



SHERISTADAR'S HANDBOOK

(Part-I) Revised edition-2026

Abstract

A concise handbook for the staff members of Odisha Judiciary, especially for Sheristadars and Head Clerks dealing with civil side

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Sheristadar's Handbook

Part-I (Judicial)
(Revised edition-2026)

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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.

(The views expressed by the Compiler are of his own.)

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INTRODUCTION

Plaint checking is a vital part in the process of civil litigation. In absence of one 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 a uniform approach in dealing with the process. As such, a consolidated procedure for checking a plaint/Pleading is felt necessary. 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. 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. 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/Pleading 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”.

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CHAPTER-I **(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 & relevant special Acts)
- D. Compliance of other miscellaneous instructions (*under CPC with special reference to order VI & VII, G.R. & 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.

CHAPTER-II

(Jurisdiction of civil courts)

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 situated. [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** 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 situated. 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 situated 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.

Very often special statutes decide the territorial jurisdiction of the case: such as in **Matrimonial cases**;

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 are 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.**) CrI. Rev. P. 476/2018, decided on 21st January, 2019.

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)

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.

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 No. IJ-93/60/7658-Judl. dated 14.11.1961 has notified that the Munsifs/Principal, Civil Judges of the state 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 not 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 [Chhedi 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.

Even there may be cases where exclusion of jurisdiction has been provided under special circumstances: such as

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);

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.

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

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.

Limitation Act, 1963 — Provisions Important While Checking a Complaint

1. Why limitation is important at the stage of checking a complaint

The first question while scrutinising a complaint should be:

“On the facts stated in the complaint itself, is the suit filed within the prescribed period of limitation?”

Sec.3 of the Limitation Act, 1963 makes limitation **mandatory**. A suit instituted after the prescribed period has to be dismissed, even if the defendant has not raised limitation as a defence, subject to Sections 4 to 24.

At the complaint stage, this becomes particularly important because **Order VII Rule 11(d) CPC** requires rejection of a complaint where, from the statements contained in the complaint itself, the suit appears to be barred by any law—including limitation. The Supreme Court has repeatedly emphasised that, for this purpose, the complaint has to be read as a whole.

2. First identify the correct Article of the Schedule

The Limitation Act does **not prescribe one uniform period for all suits**. The first practical task is therefore to identify the appropriate Article in the Schedule.

Important point: Never decide limitation merely by looking at the date of filing. **The nature of the relief claimed determines the applicable Article.**

Sections 12 to 15 provide **exclusions** and sections 4 to 11 and Sections 16 to 24 provide **exceptions**.

Some of the important points in this regard are:

3. Section 4 — Court closed on the last day

If the prescribed period expires on a day when the Court is closed, the suit may be instituted on the day when the Court reopens.

4. Extension of limitation: [Section 5 of the Limitation Act](#) for extension of time is applicable for Appeals & Applications **(other than Execution Petitions U/O XXI CPC)** only. So, needless to say this section is **not applicable to suits**.

5. 7. Sections 6–8 — Legal disability

Sections 6–8 deal with limitation where the person entitled to sue is under a recognised legal disability, such as minority or insanity, at the time from which limitation is to be reckoned.

Checking point

If the plaint shows that the plaintiff was a minor or otherwise under a statutory disability when the right accrued, the ordinary limitation calculation should not be applied

mechanically.

The plaint should be examined for:

- age of the plaintiff;
- date of accrual of the right;
- date of attaining majority, where relevant;
- representation through guardian/next friend.

6. **Section 9** — Once time begins to run, it continues to run

Section 9 embodies an important principle:

Once limitation has begun to run, no subsequent disability or inability generally stops it, unless the Act itself provides otherwise.

Simple example

A person's right to sue accrues when he is competent to sue and limitation starts running. A subsequent event does not ordinarily restart limitation.

7. **Sec. 12(1) of the Limitation Act:**

In computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded.

For example, if the cause of action to file the money suit arose on 1.1.2015 and the limitation period is 3 years, the last

date on which the suit can be filed on 1.1.2018. (the period of three years is calculated excluding the date 1.1.2015)

Similarly, Section 12 (3) of the limitation act provides that in appeals, the time requisite for obtaining a copy of the judgment shall also be excluded.

8. **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.)

If the two applications were made entirely separately (e.g., you applied for the judgment, received it, and subsequently applied for the decree), **both distinct periods will be excluded**, provided you acted with reasonable diligence and the applications were made before the limitation period expired. Ref: [*Jindal Power Limited vs Dushyant C. Dave Liquidator of Shirpur Power Pvt. Ltd. & Ors.*](#)

9. **Exclusion of time spent in bona fide proceedings in the wrong forum**

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

Simple example

A plaintiff bona fide prosecutes a proceeding in Court A, believing it has jurisdiction. Court A ultimately holds that it has no jurisdiction. The plaintiff thereafter approaches Court B.

Section 14 may permit exclusion of the time spent bona fide prosecuting the earlier proceeding, subject to its statutory requirements.

The Supreme Court has recognised Section 14 as a provision capable of excluding time where its conditions are satisfied. *Consolidated Engineering Enterprises v. Principal Secretary, Irrigation Department*, (2008) 7 SCC 169.

10. Section 15 — Exclusion of certain periods

Section 15 provides for exclusion of specified periods in circumstances such as:

- stay/injunction preventing institution of the suit;
- statutory notice in certain circumstances;
- proceedings for obtaining sanction or consent where applicable;
- other situations specifically mentioned in the section.

Practical checking point

Look for any statement in the plaint that:

“The plaintiff was prevented from instituting the suit because of an order of stay/injunction...”

or that a statutory notice period intervened.

Such periods may affect the computation.

11. Section 17 — Fraud or mistake

Section 17 is important where the plaint alleges:

- fraud;
- concealment of a right;
- mistake;
- fraudulently concealed document/title;
- knowledge of the relevant fact at a later date.

In appropriate cases, limitation does not begin to run until the fraud or mistake is discovered, or could, with reasonable diligence, have been discovered, subject to the statutory conditions.

12. Effect of acknowledgment in writing. —

Section 18 — Acknowledgment of liability

Section 18 is extremely important in money suits and other claims based upon a subsisting liability.

Where, before expiry of the prescribed period, there is a valid written and signed acknowledgment of liability, a fresh period of limitation is computed from the date of acknowledgment, subject to the conditions of the section.

Example

A debt becomes due on 01.01.2020.

Before expiry of three years, the debtor makes a written and signed acknowledgment of the liability on 01.12.2022.

A fresh period may commence from the date of that acknowledgment.

Checking point

In a money-recovery plaint, look for:

- acknowledgment letters;
- balance confirmations;
- written admissions;
- correspondence acknowledging liability.

The mere existence of correspondence, however, does not automatically amount to a valid Section 18 acknowledgment; the statutory requirements must be satisfied.

In other words, 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.

13. Section 19 — Part-payment of debt

Section 19 deals with payment on account of a debt or interest, made before expiry of the prescribed period, subject to the statutory requirements regarding acknowledgment of payment.

Checking point

In a recovery suit, if the plaintiff says:

“The defendant made part-payment of ₹50,000 on 15.03.2024,”

that date may become relevant for computation of limitation.

Therefore, while scrutinising a money suit, check both:

Section 18 — acknowledgment

Section 19 — part-payment

14. Section 27 — Extinguishment of right to property

This is particularly important in property suits.

Section 27 provides that, at the determination of the period prescribed by the Limitation Act for instituting a suit for possession of any property, the right to such property is extinguished.

This is different from an ordinary limitation bar.

Important distinction

Section 3 generally **bars the remedy**.

Section 27, in the cases to which it applies, **extinguishes the right to property itself**.

Therefore, while checking a suit for possession, special attention should be paid to Articles 64 and 65 and the pleadings concerning possession/dispossession/adverse possession.

15. Section 29(2) — Special or local laws

This provision is very important for a judicial officer/head clerk because not every limitation question is governed solely by the Schedule to the Limitation Act.

Where a special or local law prescribes a different period of limitation, Section 29(2) determines the extent to which Sections 4–24 of the Limitation Act apply, subject to the statutory language of the special law.

Practical examples

Before checking limitation, ask:

Is there a special statute governing this particular proceeding?

For example, limitation may be prescribed under special legislation relating to:

- elections;
- land/revenue matters;
- arbitration;
- consumer disputes;
- special tribunals;
- other statutory proceedings.

The special statute must therefore be examined before mechanically applying the Limitation Act Schedule.

A special law's prescribed period of limitation prevails over the general The Limitation Act, 1963

Section 29(2), Limitation Act, 1963: Where a special or local law prescribes a period of limitation different from that

prescribed by the Schedule to the Limitation Act, the special statutory period is given effect to.

Examples:

- 1) When a suit for recovery of possession under sec.6 of the Specific Relief Act is filed, the limitation is only **six months** from the date of dispossession as per sec.6(2) of Specific Relief Act.
- 2) Under section 81 of the Representation of people's act, the limitation for filing of an Election petition is only 45 days.
- 3) Section 31(1) of Gram Panchayat Act specifically provides that the election petition must be presented before the Civil Judge (Junior Division) having jurisdiction over the place where the office of the Grama Sasan is situated: **within 15 days** after the date on which the name of the person elected is published under Section 15.

And there are a number of similar examples.

In case of Motor accident claims cases

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)]

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.

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.

The schedule in the Limitation act prescribes limitation for Suits, Appeals and various petitions. Article 1 to 113 of the schedule deals with Suits, articles 114 to 117 deals with Appeals, articles 118 to 137 deals with applications.

Some Articles frequently encountered while checking complaints are:

Nature of suit	Article	Limitation	Starting point
Recovery of money based on contract	55	3 years	When breach occurs
Specific performance of contract	54	3 years	Date fixed for performance, or when plaintiff has notice that performance is refused
Declaration	58	3 years	When right to sue first accrues
Cancellation/set aside of instrument	59	3 years	When facts entitling cancellation become known
Possession based on previous possession, not title	64	12 years	Date of dispossession
Possession based on title	65	12 years	When defendant's possession becomes adverse
Other suits for which no period is provided	113	3 years	When right to sue accrues

1)Article 113 — Residual Article

Where no specific period is provided elsewhere in the Schedule:3 years from when the right to sue accrues.

