter to the notice of the Court.

Rule 140. Signing the decree by the Judge - If no such objection is made on or before the date specified in the notice, the Judge shall sign the decree giving the date of his signature.

Rule 141. Cases when no decree or formal order to be drawn up - Decrees or formal orders need not be drawn up in the case of -

(i) Interlocutory orders made during the course of a suit or execution proceeding;

(ii) Final orders such as those under Order IX, Rules 9 and 13, Order XXI, Rules 2, 58, 91, 92, 99, 100, 101. Order XXIII, Rule 1, Order XLI, Rules 19,21,23, Order XLVII, Rule 1 and an order rejecting a plaint; provided where any such order is capable of execution or affects execution by reason of adjustment of cost to be paid by one party to the other such costs may be shown in the order-sheet with a short note showing the result of the case and the name of the party by whom, such costs are to be paid as well as that of the party who is to receive the same so that the latter if desirous of executing the order, may not be compelled to take a copy of the judgment.

Rule 142. When decree need not be drawn up - In suits for money including suits upon mortgages, in suits for specific moveables, in suits for account and in suits for arrears of rent, no decrees need be drawn up if –

(i) Neither party to recover anything and when the Presiding Officer orders for the drawing up the decree;

(ii) The claim is satisfied after judgment but before the decree is drawn up.

(iii) Cost of the Advocates & Advocates Clerks welfare fund fee shall not be counted as cost in the Decree.

Advocates' Fees

(iv) Scale of Advocate's fee to be calculated for the purpose of preparing Decree shall be as per **Rule 400** of the GR & CO(Civil-I)

FINAL DECREE OF PARTITION

(v) The calculation which decides the exact value of the non- judicial

stamp paper required for preparation of the final decree of Partition is provided under article 45 of Schedule I-A of the Indian Stamp Act 1899, Orissa Amendment. (O.A. No.6 of 1943). The calculation of the stamp duty shall be based on the value of the **largest** share (in case of unequal shares) or one of the **equal** shares. The calculation of duty shall be as provided for Bond under article 15 of Sch.1-A , which provides **2 per centum stamp duty** on the share value **plus 10 per centum surcharge** as per sec.2 of the Odisha Stamp(imposition of surcharge) Act, 1974.

Example -1(for equal shares)

Value of the suit is :- Rs.3,00,000/-

where property is divided into three **equal** shares each of Rs.1,00,000/-

Hence the stamp duty on the final decree shall be as follows:

2% of Rs.1,00,000/- = Rs.2,000.00

Surcharge (i.e. 10% of Rs.2000/-) = Rs. 200.00

Total stamp duty is = **Rs.2,200.00**

Example -2 (for unequal shares)

Value of the suit is :- Rs.3,00,000/-

where property is divided into two **unequal** shares i.e. 1/3rd (Rs.1,00,000) in favour of one and 2/3rd (Rs.2,00,000/-) in favour of the other or if there are more than two parties the largest share value:

Hence the stamp duty on the final decree shall be as follows:

2% of Rs.2,00,000/- = Rs.4,000.00

Surcharge (i.e. 10% of Rs.4000/-) = Rs. 400.00

Total stamp duty is = **Rs.4,400.00**

It is the **duty of the Court** when passing a final decree for partition to call upon the parties to furnish requisite stamp papers

for engrossing the decree thereon. See AIR 1960 AP 54, 1975 AP 91; 1958 AP 457, 1973 AP 300 and 1997(3) ALD 261.

Once a court passes a preliminary decree, it is the duty of the court to ensure that the matter is referred to the Collector or a Commissioner for division unless the parties themselves agree as to the manner of division. This duty in the normal course has to be performed by the court itself as a continuation of the preliminary decree([Indu Singh And Anr. vs Prem Chaudhary And Ors](#))

Compromise Decree in partition suit: A compromise Decree in a partition suit shall be treated as a Final decree vide [Bimal Kumar & Anr vs Shakuntala Debi & Ors on 27 February, 2012](#).

Whether the decree is taken to be preliminary or final, in the case of [Jesinglal Kalidas Shah vs Gangadhar Mahadeo Karandikar](#), it was pointed out that it was only in the case of Preliminary Decrees in mortgage suits that an application for making it final is expressly required by Order 34 of the C.P.C.

3. **Classification of Misc. cases:**

Rule 430 & 431 of GR & CO define nature of cases which are to be registered as Misc. Judicial Cases/I.A. In addition,

a) As per Letter No. 8869, dated 13.11.79, Petition u/s. 12 O.M.L.Act should be registered as Misc. cases.

b) As per letter No.13617, dated 7.12.81 of Hon'ble High Court of Orissa, Application u/s. 116 (7) Cr.P.C. is to be registered as Misc. case.

c) As per letter No.1974, dated 15.2.84 of Hon'ble High Court of Orissa, Cases u/s. 15 of payment of wages act be registered as Misc. case (Civil)

4. Nomenclature of cases:

Nomenclature of cases shall be as notified by the Orissa High Court vide standing order no.1, dated 1.6.2002 (examples in **Annexure- IV**) & Standing Order 3 of 2014, dated 19.12.2014. Some of the commonly used nomenclatures which have been renamed as follows:

Annexure- IV

Nature of suit	Old nomenclature before July 2002	New nomenclature after July 2002
Civil Suit	T.S, M.S, TMS,O.S.	C.S.
First Appeal	T.A, F.A	R.F.A.
Review Petition	CVRVW	RVWPET
Interlocutory application in pending suits/appeals		I.A.
Petitions under Guardianship & Wards Act		GUAP
Motor Accident Claims Case	OJC	MAC
Proceedings, under Insolvency Act(Main petition)	OJC	IP(M)
Proceedings, under Insolvency Act(Applications submitted after adjudication)	OJC	IPAPL
Regular Bail		BLAPL
Anticipatory Bail		ABLAPL
Succession Certificate	MJC(Succession)	INTEST (INTESTATE)
Election Petition	MJC	ELPET

etc.