- 2) The Supreme Court has specifically explained the importance of the distinction between Article 58 and Article 113: Article 58 runs from the point when the **right to sue first accrues**, whereas Article 113 runs from when the **right to sue accrues**.
- 3) 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

- 4) **One point to remember:** If subject to all exceptions and exclusions provided in the limitation act, if a suit is found to be filed after the period of limitation, whether the suit will be rejected or dismissed?

1. When the plaint will be REJECTED — Order VII

Rule 11(d) CPC

If, **from the statements/averments contained in the plaint itself**, it is clear, without requiring evidence or determination of disputed facts, that the suit is barred by limitation, the proper course is **rejection of the plaint under Order VII Rule 11(d) CPC.**

2. When the suit will be DISMISSED — Section 3 of the Limitation Act.

The position is different where the question **whether the suit is time-barred cannot be decided merely from the plaint**, when limitation becomes a **mixed question of law and fact** because it depends upon disputed facts or evidence.

The Court ordinarily cannot reject the plaint under Order VII Rule 11(d) merely on the defendant's assertion. The issue may have to be framed and decided after pleadings/evidence.

If, after considering the evidence and applicable provisions of Sections 4–24, the Court ultimately finds that the suit was instituted beyond the prescribed period, **Section 3 mandates dismissal of the suit.** Ref: [*Ramesh B. Desai And Others vs Bipin Vadilal Mehta And Others on 11 July, 2006*](#)

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-:** 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/their share by way of partition.

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

(i) 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.

(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-A of Sch-II of Court-fees Act.

(iii) If the parties make a family settlement and claim for a declaratory decree regarding validity of the family settlement, then Sec.7(iv-c) of Court fees Act applies.

Ref- 1) [Satheedevi vs Prasanna & Anr on 7 May 2010 SC](#), [(2010) 5 SCC 622]

Ref- 2) Orissa High Court: [Sadananda Sahu vs State Of Orissa on 18 January, 1961](#), [AIR 1962 Orissa 102]

c) 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 be 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 practicably 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 document 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 here to before 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 Indian Stamp 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.

DECODING SECTION 7 OF COURT FEES ACT, 1870

In order to understand well the formula of calculation of court fees as well as the process of valuation of suits, it is necessary to go under understand section 7 of the court fees act.

Section 7(i) of the Court-Fees Act, 1870: Money Claims, Interest and Mesne Profits

Section 7(i) of the [Court-Fees Act, 1870](#) lays down a simple rule for determining court fees in a money suit: **the fee is payable according to the amount claimed**. The provision expressly includes suits for **damages, compensation, arrears of maintenance, annuities** and **other periodically payable sums**.

However, certain components of a monetary claim require special consideration, particularly **future interest and mesne profits**.

1. Future interest need not ordinarily be valued for court-fee at the institution of the suit

A distinction must be drawn between:

- 1. Principal amount and interest accrued up to the date of institution of the suit; and**
- 2. Interest claimed for the period after the institution of the suit until realization.**

The first category represents an existing and ascertainable monetary claim. Therefore, the plaintiff must include the principal and interest accrued up to the date of the suit in the valuation and pay ad valorem court fee on the amount claimed.

Future interest, however, is inherently uncertain at the time of filing the suit because its ultimate amount depends upon the duration of the litigation and the date on which the decretal amount is ultimately paid. Consequently, it cannot ordinarily be treated as an existing, ascertainable amount requiring separate valuation at the institution of the suit. The principle receives strong support from the Supreme Court decision in **State of Maharashtra v. Mishri Lal Tarachand Lodha, AIR 1964 SC 457**. Although in the case concerned court fees payable in an appeal, the Supreme Court explained that **future interest does not ordinarily form part of the subject matter** in dispute unless it is independently and specifically challenged. If the challenge to the principal claim succeeds, the consequential question of future interest will ordinarily follow.

Thus, in a typical money suit, court fee is payable on:

Principal amount + interest accrued up to the date of institution of the suit

and not on an unascertainable amount of interest that may accrue during the pendency of the suit and thereafter.

2. Mesne profits are substantially a claim for compensation and fall within Section 7(i) of Court fees Act:

Under Section 2(12) of the Code of Civil Procedure, mesne profits broadly represent the profits which a person in wrongful possession of property actually received or might with ordinary diligence have received, together with interest thereon.

A claim for mesne profits is, in substance, a claim for **damages or compensation for wrongful possession**. Therefore, it falls within the

scope of Section 7(i), which specifically covers suits for damages or compensation. **(AIR 1917 Pat.79)**

The important distinction is between **past mesne profits** and **future mesne profits**.

(a) Past mesne profits

Past mesne profits are those that have accrued before the institution of the suit. Since they relate to a definite period preceding the suit, the plaintiff has an existing cause of action in respect of them. Accordingly, the plaintiff must:

- specifically claim past mesne profits;
- state their approximate amount;
- value that claims; and
- pay the requisite ad valorem court fee.

The Supreme Court authoritatively explained this principle in **Gopalakrishna Pillai v. Meenakshi Ayal, AIR 1967 SC 155**, holding that, regarding past mesne profits, the plaintiff has an existing cause of action on the date of the institution of the suit and must value the claim approximately and pay court fees accordingly.

The same principle has been reiterated by several High Courts: a claim for past mesne profits is essentially a claim for damages or compensation and therefore attracts Section 7(i) of Court Fees Act.

(b) Future mesne profits

The position regarding future mesne profits is fundamentally different. These relate to the period **after the institution of the suit until delivery of possession**. At the time of filing the plaint, neither

the duration of the wrongful possession nor the ultimate amount of such profits can be known.

The Supreme Court in **Gopalakrishna Pillai v. Meenakshi Ayal** clearly held that, in respect of future mesne profits, the plaintiff has no existing cause of action at the date of institution of the suit and it is impossible to value such profits or pay court fees on them at that stage. The court may, in an appropriate case under Order XX Rule 12 CPC, direct an inquiry and award future mesne profits.

Therefore:

Past mesne profits must ordinarily be valued and court fee paid under Section 7(i), whereas future mesne profits, being unascertainable when the suit is instituted, need not be valued at that stage.

3. Section 11 of the Court-Fees Act provides an important safeguard

An important aspect that should not be overlooked is **Section 11 of the Court-Fees Act**.

Sometimes a plaintiff may reasonably estimate past mesne profits at a particular amount, but after an inquiry the court may determine that the actual amount payable is higher. Section 11 addresses this situation by requiring payment of the deficient court fee before the decree, to the extent provided by the section, can be executed.

The statutory scheme therefore recognises that the exact number of mesne profits may sometimes become clear only after an inquiry.

This provision should be read together with Section 7(i) and Order XX Rule 12 CPC.

Appeal matters

In appeal matters arising out of money suits, the question involves an important distinction between

- (i) jurisdictional value of an appeal and
- (ii) the value on which court fee is payable in the appeal.

These two need not necessarily be the same.

Important authority: Francisco Luis Jose D'Souza

The principle is clearly explained in: [Francisco Luis Jose D'Souza v. Vithal Bhadu Tamboskar, Bombay High Court \(18 November 1988\)](#)

The Court distinguished between the **valuation determining pecuniary jurisdiction** and the **valuation for payment of court fees**. It held, in substance, that the valuation of the suit ordinarily remains constant for determining the appellate forum, regardless of whether the suit is wholly decreed, partly decreed or dismissed.

The judgment also discusses the principle that, where the amount in dispute in an appeal is ascertainable:

- a **defendant** challenging a money decree pays court fee on the amount of the decree, or the part thereof, which he seeks to have set aside; and
- a **plaintiff** seeking enhancement pays court fee on the additional amount claimed over and above what has already been decreed.

A simple illustration

Suppose A sues B for:

- Principal: ₹1,00,000
- Interest: ₹20,000
- **Total claim: ₹1,20,000**

The trial court grants only ₹80,000.

If B, the defendant, appeals

B wants the ₹80,000 decree to be entirely set aside.

- **Jurisdictional value: ₹1,20,000**
- **Court-fee value: ₹80,000**

If A, the plaintiff, appeals

A wants the decree enhanced from ₹80,000 to ₹1,20,000.

- Additional amount claimed = ₹40,000
- **Jurisdictional value: ₹1,20,000**

Court-fee value: ₹40,000

In short: Jurisdiction follows the value of the original suit; court fee follows the value of the relief actually disputed in the appeal.

Important qualification: The exact court-fee calculation in Odisha must ultimately be made according to the applicable provisions of the Court-fees Act, 1870, as amended in Odisha, and the precise appellate valuation may also depend upon the exact form of the decree and the relief framed in the memorandum of appeal.

Conclusion

The central principle underlying Section 7(i) is that court fee in a money suit is payable according to the amount presently claimed and capable of valuation. A plaintiff is not ordinarily required to perform the impossible task of calculating an amount that will arise in the uncertain future.

Therefore, while the principal claim, accrued interest and past mesne profits must generally be included in the valuation, future interest and future mesne profits stand on a different footing because their precise amount cannot ordinarily be ascertained when the suit is instituted. In the case of mesne profits, the distinction between accrued and future profits is particularly important, and the combined operation of Section 7(i), Section 11 of the Court-Fees Act and Order XX Rule 12 CPC provides the statutory mechanism for dealing with them.

Leading authorities:

Gopalakrishna Pillai v. Meenakshi Ayal, AIR 1967 SC 155;

State of Maharashtra v. Mishri Lal Tarachand Lodha, AIR 1964 SC 457; and

Ranjit Kaur v. Punjab State Electricity Board, decided on 11 August 2006.

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Sec.7(ii)- Valuation and Court Fee in Suits for Maintenance and Annuities under Section 7(ii) of the Court Fees Act: The Special Odisha Amendment (Act V of 1939)

1. Introduction

Section 7 of the Court Fees Act, 1870, prescribes the method for determining the value of certain suits for the purpose of payment of court fees. Clause (ii) of Section 7 specifically deals with suits for maintenance, annuities and other sums payable periodically.

The provision is particularly important in Odisha because the general rule of valuation has been modified by the Orissa Act 5 of 1939. The Odisha amendment makes a significant distinction between:

Suits for maintenance, and

Other suits involving annuities or sums payable periodically.

The distinction directly affects both the valuation of the suit and the ad valorem court fee payable.

2. The Odisha Amendment to Section 7(ii)

As applicable in Odisha, Section 7(ii) substantially provides that in suits for maintenance, annuities or other sums payable periodically, the value of the subject matter shall be deemed to be:

In suits for maintenance: **five** times the amount claimed to be payable for one year; and

In other suits for annuities or periodically payable sums: **ten** times the amount claimed to be payable for one year.

Thus, the Orissa Amendment has reduced the multiplier in a maintenance suit from ten times to five times.

This amendment was introduced by Orissa Act 5 of 1939.

3. How Is the Valuation Calculated?

A. Suit for **maintenance**

The first step is to ascertain the amount of maintenance claimed for one year.

The annual amount is then multiplied by five.

Formula

Suit valuation = Annual maintenance claimed $\times$ 5

Court fee is then payable according to the applicable ad valorem rate on that valuation.

Example

Suppose a wife file a suit claiming maintenance at the rate of ₹10,000 per month.

Her annual claim would be:

$$₹10,000 \times 12 = ₹1,20,000$$

Under the Odisha amendment:

$$₹1,20,000 \times 5 = ₹6,00,000$$

Therefore:

Value of the subject matter of the suit = ₹6,00,000

The plaintiff will pay ad valorem court fee on ₹6,00,000, according to the court-fee rates applicable in Odisha.

It is important to note that the plaintiff is not required to value the claim at the amount that may ultimately become payable during her entire lifetime. The statute creates a notional or artificial valuation by adopting five times the annual amount.

4. Other Annuities and Periodical Payments

The position is different where the suit concerns an annuity or another periodically payable sum, but is not a suit for maintenance.

In such cases, the general multiplier remains ten times the amount payable for one year.

Formula

Suit valuation = Annual amount claimed $\times$ 10

Example

Suppose a person claims a periodical payment of ₹50,000 per year under a legally enforceable arrangement/document.

The valuation would be:

$$₹50,000 \times 10 = ₹5,00,000$$

Therefore, the suit would be valued at ₹5,00,000, and ad valorem court fee would be payable on that amount.

5. Important Distinction Between Maintenance and Other Periodical Payments

The following table illustrates the special benefit provided to a maintenance claimant in Odisha:

Nature of the suit	Annual Amount claimed	Multiplier in Odisha	Suit Valuation
Maintenance	Rs.1,20,000	5 times	Rs.6,00,000
Other annuity/ periodical payments	Rs.1,20,000	10 times	Rs.12,00,000

Thus, although the annual amount may be identical, the statutory valuation of a maintenance suit is only half of that applicable to other annuities or periodical payments.

This demonstrates the legislative intention behind the Odisha amendment: a claimant seeking maintenance should not be burdened with the comparatively higher court fee resulting from the ten-times multiplier.

6. Arrears of Maintenance and Future Maintenance

A significant distinction must also be made between:

Arrears already due, and

Maintenance or instalments claimed for the future.

Where both claims are made in the same suit, they may have to be valued differently.

The decision in AIR 1936 Mad. 388 recognizes the principle that where a suit contains:

a claim for arrears already due, and

a claim for future instalments,

the arrears are chargeable under the provision applicable to a suit for money, whereas the future recurring claim is valued under Section 7(ii) of the court fees act.

Illustration

Suppose a plaintiff claims:

₹60,000 as arrears of maintenance already due; and

₹10,000 per month as future maintenance.

The arrears claim of ₹60,000 would be valued as a money claim.

The annual future maintenance would be:

$₹10,000 \times 12 = ₹1,20,000$

Under the Odisha amendment, the future maintenance claim would be valued at:

$$₹1,20,000 \times 5 = ₹6,00,000$$

Therefore, subject to the applicable procedural and court-fee rules, the two components are separately considered for determining the appropriate court fee.

7. Meaning of an Annuity

The expression “annuity” has received judicial consideration. The authorities cited in AIR 1934 Cal. 674 and AIR 1961 Cal. 513 discuss an annuity as a yearly payment of a certain sum of money granted to another for a specified period, such as for life or for years. However, every recurring monetary obligation does not automatically become an “annuity” within the meaning of Section 7(ii). The real nature of the legal right and the relief claimed must be examined.

8. Suit for Declaration of Right to Maintenance with Arrears

Where a plaintiff seeks:

a declaration of his or her right to receive maintenance, along with arrears of maintenance,

the nature of the reliefs and the applicable valuation provisions must be carefully examined. The decisions reported in AIR 1913 Pat. 290 and AIR 1934 Pat. 240 are relevant authorities concerning such claims.

The fundamental principle is that the court fee must correspond to the substantive relief actually sought, and separate monetary relief for arrears cannot necessarily be ignored merely because a declaration regarding the right to maintenance is also claimed.

9. An Important Orissa High Court Decision: AIR 1984 Ori. 151

A particularly important decision in the Odisha context is AIR 1984 Ori. 151.

The Orissa High Court held that a petition for maintenance under Section 26 of the Hindu Marriage Act, 1955, need not be registered as a regular suit.

Consequently, the valuation provision contained in Section 7(ii) of the Court Fees Act is not automatically attracted merely because maintenance is claimed in such a statutory matrimonial proceeding. The court fee and valuation would be governed by the relevant provisions applicable to a petition under the Hindu Marriage Act and the applicable court-fee law.

This decision illustrates an important principle:

Section 7(ii) applies when the proceeding is a suit falling within its scope; it does not automatically govern every proceeding in which a claim for maintenance is made.

Therefore, before applying the five-times multiplier under the Odisha amendment, one must first determine the nature of the proceeding and the statutory provision under which it has been instituted.

10. Appeal Valuation and Court Fee Where Maintenance Decreed Is Less Than the Amount Claimed

This question requires a distinction between the appeal filed by the maintenance claimant and the appeal filed by the person directed to pay maintenance.

The basic principle is that the subject matter actually challenged in the appeal determines its valuation. However, because Section 7(ii) creates a special statutory method for valuing maintenance claims,

the precise application in Odisha should be considered in light of the five-times annual amount rule under the Orissa Amendment.

A simple example

Suppose:

The plaintiff claims maintenance at ₹10,000 per month.

Thus, the annual maintenance claimed is ₹1,20,000.

Under the Odisha amendment, the original maintenance suit is valued at:

$$₹1,20,000 \times 5 = ₹6,00,000$$

The plaintiff pays ad valorem court fee on ₹6,00,000.

The trial court, however, awards maintenance at only ₹6,000 per month.

Thus:

Maintenance claimed: ₹10,000 per month

Maintenance decreed: ₹6,000 per month

Amount disallowed: ₹4,000 per month

Now let us consider the two separate appeals.

1. Appeal by the plaintiff seeking enhancement

Suppose the plaintiff challenges the decree and seeks the entire balance of ₹4,000 per month which was refused by the trial court.

The subject matter of this appeal is the additional maintenance sought, namely ₹4,000 per month.

The additional annual maintenance claimed in the appeal is:

$$₹4,000 \times 12 = ₹48,000$$

Applying the Odisha rule

Since the appeal concerns a claim for additional future maintenance, the valuation may be calculated by applying the statutory multiplier applicable in Odisha:

$$₹48,000 \times 5 = ₹2,40,000$$

Therefore, on this approach:

Value of the plaintiff's appeal: ₹2,40,000

Court fee: Ad valorem court fee payable on ₹2,40,000 according to the court-fee schedule applicable in Odisha.

Why?

The plaintiff is not challenging the entire decree. The plaintiff has already succeeded to the extent of ₹6,000 per month and is seeking only the additional ₹4,000 per month.

Therefore, the subject matter of the appeal is the difference between: Maintenance claimed – Maintenance decreed.

2. Appeal by the defendant seeking reduction or complete reversal

Now suppose the defendant challenges the decree awarding ₹6,000 per month.

The subject matter of the defendant's appeal is the amount which the defendant seeks to avoid paying.

If the defendant wants the entire maintenance decree to be set aside:

$$₹6,000 \times 12 = ₹72,000 \text{ per year}$$

Applying the Odisha multiplier:

$$₹72,000 \times 5 = ₹3,60,000$$

Therefore:

Value of the defendant's appeal: ₹3,60,000

Court fee: Ad valorem court fee on ₹3,60,000.

If, however, the defendant accepts liability to pay ₹4,000 per month but seeks reduction of the decree from ₹6,000 to ₹4,000 per month, the actual subject matter of the appeal is only ₹2,000 per month.

Thus:

$₹2,000 \times 12 = ₹24,000$ per year

Valuation would be: $₹24,000 \times 5 = ₹1,20,000$

In such a case, the appeal would, on this reasoning, be valued at ₹1,20,000.

The underlying principle

The general principle regarding appeals is that a party need not necessarily challenge the entire subject matter of the original suit. A plaintiff appealing against partial refusal ordinarily challenges the portion of the claim refused, whereas a defendant appeals against the portion of the decree from which he seeks relief. Judicial authorities have recognized that the subject matter of an appeal can be smaller than that of the original suit when only part of the decree remains in dispute.

11. Conclusion

The Odisha amendment to Section 7(ii) of the Court Fees Act makes an important and beneficial distinction between suits for maintenance and other claims for recurring payments.

The position may be summarised as follows:

Suit for maintenance: Five times the annual amount claimed.

Suit for annuity or other periodical payment: Ten times the annual amount claimed.

Arrears already due: Generally require separate valuation as a monetary claim.

Future maintenance: Valued according to the statutory formula under Section 7(ii) of the Court fees act, where the provision applies.

Statutory maintenance petitions: It must first be determined whether the proceeding is a “suit” to which Section 7(ii) applies.

In one sentence:

Under the Odisha amendment introduced by Orissa Act 5 of 1939, the statutory valuation of a maintenance suit is five times the amount claimed for one year, whereas a suit for an annuity or another periodically payable sum is ordinarily valued at ten times the annual amount.