Complaint Petitions:

Rule 20 of GRCO (CrI) says Every petition of complaint shall contain the following particulars -

- (1) The name, age and other description of the complainant.
- (2) The name, age and other description of the accused.
- (3) The date, time and place of occurrence.

- (4) The list of witnesses with addresses.
- (5) Nature of offence with section of statute.
- (6) Whether any information was given at the Police-Station and if so, the' action taken thereon.
- (7) Whether any previous complaint regarding the same occurrence was filed, and if so, the name of the Court and the date and manner of disposal of the same.
- (8) Facts of the case.
- (9) Documents, if any relied upon by the complainant.

[Note - While making an application for issue of an order under Sections 94, 97 and 98 of the Code of Criminal Procedure, 1973, the applicant (or the party) should file an affidavit that he has not filed any such application on the same facts before any other Magistrate or in any other Court.]

Rule 31(c) of GR & CO (CrI) provides that

Whenever notices / summons / warrants are to be issued by the Court, the following shall be mentioned on the bottom of form for information about free Legal Services & provision of VC .

“You are hereby informed that free legal services from the State Legal Services Authorities, High Court Legal Services Committee, District Legal Services Authorities and Taluka Legal Services Committees, as per eligibility criteria, are available to you and in case you are eligible and desire to avail of the free legal services, you may contact any of the above Legal Services Authorities/Committees.”

(i) You are further informed that alternative resolution (A.D.R.) “Meditation” facilities are also available in case you desire to avail the said facilities.

(ii) You are hereby informed that the facility of examination of witness through virtual mode (Video Conferencing) is also available in the District Courts of the State. If you desire to avail such facility provided under the Orissa High Court Video Conferencing for Courts Rules, 2020, you may contact the Remote Point Coordinator of the Court concerned, whose name and number is provided in the website of the District Court, for the said purpose

	(CHECK SLIP) ANNEXURE-I
1	JURISDICTION
2	WHETHER PROPERLY STAMPED
3	NOT IN TIME
4	NOT ACCOMPANIED BY A COPY OF JUDGMENT/DECREE/ORDER UNDER APPEAL
5	PARTEIS ARE NOT TAKENAS PER COPY OF JUDGMENT
6	ADDRESS GIVEN ARE NOT REGISTERED ADDRESS
7	VALUATION OF APPEAL IS NOT MENTIONED
8	APPEAL IS NOT COMPETENT
9	PRESENTATION OF THE APPEAL IS NOT DULY AUTHOSISED
10	PRESENTATION OF MACP PETITION IS NOT PROPER
11	DATE, PLACE AND TIME OF ACCIDENT NOT MENTIONED
12	MACP DOCUMENT NOT ANNEXED UNDER RULE 254
13	MACP -PHOTO REQUIRES UNDER RULE 259
14	MACP NOT FILED IN TRIPLICATE UNDER SECTION 140
15	LAR- PETITION NOT ACCOMPANIED WITH AWARD AND St.E
16	LAR -NAME OF THE PETITIONER NOT MENTIONED IN St.E
17	LAR-COPIES FOR NON APPLICANT NOT FILED
18	LAR-IS NOT IN TIME UNDER SECTION 18-2-a-b LAQ ACT
19	THE PLAINT IS NOT PROPERLY SIGNED
20	THE PLAINT IS NOT PROVED BY AFFIDAVIT-SEC 26
21	PLAINT NOT COMPLIED AS PER ORDER VII, RULE 2,4 AND 6 CPC
22	PROVSIONS OF ORDER XI RULE 4 AND 5 CPC ARE NOT INFRINGED
23	GROUND NOT DISCLOSING HOW SUIT IS WITHIN LIMITATION
24	COPY OF PLAINT NOT FILED
25	COPIES FOR DEBTS NOT FURNISHED -ORDER V RULE 7 CPC
26	PLAINTIFF HAS NOT PAID REQUISITE PROCESS FEES
27	CHARGE SHEET COMAPLANTS IS NOT FILED WITHIN PERIOD
28	IDEDNTIFICAION MARKS OF THE ACCUSED NOT FURNISHED
29	LEGIBLE COPIES OF RELEVANT PAPERS NOT ATTACHED
30	MUDDMAL PROPERTY NOT MENTIONED IN CHARGE SHEET

About the compiler

The compiler happens to be a staff of Rayagada Judgeship and presently working as the Sheristadar of the Family Court, Rayagada. He is an Wikipedian and created some pages both in English and Odia, most of which are related to various places and personalities of Rayagada district and some pages related to frequently referred legal subjects. A page titled "[Plaint Checking under Indian Law](#)" has been created by him in English Wikipedia. One can access his user page in English/Odia Wikipedia through the following link.

[User:Hpsatapathy](#)