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Section 7(iii) of the Court Fees Act, 1870: Understanding the valuation of movable property

Section 7(iii) provides:

“In suits for movable property other than money, where the subject-matter has a market-value, [court-fee shall be computed] according to such value at the date of presenting the plaint.”

This provision lays down a relatively simple rule: when the subject-matter of a suit is movable property having an ascertainable market value, court-fee must be paid on the market value of that property as it existed on the date the plaint was presented before the court.

1. What kind of property is covered?

Section 7(iii) applies when:

The suit concerns movable property;

The property is not money; and

The property has an ascertainable market value.

Examples may include:

a motor vehicle; jewellery or gold;

machinery; shares or other marketable goods;

livestock or commercial goods.

A suit for money is separately governed by Section 7(i). Likewise, where movable property has no market value, Section 7(iv)(a), rather than Section 7(iii), may apply.

2. What does “such value at the date of presenting the plaint” mean?

This expression is particularly important.

It means that the relevant date for determining market value is the date on which the plaint is presented to the court.

Thus, the court has to ask:

What was the fair market value of the movable property on the date of institution of the suit?

The following dates are ordinarily irrelevant for determining the initial court-fee:

the date when the plaintiff originally acquired the property;

the date on which the defendant allegedly took possession of it;

the date on which the cause of action arose, if different;

the date of trial;

the date of the decree.

Therefore, a subsequent increase or decrease in the market price does not ordinarily alter the court-fee that was correctly payable when the suit was instituted.

The principle of a “fixed valuation date”

The legislature has deliberately fixed a particular date—the date of presentation of the plaint—to provide certainty in the matter of court-fee.

Suppose the value of a particular movable property rises substantially during the five years taken for disposal of a suit. The plaintiff is not ordinarily required to pay additional court-fee merely because its value has subsequently increased. Similarly, a later fall in value would not ordinarily entitle the plaintiff to claim a reduction of the court-fee properly payable at the institution of the suit.

The Supreme Court, while discussing statutory provisions requiring valuation on the basis of market value, has emphasised that where court-fee depends upon market value, the relevant value is that existing on the date of presentation of the plaint. This statutory principle supports the importance of the institution date as the valuation date.

3. One simple example

Facts

A owns a car which is wrongfully retained by B. A files a suit for recovery of possession of the car.

Value of the car when B allegedly took possession: ₹8,00,000

Market value of the car on the date A presents the plaint: ₹6,00,000

Market value on the date of the judgment, two years later: ₹5,00,000

What is the valuation under Section 7(iii)?

The relevant value is:

₹6,00,000—the market value on the date of presentation of the plaint.

Therefore, the court-fee is to be calculated according to the applicable court-fee schedule on ₹6,00,000, and not on ₹8,00,000 or ₹5,00,000. The reason is that Section 7(iii) expressly fixes the valuation date as the date of presenting the plaint.

4. **“Market value”** does not mean an imaginary or arbitrary figure

The expression “market value” generally refers to the value which the property would reasonably fetch in an open market between a willing seller and a willing purchaser.

Thus, the plaintiff cannot arbitrarily place a very low valuation upon property when its market value is objectively ascertainable merely to reduce the amount of court-fee.

Conversely, the valuation should not be based upon an exceptional or artificially inflated price. The relevant consideration is the property's reasonable market value at the relevant statutory date.

5. **Relevant judicial guidance**

Satheedevi v. Prasanna, (2010) 5 SCC 622

The Supreme Court explained that, where the statutory scheme requires court-fee to be calculated with reference to the market value of property, the relevant market value is determined with reference to the date of presentation of the plaint. Although the precise provision interpreted in that case arose under a different State court-fee legislation, the judgment is useful for understanding the general statutory significance of fixing the valuation date.

Raju alias M. Sengoda Asari v. K.R. Ponnusamy

This decision reproduces and discusses the distinction under the old Court Fees Act between:

movable property having a market value, falling under Section 7(iii); and

movable property having no market value, falling under Section 7(iv)(a).

It is therefore useful in understanding the dividing line between these two provisions.

Conclusion

Section 7(iii) can be reduced to the following formula:

Movable property (other than money) + ascertainable market value = valuation based on its market value on the date the plaint is presented.

The crucial words “at the date of presenting the plaint” fix a statutory valuation date. Consequently, the subsequent appreciation or depreciation of the movable property ordinarily does not affect the court-fee that was properly payable at the time of institution of the suit.

In short:

For a suit concerning movable property having a market value, the court looks at what the property was worth on the date the plaint entered the court—not what it was worth earlier or what it may become worth later.

References: 1) Raju alias M. Sengoda Asari v. K.R. Ponnusamy &
3. Satheedevi v. Prasanna, (2010) 5 SCC 622

Court Fee and Valuation in Suits Relating to Documents under Section 7(iv)(a) and Section 7(iv-A) of the Court-fees Act (Odisha)

Sec. 7(iv) (a) of Court fees Act states:

(iv) In suits for movable property of no market-value.

for movable property where the subject-matter has no market-value, as, for instance, in the case of documents relating to title.

The question of court fee in a suit involving a document depends primarily upon the nature of the relief claimed. A significant distinction exists between a suit merely seeking a declaration that a document is not binding upon the plaintiff and a suit seeking the cancellation of a document or decree.

1. Section 7(iv)(a): Documents Having No Market Value

Section 7(iv)(a) applies to suits concerning movable property having no market value, such as documents relating to title.

In a suit for declaration with consequential relief, the plaintiff is generally entitled to make his or her own bona fide valuation of the relief claimed. Ordinarily, such valuation is accepted for purposes of both court fee and jurisdiction. However, the court may interfere where the valuation is arbitrary, unreasonable, or demonstrably undervalued. The material supplied refers to 2009 (1) OLR 188 and 2003 (Supp.) OLR 163 in this connection.

An important principle emerging from the cited authorities is that the actual market value of the entire property involved is not necessarily the criterion for determining court fee under this provision.

2. The Odisha Amendment: Section 7(iv-A)

The Odisha Legislature Inserted Section 7(iv-A) through Orissa Act V of 1939 as follows.

"(iv-A) In a suit for cancellation of a decree for money or other property having a money-value, or other document securing money or other property having such value, according to the subject-matter of the suit, and such value shall be deemed to be -
If the whole decree or other document is sought to be cancelled, the amount or the value of the property for which the decree was passed or other document executed ;If a part of the decree or other documents sought to be cancelled, such part of the amount or value of the property.

Explanation - In any case where a suit for the cancellation of a whole decree for money or other property having a money value, or other document securing money or other property having such value has to be instituted, but the substantial relief claimed is only in respect of a part of the amount or the value of the property for which the decree was passed for the other document was executed, the value of the subject-matter of the suit shall be deemed to be such part of the amount or value of the property in respect of which the relief is sought."

This provision specifically deals with a suit for the cancellation of a decree or document securing money or property having a money value.

Where cancellation of the whole document or decree is sought, the valuation is:

the amount or value of the property for which the decree was passed or the document was executed.

Where cancellation is sought only in respect of a part, the valuation corresponds to that part. The Explanation further provides that, where the substantial relief concerns only a part of the amount or property, the value of that part constitutes the subject matter of the suit.

3. **Cancellation and Mere Declaration:** An Important Distinction

The form of relief, rather than merely the existence of a document, is crucial.

For example, where a plaintiff is not a party to a sale deed and merely seeks a declaration that the deed is not binding upon him or her, the suit may not necessarily be one for cancellation. The material supplied refers to AIR 1970 Ori 215, where it was held that the plaintiff, not being a party to the document, was not required to have it cancelled in order to establish her title.

Conversely, where the real and substantive relief is to set aside a compromise decree allegedly obtained by fraud, Section 7(iv-A) may apply. The supplied material cites 1990 (1) OLR 34 on this principle.

Example

Suppose A executes a sale deed transferring land worth ₹10 lakh to B. Subsequently, A himself files a suit alleging fraud and seeks cancellation of the entire sale deed.

Since A is a party to the document and seeks its cancellation, the case would fall within the principles governing a suit for cancellation under Section 7(iv-A). The value of the subject matter, according to

the provision reproduced in the supplied material, would correspond to the value of the property covered by the document—namely, ₹10 lakh.

However, suppose C, who claims an independent title to the same property, was not a party to the sale deed between A and B. If C merely seeks a declaration that the sale deed is not binding upon his rights, without requiring its cancellation, the matter may stand on a different footing. The principle referred to in AIR 1970 Ori 215 becomes relevant in such circumstance.

Where the plaintiff is the executant of a document and seeks its cancellation, the court fee is ad-valorem, not a fixed fee. The Supreme Court has stated this expressly, and an Orissa High Court decision applies the same principle in the context of Section 7(iv-A) as amended in Odisha.

1. Supreme Court: Suhrid Singh v. Randhir **Singh**

The leading authority is:

Suhrid Singh @ Sardool Singh v. Randhir Singh & Ors., (2010) 12 SCC 112 : AIR 2010 SC 2807, decided on 29 March 2010.

The Supreme Court drew a clear distinction between an executant and a non-executant of the document. It held that where A, the executant of a sale deed, wants to avoid the deed, A has to sue for cancellation and has to pay ad-valorem court fee on the consideration stated in the sale deed. A non-executant, on the other hand, ordinarily seeks a declaration that the document is invalid or not binding on him, and the court-fee consequences are different.

The Supreme Court's illustration is particularly useful:

A executes a sale deed in favour of C. Subsequently, A wants to avoid it. A has to sue for cancellation of the deed.

“If A, the executant of the deed, seeks cancellation of the deed, he has to pay ad valorem court fee on the consideration stated in the sale deed.”

2. How this operates in Odisha under Section 7(iv-A)

The Odisha Amendment Act, V of 1939, inserted Section 7(iv-A). It provides that in a suit for cancellation of a decree or “other document securing money or other property having such value”, the suit is to be valued according to the subject matter.

For the whole document, the deemed value is the amount or value of the property for which the document was executed; for cancellation of only part, the corresponding part is taken.

The Orissa High Court has specifically recognised this consequence. In Prafulla Chandra Das & Anr. v. Anem Bhengra Munda & Ors., the Court explained that where the suit falls under Section 7(iv-A), “the value of the document sought to be cancelled has to be the valuation of the suit.” The Court contrasted this with Section 7(iv)(c), where the plaintiff has the statutory liberty to value the relief, subject to the applicable rules.

An earlier Orissa High Court decision, Bipinbehari Pansari v. Asoka Marketing Ltd., AIR 1989 Ori 117, also concerned the question of payment of court fee in relation to a decree having a money value and records the direction for payment of ad-valorem court fee on the relevant amount.

3. A simple example

Suppose A executes a registered sale deed in favour of B for a consideration of ₹8,00,000.

Later A alleges fraud or some other ground and wants the court to cancel the sale deed. Here:

For Executant: A

Relief: Cancellation of sale deed

Subject-matter value under Section 7(iv-A): ₹8,00,000

Court fee: Ad-valorem court fee on ₹8,00,000, according to the applicable Court-fees Act as in force in Odisha.

4. The crucial distinction

The principle can therefore be remembered as follows:

Plaintiff's status	Relief	Court fee principle
Executant	Cancellation of deed	Ad Valorem
Non-executant being in possession	Declaration that the deed is void & not binding on plaintiff	Generally Fixed (Under.....)
Non-executant out of possession	Declaration as above + possession	Ad Valorem

The first distinction is expressly affirmed by the Supreme Court in Suhrid Singh case.

Bottom line

For an executant who seeks cancellation of a document having a monetary value, there are two separate propositions which should not be confused:

- (1) Valuation: Under Odisha's Section 7(iv-A), the value is the amount/value for which the document was executed (or the relevant part thereof).
- (2) Court fee: The fee on that valuation is ad-valorem, not fixed. This is expressly laid down by the Supreme Court in *Suhrid Singh v. Randhir Singh*, (2010) 12 SCC 112.

Conclusion

Thus, the essential question in a document-related suit is:

What is the real and substantive relief sought by the plaintiff?

A suit concerning a document having no market value or seeking a declaratory relief may fall under Section 7(iv)(a).

A suit seeking the actual cancellation of a decree or document securing money or property having a money value is governed by Section 7(iv-A), as inserted by the Odisha Amendment.

The plaintiff's relationship with the document and the substance of the relief sought are important in determining the applicable provision.

Courts may scrutinise a valuation if it is arbitrary, unreasonable, or demonstrably undervalued.

In case of cancellation of a document having a monetary value, the party/executant seeking its cancellation has to pay Ad-valorem court fee.

The authorities contained in the supplied material also show that, particularly in cases involving compromise decrees and partition claims, the true subject matter and the extent of the relief actually claimed must be carefully identified for determining the proper court fee.

Case Laws:

In a suit for declaration with consequential relief, the plaintiff is free to make his own estimation of the relief sought in the plaint and such valuation both for the purposes of Court-fee and jurisdiction has to be ordinarily accepted- In case it appears to the Court on consideration of the facts and circumstances of the case that the valuation is arbitrary, unreasonable and the plaint has been demonstratively undervalued, the Court can examine the valuation and can revise the same: 2009 (1) OLR 188.

Suit for declaration that a compromise decree is illegal having been obtained by fraud and does not bind the plaintiff-The suit is essentially one for setting aside a compromise decree sec.7 (iv-a) would apply: 1990 (1) OLR 34.

Suit for declaration- The plaintiff was not bound by sale deed executed by her father in favour of defendant; suit is not one for cancellation falling within Section 7 (iv-a): AIR 1970 Ori 215.

In its judgement dated 23rd April 2025 in SLP (C) No. 3056 of 2016, the Supreme Court has clarified that a person who is not a party to a sale deed is not obligated to seek its cancellation under Section 31 of the Specific Relief Act, 1963. Instead, such a person can seek a declaration that the deed is not binding on him.

Sec.7(iv-b) of court fees act omitted by Odisha amendment act V 1939.

“Consequential Relief” under Section 7(iv)(c) and its relationship with Section 7(iv-A) in Odisha

1. What does Section 7(iv)(c) mean?

Section 7(iv)(c) of the Court-fees Act, 1870 applies:

“to obtain a declaratory decree or order, where consequential relief is prayed.”

The expression has two essential components:

there must be a declaration, and

some further relief must be claimed which is consequential upon, or flows directly from, that declaration.

Thus, a consequential relief is not merely any additional relief mentioned in the plaint. It is a relief which becomes necessary or follows as a direct result of the declaration sought.

The Supreme Court has repeatedly emphasised that the substance of the relief, rather than the mere form of drafting, is relevant in determining the appropriate court-fee provision. The principle can be traced to Vishnu Pratap Sugar Works (P) Ltd. v. Chief Inspector of Stamps, AIR 1968 SC 102.

A useful way of putting the test is:

If the declaration is granted, does the additional relief necessarily flow from that declaration?

If the answer is yes, it is likely to be a consequential relief.

2. Simple examples

Example A — Declaration alone

A claims that a sale deed executed by B in favour of C does not affect A's title, and A is already in possession.

A asks:

“Declare that the sale deed executed by B in favour of C is void and not binding upon the plaintiff.”

If A is a non-executant and is in possession, no relief of possession is necessary. The declaration itself gives A the relief he needs.

Therefore, this is ordinarily a declaration simpliciter, and not a declaration with consequential relief.

This is precisely the distinction recognised by the Supreme Court in *Suhrid Singh @ Sardool Singh v. Randhir Singh*, (2010) 12 SCC 112.

Example B — Declaration + possession

Suppose A is the non-executant of the sale deed but C has taken possession of the property pursuant to that deed.

A asks:

- (i) Declare that the sale deed is not binding upon the plaintiff; and
- (ii) direct the defendants to deliver possession to the plaintiff.

Here possession is the natural consequence of the declaration. A need something more than a bare declaration to obtain effective relief.

Therefore, the suit is one for declaration with consequential relief of possession, attracting Section 7(iv)(c).

The Supreme Court's *Suhrid Singh* decision makes this distinction particularly clear.

3. The crucial distinction between an executant and a non-executant

This is the most important point for your question.

Suppose A executes a sale deed in favour of B.

A. A is the executant

If A subsequently wants to get rid of the deed, A must ordinarily sue for cancellation of the deed.

The rationale is that A himself created the document. Until it is cancelled, it operates against him.

Therefore, the question is one of cancellation, and the applicable court-fee provision may be Section 7(iv-A), where its requirements are satisfied.

B. C is not the executant

Suppose C claims an independent title to the same property and B relies upon A's sale deed against C.

C did not execute that document.

C therefore does not ordinarily have to ask the Court to cancel the document. C can say:

“The document is void/illegal/not binding upon me or my share.”

This distinction was authoritatively laid down by the Supreme Court in *Suhrid Singh @ Sardool Singh v. Randhir Singh*, (2010) 12 SCC 112.

The Supreme Court's classic illustration is that where A, the executant, wants to avoid his deed, he must seek cancellation; but where B, a non-executant, wants to avoid a deed executed by A, B can seek a declaration that it is invalid/non-est/illegal or not binding upon him.

4. Then what is the role of Odisha's Section 7(iv-A)?

This is where a very important correction is necessary.

Section 7(iv-A), as inserted by the Orissa Court-fees (Amendment) Act, 1939, is specifically concerned with a “suit for cancellation” of a decree or a document securing money or property having money-value.

The Odisha amendment provides that where the whole document is sought to be cancelled, the value is the amount/value for which the document was executed; where only a part is sought to be cancelled, the corresponding part is taken.

Therefore:

Section 7(iv-A) is a provision concerning cancellation. It does not automatically apply merely because a plaintiff mentions an impugned document in a declaratory suit.

This distinction has been recognised by the Orissa High Court.

In *Kandha Das v. Indumati Devi*, AIR 1970 Orissa 215, the Court dealt with the question whether Section 7(iv-A), as amended in Orissa, applied where a person who was not a party to the document sought a declaration that the document was not binding upon him. The principle emerging from the decision is that Section 7(iv-A) is attracted when the plaintiff seeks cancellation of the document, rather than merely an incidental declaration that a document executed by somebody else is not binding upon him.

The same distinction was reiterated by the Orissa High Court in *Prafulla Chandra Das v. Anem Bhengra Munda*, where the Court referred to *Kandha Das* and observed that Section 7(iv-A) would be

attracted where the plaintiff seeks cancellation of the sale deed to which he is a party.

5. How Section 7(iv)(c) fits into the picture

The following table makes the distinction clear:

Position of Plaintiff	Relief Sought	Appropriate principle
Executant	Cancellation of his own sale deed/document	Section 7(iv-A) in Odisha
Non executant being in possession	Declaration that the deed is void and not binding on him/her	Generally fixed court fee under Sch-II of court fees act
Non executant who is excluded from possession	Declaration + possession	Section 7(iv)(c) — declaration with consequential relief
Non executant	Declaration + injunction, depending on circumstances	Examine whether injunction is truly consequential and the substance of the plaint

The Supreme Court in *Suhrid Singh* specifically held that where a non-executant is in possession and seeks only a declaration that the deed is null/void and does not bind him, a fixed fee is payable; but where the non-executant is not in possession and also seeks possession, the possession is consequential relief and Section 7(iv)(c) applies.

6. A particularly important point: “declaration that document is not binding” is NOT itself necessarily consequential relief

This is sometimes misunderstood.

Suppose A executes a sale deed in favour of B concerning property X.

C, who never executed the deed, claims that X belongs to him.

C files a suit:

“Declare that the sale deed dated ____ executed by A in favour of B is void, illegal and not binding upon the plaintiff.”

The declaration concerning the sale deed is the declaratory relief itself.

The mere fact that the declaration has the practical effect of neutralising the sale deed does not convert the suit into a suit for cancellation under Section 7(iv-A).

If C is in possession, there may be no consequential relief at all.

But if C additionally asks:

“and direct B to deliver possession of the property to C,”

then possession is a separate relief which flows from the declaration.

It becomes the consequential relief, attracting Section 7(iv)(c).

This is the core lesson of *Suhrid Singh*.

7. The latest Supreme Court position: *Hussain Ahmed Choudhury*

There is an especially useful recent Supreme Court judgment which reinforces this principle.

In Hussain Ahmed Choudhury & Ors. v. Habibur Rahman (Dead) through LRs & Ors., 2025 INSC 553, decided on 23 April 2025, the Supreme Court considered whether a person who was not a party to a subsequent sale deed was required to seek cancellation of that deed under Section 31 of the Specific Relief Act merely because he sought declaration of his title.

The Supreme Court held, in substance, that a plaintiff who is not the executant/party to the sale deed is not obliged to seek cancellation of that deed merely to establish his own title.

The decision reaffirmed the distinction between cancellation under Section 31 and declaration under Section 34, and relied substantially upon Suhrid Singh.

This is significant for court-fee purposes because it strengthens the proposition that:

A non-executant's suit does not become a cancellation suit merely because the Court, while granting the declaration, may effectively render the impugned document ineffective against the plaintiff.

The Supreme Court's official judgment is available here: Hussain Ahmed Choudhury v. Habibur Rahman — Supreme Court judgment (2025 INSC 553)

8. Recent Orissa High Court application

A very recent Orissa High Court decision is Mustak Mallik & Others v. Sanjib Kumar Subudhi & Others, CMP No.207 of 2025, order dated 19 February 2026.

The Court applied Suhrid Singh and held that where the plaintiffs were non-executants and sought recovery of possession in addition to declaration that the sale deed was null and void, they were liable to

pay ad valorem court-fee, because possession constituted consequential relief.

This is particularly useful because it demonstrates the practical application of the Supreme Court rule within the Odisha court-fee context.

9. The principle in one sentence

The entire scheme can be remembered by this formula:

Executant → cancellation → Section 7(iv-A), Odisha.
non-executant + possession → declaration alone → fixed declaratory fee.

non-executant + no possession → declaration + possession → consequential relief → Section 7(iv)(c).

And importantly:

The expression “not binding upon me” does not by itself create a consequential relief. The Court must look for some further relief—such as recovery of possession—which necessarily flows from the declaration.

Important authorities

Suhrid Singh @ Sardool Singh v. Randhir Singh & Ors., (2010) 12 SCC 112 — leading Supreme Court authority distinguishing cancellation by an executant from declaration by a non-executant.

Hussain Ahmed Choudhury & Ors. v. Habibur Rahman (Dead) through LRs & Ors., 2025 INSC 553, decided 23.04.2025 — latest important Supreme Court reaffirmation that a non-party/non-executant need not seek cancellation of another's sale deed merely to establish his own title.

Kandha Das v. Indumati Devi, AIR 1970 Orissa 215 — important Odisha authority concerning Section 7(iv-A) and a non-executant's challenge to a document.

Prafulla Chandra Das v. Anem Bhengra Munda — Orissa High Court, discussing Kandha Das and the distinction between cancellation under Section 7(iv-A) and declaration with consequential relief.

Mustak Mallik v. Sanjib Kumar Subudhi, Orissa High Court, 19.02.2026 — recent application of Suhrid Singh to a non-executant seeking declaration plus possession.

One caution: Section 7(iv-A) and Section 7(iv)(c) should not be treated as interchangeable provisions. In Odisha, Section 7(iv-A) is the special provision for a suit for cancellation of the specified document/decreed, whereas Section 7(iv)(c) deals with declaration coupled with consequential relief. The fact that a declaratory decree may incidentally render a document ineffective is not, by itself, sufficient to convert the suit into one for cancellation.

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Section 7(iv)(d) of the Court Fees Act, 1870: Valuation and Court Fee in a Suit for Injunction

Section 7(iv)(d) provides for the computation of court fees in a suit instituted to obtain an injunction. In substance, the provision states that the court fee shall be computed according to the amount at which the plaintiff values the relief sought in the plaint, and the plaintiff must expressly state that valuation.

1. What is the basic rule?

In a suit seeking a permanent, prohibitory, or mandatory injunction, the plaintiff is generally required to value the relief claimed. The court fee is then payable ad valorem on the valuation so stated, according to the applicable court-fee schedule.

Thus, the important point is that the value of the relief of injunction, rather than automatically the market value of the property involved, governs the valuation.

The Supreme Court has emphasized that merely because immovable property is involved in litigation, its market value does not necessarily determine the suit valuation. The decisive consideration is the nature of the relief actually claimed.

2. Is the plaintiff free to put any valuation?

Section 7(iv)(d) gives the plaintiff considerable discretion in valuing an injunction relief. However, that discretion must be exercised bona fide and rationally.

A plaintiff cannot arbitrarily manipulate the valuation merely to:
pay an artificially low court fee; or
bring the suit within the pecuniary jurisdiction of a court that otherwise lacks jurisdiction.

The court may therefore examine the plaint where the valuation appears demonstrably arbitrary or inconsistent with the nature of the relief claimed.

3. Must the market value of the property be adopted?

Not necessarily. This is a particularly important feature of Section 7(iv)(d).

Suppose a property worth ₹50 lakh is the subject matter of a suit. If the plaintiff merely seeks an injunction restraining the defendant from interfering with possession, the suit does not automatically have to be valued at ₹50 lakh merely because the property has that market value. The Supreme Court in *Bharat Bhushan Gupta (S) v. Pratap Narain Verma*, decided on 16 June 2022, held that the market value of immovable property does not become decisive merely because the property is involved in the litigation; valuation must primarily depend upon the nature of the relief claimed.

4. Relationship between court-fee valuation and jurisdictional valuation

An important question is whether a plaintiff can give one valuation for court fees and another for jurisdiction.

Under Section 8 of the Suits Valuation Act, 1887, in suits falling within Section 7(iv)(d), where court fees are payable ad valorem, the valuation for the purpose of court fees and jurisdiction should ordinarily be the same.

The Orissa High Court clearly explained this principle in:

Kurupa Naik and Others v. Bhagaban Naik and Others, AIR 1968 Ori 181.

In that case, the plaintiffs sought a permanent injunction concerning property valued at ₹4,816. They valued the injunction relief at ₹100 for court fees but gave ₹4,816 as the jurisdictional value. The Orissa High Court held that, under Section 8 of the Suits Valuation Act, the valuation adopted for court fees must also be the valuation for jurisdiction. The Court further observed that the value of the property itself is not necessarily material for determining court fees in a pure injunction suit.

5. Simple example

Example: A is in possession of a house. B threatens to forcibly interfere with A's possession. A files a suit seeking only a permanent injunction restraining B from interfering with the possession.

Market value of the house: ₹30 lakh.

Relief claimed: Permanent injunction only.

A bona fide value the relief of injunction at ₹1 lakh.

In such a case, the court fee would be payable on the valuation of ₹1 lakh, according to the applicable court-fee schedule. The market value of ₹30 lakh does not automatically become the court-fee valuation merely because the dispute concerns that house.

Further, subject to the applicable provisions of the Suits Valuation Act and local law, the jurisdictional valuation should correspond with the valuation adopted for the injunction relief.

Important distinction

This principle applies where the suit is genuinely and substantially a suit for injunction. The court will examine the real nature of the relief. A plaintiff cannot disguise a suit for declaration, cancellation, possession, or another substantive relief as a mere injunction suit simply to avoid payment of the proper court fee.

Important authorities

Bharat Bhushan Gupta (S) v. Pratap Narain Verma and Another, Civil Appeal No. 4577 of 2022, decided on 16 June 2022 — the Supreme Court held that market value is not automatically decisive in a suit for mandatory or prohibitory injunction; the nature of the relief is the primary consideration.

Sathappa Chettiar v. Ramanathan Chettiar, AIR 1958 SC 245 — a leading Supreme Court authority on the plaintiff's valuation of relief under Section 7(iv) and its relationship with jurisdiction.

Kurupa Naik and Others v. Bhagaban Naik and Others, AIR 1968 Ori 181; 34 Cut LT 1195 — an important Orissa High Court decision holding that in an injunction suit under Section 7(iv)(d), the property value is not necessarily material and that court-fee and jurisdictional valuation cannot ordinarily be different.

Conclusion

Section 7(iv)(d) does not prescribe a fixed court fee merely because the suit is for injunction. The plaintiff must place a bona fide valuation upon the injunction relief, & ad valorem court fee is payable on that valuation. However, the valuation cannot be arbitrary, and the actual nature of the relief claimed—not merely the label given to the suit—ultimately determines the proper court-fee provision.

Easement Rights and Court Fee under Section 7(iv)(e) of the Court-Fees Act, 1870

Section 7(iv-e) of court fees act provides-for easements. (e) for a right to some benefit (not herein otherwise provided for) to arise out of land
Section 7(iv)(e) deals with suits “for a right to some benefit (not herein otherwise provided for) to arise out of land.” The marginal heading describes such suits as suits “for easements.” Under the general scheme of Section 7(iv), the plaintiff states the value of the relief sought in the plaint or memorandum of appeal.

1. What is an easement right?

An easement is a right possessed by the owner or occupier of one land (the dominant heritage) for the beneficial enjoyment of that land over another person's land (the servient heritage).

Common examples include:

- a right of way through another person's land;
- a right to receive light and air;
- a right to discharge rainwater;
- a right to draw water; or
- a right to use a pathway or drainage channel.

Thus, the plaintiff does not claim ownership or possession of the neighbouring land. Instead, the plaintiff claims a limited beneficial right arising out of or exercised over that land.

In H.R. Patel v. C.G. Venkatalakshamma, AIR 1955 Mys 58, the Court recognised that a suit asserting an easementary right, such as a right relating to roof water over another's land, falls within Section 7(iv)(e).

2. How are valuation and court fee computed?

Section 7(iv)(e), read with the concluding portion of Section 7(iv), provides that the suit is valued according to the amount at which the plaintiff values the relief sought in the plaint.

Therefore:

Step 1: The plaintiff reasonably assesses the value of the easementary relief.

Step 2: The plaintiff states that valuation in the plaint.

Step 3: Court fee is paid according to the applicable court-fee schedule on that valuation.

The provision generally does not prescribe the market value of either the dominant land or the servient land as the automatic basis of valuation. This is because an easementary right itself may not have an easily ascertainable market value. The general principle governing suits under Section 7(iv) is that, where the statute leaves valuation to the plaintiff, the plaintiff's valuation is ordinarily accepted unless it is demonstrably arbitrary or unreasonable.

3. Importance of the words “not herein otherwise provided for”

These words are extremely important. Section 7(iv)(e) is a residuary provision for a benefit arising out of land.

Consequently, if the Court-Fees Act or a valid State amendment specifically provides another method for valuing a particular relief, the specific provision will prevail.

For example, suppose a particular State Court-Fees law contains a separate provision prescribing the valuation of a suit relating to easements. In such a case, the specific statutory provision must be applied rather than the general residuary provision of Section 7(iv)(e).

The legislative history in some States demonstrates this distinction: later State court-fee legislation has expressly created separate provisions dealing with suits relating to easements, instead of relying upon the general language of Section 7(iv)(e).

Example

A owns agricultural land and has been using a pathway through B's adjoining land for access to the public road. B subsequently blocks the pathway. A file a suit claiming a right of easement and seeks removal of the obstruction.

If no other specific statutory provision governs the valuation of this particular easement suit, A may value the relief under Section 7(iv)(e) and pay the court fee applicable to that valuation.

However, if a special provision in the applicable State Court-Fees Act specifically prescribes the valuation or court fee for such an easementary claim, that specific provision will govern, and Section 7(iv)(e) cannot be used to bypass it.

Conclusion

Section 7(iv)(e) applies to a suit seeking enforcement of an easementary or similar beneficial right arising out of land, provided that the matter is not otherwise specifically provided for in the applicable court-fee legislation. Ordinarily, the plaintiff states a reasonable valuation of the relief, and court fee is paid accordingly. But where the statute contains a specific method of valuation for that particular relief, the specific provision overrides the general provision of Section 7(iv)(e).

Section 7(iv)(f) of the Court Fees Act, 1870: Suits for Accounts

Section 7(iv)(f) provides that, in a suit for accounts, court-fee is payable according to the amount at which the relief sought is valued in the plaint or memorandum of appeal. The plaintiff is required to state the amount at which he values the relief.

1. What is a suit for accounts?

A suit for accounts is generally filed where the plaintiff is entitled to receive accounts from the defendant, but the exact amount due cannot be ascertained without examining the relevant transactions and records. Examples include accounts between a principal and an agent, partners, or other persons standing in a fiduciary or similar relationship.

The special feature of such a suit is that, at the time of its institution, the plaintiff may not know the precise amount ultimately payable to him.

2. How is the suit valued?

Under Section 7(iv)(f), the plaintiff must put a valuation upon the relief claimed in the plaint. However, this valuation is not entirely arbitrary. Since the exact amount may be unknown, the plaintiff is permitted to make a reasonable and bona fide estimate of the amount likely to be found due upon rendition of accounts.

Thus:

Suit valuation = the reasonable amount at which the plaintiff values the relief for rendition of accounts.

The court-fee is then payable on that valuation according to the applicable court-fee schedule.

3. How is the court-fee calculated?

Suppose the plaintiff alleges that the defendant has managed his business or property and that, upon taking accounts, approximately ₹2,00,000 may be found due to him.

The plaintiff may therefore value the relief at ₹2,00,000 and pay the applicable ad valorem court-fee on that amount.

The plaintiff cannot deliberately put an unrealistically low or arbitrary figure merely to pay a lesser court-fee or bring the suit within the pecuniary jurisdiction of a particular court.

4. What happens if a larger amount is ultimately found due?

In a suit for accounts, the final amount may be more or less than the tentative valuation given in the plaint. If, after accounts are taken, the plaintiff becomes entitled to a larger amount, the necessary additional court-fee may have to be paid before the plaintiff can obtain or execute a decree for the excess amount, as required by law. This practical feature explains why Section 7(iv)(f) permits an estimated valuation at the initial stage.

5. Important judicial authority

The Supreme Court in *A.K.A.Ct. V.C.T. Meenakshisundaram Chettiar v. Venkatachalam Chettiar*, AIR 1979 SC 989, explained that, because a plaintiff in a suit for accounts may not know the exact state of the defendant's transactions, it may be impossible to estimate precisely the amount ultimately due. Nevertheless, the valuation stated by the plaintiff must be a reasonable estimate and not an arbitrary or deliberately underestimated figure.

The Orissa High Court similarly applied this principle in *Mahendra Singh Jaggi v. Dataram Jagannath* (1985), holding that a suit or

appeal for rendition of accounts is governed by Section 7(iv)(f) and that court-fee is payable according to the amount at which the relief is properly valued.

Conclusion

Section 7(iv)(f) recognizes the practical difficulty of determining the exact monetary entitlement before accounts are examined. Therefore, the plaintiff may make a reasonable and bona fide estimate of the amount due, value the suit accordingly, and pay court-fee on that valuation. The statutory discretion given to the plaintiff is not a licence to adopt an arbitrary or fictitious valuation.

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Section 7(v) provides for valuation and court fee for possession of lands under different situations the gist of which is shown in the following table which is easy to remember.

Situation under Section 7(v)	Basis of valuation
7(v)(a) — entire estate / definite share / separately assessed part + permanently settled revenue	20 × annual revenue (as per orissa amendment Act V of 1939)
7(v)(b) — same category + revenue not permanently settled	10 × annual revenue (as per orissa amendment Act V of 1939)
7(v)(c) — land pays no revenue / partly exempt / fixed payment in lieu of revenue	15 × net profits; if no net profits → Court's estimate with reference to similar land
7(v)(d) — land forms part of revenue-paying estate but is neither a definite share nor separately assessed	Market value of the land
7(v)(e) — subject-matter is house or garden	Market value of house or garden

The important point is that market value is not the normal method for every suit for possession of land under Section 7(v). It becomes the prescribed basis only in the situations specifically mentioned in clauses (a) to (e).

In most of the suits, very often the above clauses i.e. clauses (d) and (e) are applicable. Let us further explain both the above provisions with suitable example and citations.

1. Section 7(v)(d) — possession of a part of an estate which is not separately assessed

Clause (d) applies where all the following conditions exist:

The suit is for possession of land;

The land forms part of an estate paying revenue to Government;

The land claimed is not a definite share of that estate; and

The land is not separately assessed to land revenue.

In such a case, the statute expressly provides that the value of the subject-matter shall be the market value of the land.

Simple example

Suppose Estate A is paying land revenue to Government. A particular physical portion measuring 5 acres is claimed by the plaintiff, but:

the 5 acres are not a definite share of Estate A; and

those 5 acres are not separately assessed to land revenue.

If the plaintiff files a suit for possession of those specific 5 acres, the suit is valued under Section 7(v)(d) on the market value of those 5 acres, and not by applying 20 times or 10 times the land revenue.

Orissa High Court authority

In *Khetrabasi Padhan v. Batakrishna Padhan*, AIR 1969 Ori 262 : 35 CLT 476, the Orissa High Court clearly explained the distinction. The disputed 89.83 acres constituted a definite share of an estate and

were separately assessed. Therefore, clause (b), and not clause (d), applied. The Court observed that only if the disputed land were not a definite share and were not separately assessed would Section 7(v)(d) apply and market value become the basis of court-fee.

The principle can therefore be remembered as:

Definite share + separately assessed → revenue multiple under (a)/(b).

Specific part which is neither a definite share nor separately assessed → market value under (d).

A similar principle was explained in *Balu Deochand Kulmi v. Fundibai Amichand Kulmi*, where the Court held that clause (d) is a residuary provision and applies where the claimed land does not fall within the revenue-based categories.

2. Section 7(v)(e) — possession of a house or garden

Clause (e) is much simpler.

Where the subject-matter of the suit is a house or garden, the value is the market value of the house or garden.

Thus, unlike land covered by clauses (a) and (b), there is no multiplication of annual land revenue under clause (e).

Example

Suppose A files a suit for possession of a residential house and the market value of the house is ₹20 lakh.

The value for purposes of Section 7(v)(e) is:

₹20,00,000

The court-fee is then calculated ad valorem on that statutory valuation, subject to the applicable provisions of the Court-fees Act and Odisha amendments.

The same principle applies where the subject-matter is a garden: its market value is taken.

The Supreme Court has also recognized the distinction between agricultural land and a house/garden under Section 7(v). In Duli Chand (D) through LRs v. Shri Bans Guru Gaddi Kabir Dharam Dass, the Supreme Court considered Section 7(v) and reiterated that where the subject-matter is a house or garden, clause (e) prescribes market value, whereas the statutory valuation for qualifying land may instead be based on land revenue.

A useful way to remember clauses (d) and (e)

7(v)(d): Land → market value because the land does not fit the revenue-based categories.

7(v)(e): House/Garden → market value expressly, irrespective of the land-revenue formula applicable to land.

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Section 7(vi): Court Fee in a Suit for Pre-emption

1. What is the right of pre-emption?

Pre-emption is a legal right by which a person having a preferential or superior right is entitled to step into the shoes of the purchaser when specified property has been transferred to another person.

In simple terms, if A sells his property to B, and C has a legally recognised right of pre-emption, C may institute a suit asking the court to substitute him for B as purchaser, subject to the conditions governing that right.

The Supreme Court has described pre-emption as essentially a right of substitution, and not an independent right to purchase the property afresh. □

The right, however, is not a general right available to every person. It must arise from a statute, valid custom, or other legally enforceable source applicable to the particular transaction.

2. How is the suit valued under Section 7(vi)?

Section 7(vi) of the Court-fees Act provides that a suit to enforce pre-emption is valued according to the value of the land, house or garden in respect of which the right is claimed, the value being computed in accordance with Section 7(v). □

Therefore, the important point is:

The court-fee is not necessarily calculated on the price mentioned in the sale deed. The valuation has to be determined by applying the rules contained in Section 7(v).

3. How Section 7(v) operates

The method depends upon the nature of the property:

A. Land forming an estate or definite share of an estate paying Government revenue: The valuation is determined according to the applicable statutory multiple of the revenue payable, as prescribed in Section 7(v).

B. Land not falling within the revenue-based categories: Section 7(v) provides other methods, including valuation based on net profits or, in the specified case, market value.

C. House or garden: The value is the market value of the house or garden.

Thus, Section 7(vi) adopts the valuation machinery of Section 7(v) rather than creating an independent method of valuation.

4. Example

Suppose A sells agricultural land to B, and C, claiming a statutory right of pre-emption, files a suit to enforce that right.

Assume, for illustration, that under the applicable Section 7(v) provision the land is valued at 10 times the annual land revenue, and the annual revenue is ₹5,000.

Therefore:

Valuation for court-fee = ₹5,000 × 10 = ₹50,000.

The ad valorem court fee prescribed under the applicable Schedule is then calculated on ₹50,000.

The important point is that, in such a case, the court-fee valuation is not necessarily the market value of the agricultural land.

The Supreme Court explained this principle in *Gajja Singh v. Gurdial Singh*, AIR 1960 SC 951, holding that for an agricultural-land pre-emption suit the valuation for court-fee follows Section 7(v), and

therefore, may be based on the statutory land-revenue formula rather than market value.

5. One important distinction

The court-fee valuation under Section 7(vi) should not automatically be confused with the jurisdictional valuation of the suit. The two may be governed by different statutory provisions, including the Suits Valuation Act and rules framed thereunder. The Supreme Court has recognised this distinction in *Gajja Singh*.

In one sentence

Pre-emption is the right of a qualified person to substitute himself for the purchaser; under Section 7(vi), the court-fee valuation is determined by applying the valuation rules of Section 7(v) to the land, house or garden in respect of which pre-emption is claimed.

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Odisha Amendment — Section 7(vi-A) and Court Fee in Partition Suits
The Orissa Court-fees (Amendment) Act, 1939 (Orissa Act V of 1939) made an important change in the law relating to partition suits.

It omitted Section 7(iv)(b) of the Central Court-fees Act and inserted a specific provision, Section 7(vi-A), dealing with suits for partition and separate possession of a share in joint family or joint property.

Under the inserted Section 7(vi-A), where a plaintiff seeks partition and separate possession of his share and alleges that he has been excluded from possession of the property of which he claims to be a coparcener or co-owner, the suit is to be valued according to the market value of the plaintiff's share, and ad valorem court fee is

payable on that valuation. The Explanation expressly provides that “possession” includes constructive possession.

Thus, the important distinction in Odisha is:

Position pleaded in the plaint	Applicable provision	Court fee
Plaintiff alleges exclusion from possession	Section 7(vi-A)	Ad valorem on market value of plaintiff's share
Plaintiff alleges joint/constructive possession	Article 17-A, Schedule II of Court fees act	Fixed court fee

Example

Suppose a joint property is worth ₹30,00,000 and the plaintiff claims a 1/3 share.

If the plaintiff alleges exclusion from possession:

Value of plaintiff's share = ₹30,00,000 × 1/3 = ₹10,00,000.

The suit is governed by Section 7(vi-A) and

Ad valorem court fee is payable on ₹10,00,000.

(2) If the plaintiff alleges that he is in joint or constructive possession with the defendants:

The suit is not governed by Section 7(vi-A). Since the plaintiff is not seeking recovery of possession from an alleged ouster but merely seeks separation of his share from joint enjoyment, Article 17-A of Schedule II applies and the prescribed fixed court fee is payable.

Leading Orissa High Court decision.

The position was authoritatively explained in *Balmakunda Singh Rai & Ors. v. Chitrabhanu Singh Rai & Ors.*, decided on 20 January 1970, AIR 1971 Ori 108, 36 CLT 1200.

The Orissa High Court held that, under the Orissa amendment, Section 7(vi-A) is attracted only when the plaintiff alleges exclusion from possession. Where the plaintiff claims to be in actual or constructive joint possession, the suit is governed by Article 17-A of Schedule II, because the subject-matter of such a partition suit cannot appropriately be valued in money—the plaintiff is essentially seeking a change in the mode of enjoyment, rather than recovery of possession.

The same principle was subsequently reiterated in *Nakhyatramali Debi v. Chandrasekhar Pattnaik & Ors.*, Orissa High Court, 8 November 1976, where the Court held that the question of court fee has to be determined primarily from the averments in the plaint, rather than from the defence taken in the written statement.

In short:

Exclusion from possession → Section 7(vi-A) → market value of plaintiff's share → ad valorem court fee.

Joint/constructive possession → Article 17-A → fixed court fee.

Section 7(vii) and (viii) of the Court-fees Act, 1870

1. Section 7(vii) — Suit concerning the interest of an assignee of land-revenue

Section 7(vii) provides:

“In suits for the interest of an assignee of land-revenue — fifteen times his net profits as such for the year next before the date of presenting the plaint.”

What is an “assignee of land-revenue”?

The expression refers to a person who has been assigned the right to receive land revenue payable from land, rather than necessarily being the owner of the land itself.

In simple terms:

Government → land revenue → assignee

The Government may, under the applicable revenue system, assign the right to collect or receive the revenue from particular land or an estate to another person. The person receiving that assigned revenue is the assignee of land-revenue.

Therefore, the expression does not ordinarily mean:

an ordinary purchaser of agricultural land;

a person who merely owns land;

a person to whom land itself has been transferred.

It refers specifically to an interest or right in the land revenue.

The distinction is important because Section 7(vii) is concerned with the income-producing interest in the revenue, rather than the market value of the land itself.

Why is the valuation fifteen times the net profit?

The Act creates an artificial method of valuation.

The court does not take:

the market value of the land; or

the total amount of land revenue collected.

Instead:

Suit valuation = $15 \times$ net profits of the assignee for the year immediately preceding presentation of the plaint.

Thus, the expression “fifteen times” is a statutory multiplier.

Example

Suppose A is an assignee of land-revenue and his net profit from the assigned revenue interest during the year immediately preceding the filing of the suit was:

₹20,000

Then:

Statutory value = ₹20,000 $\times$ 15 = ₹3,00,000.

Therefore, the court-fee is calculated ad valorem on ₹3,00,000, according to the applicable court-fee rate.

Another example

Suppose the assignee's:

gross receipts from the assigned revenue = ₹1,00,000;

permissible expenses = ₹30,000;

net profit = ₹70,000.

Then:

₹70,000 $\times$ 15 = ₹10,50,000.

The relevant valuation under Section 7(vii) is therefore ₹10,50,000, not ₹1,00,000 and not the market value of the underlying land.

Important point

The relevant period is expressly fixed by the statute:

“the year next before the date of presenting the plaint.”

Therefore, the calculation is based on the net profits for the immediately preceding year, not the average of several years and not the profits anticipated in the future.

The statutory provision and this method of valuation are reproduced in the current text of Section 7 of the Act.

For better understanding of section 7(vii) of Court fees act let us cite examples with further explanation:

What kind of suit is contemplated?

An assignee of land-revenue is a person to whom the right to receive the land revenue, or the income/benefit represented by that revenue interest, has been assigned. The important point is that the plaintiff is not necessarily claiming ownership of the land itself. The plaintiff is claiming or protecting his revenue-receiving interest.

Therefore, a suit under Section 7(vii) would ordinarily arise where someone denies, interferes with, or claims adversely to the plaintiff's assigned right to receive the land revenue.

For example:

Government/Revenue authority → assigns the right to receive specified land revenue → A (assignee).

If B subsequently disputes A's right and claims that B, and not A, is entitled to receive that revenue, A may institute a civil suit to establish and enforce his assigned interest.

Who would be the parties?

Plaintiff:

Usually the assignee of land-revenue, i.e. the person claiming the assigned revenue interest.

Defendant:

The person who denies, interferes with, or claims adversely to that revenue interest. Depending upon the circumstances, this might be another claimant to the same revenue interest, a person withholding the revenue, or another person asserting a competing right.

The exact identity of the defendant therefore depends upon the nature of the dispute.

What would the prayer look like?

A typical prayer might be along these lines:

“Declare that the plaintiff is the lawful assignee and entitled to receive the land-revenue arising from the lands described in the schedule and restrain the defendant from interfering with or receiving the said revenue.”

If the defendant has actually collected the revenue, the plaintiff might additionally seek:

“a decree directing the defendant to pay to the plaintiff the revenue/profits wrongfully received.”

The principal relief, however, is protection or enforcement of the plaintiff's assigned revenue interest.

One simple example

Suppose the Government has assigned to A the right to receive revenue from a particular estate. A's net profit from this assigned revenue during the year immediately preceding the suit was ₹20,000. Later, B claims that he is entitled to receive the same revenue and prevents A from receiving it.

A files a suit against B seeking:

a declaration that A is the lawful assignee of the land-revenue;
an injunction restraining B from interfering with A's right; and, if appropriate,
recovery of revenue wrongfully collected by B.

This is the type of dispute to which Section 7(vii) is directed.

For court-fee valuation:

Net profit for preceding year = ₹20,000

Statutory value = ₹20,000 × 15 = ₹3,00,000.

Thus, the court-fee is calculated on ₹3,00,000, subject to the applicable Odisha court-fee provisions/rates. The statutory formula is expressly “fifteen times his net profits as such for the year next before the date of presenting the plaint.”

In one sentence

Section 7(vii) applies when the very subject-matter of the civil suit is the plaintiff's legally recognised interest as an assignee of land-revenue—not merely ownership or possession of the underlying land.

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2. Section 7(viii) — Suit to set aside an attachment

Section 7(viii) deals with suits:

“to set aside an attachment of land or of an interest in land or revenue.”

The normal rule is:

Suit valuation = amount for which the land or interest was attached.

Thus, the court-fee is not ordinarily calculated on the market value of the property. The amount for which the attachment was made is the starting point.

Example 1 — Amount of attachment is lower than value of property

Suppose:

Market value of land = ₹20 lakh

Land was attached for = ₹5 lakh

The plaintiff files a suit to set aside the attachment.

Under Section 7(viii):

Valuation = ₹5 lakh.

The court-fee is therefore calculated on ₹5 lakh.

3. The important proviso to Section 7(viii)

The provision contains an important safeguard:

Where the amount for which the land or interest was attached exceeds the value of the land or interest, the court-fee is to be computed as if the suit were for possession of such land or interest.

Thus, there are effectively two stages.

Stage 1

Ask:

For how much was the property attached?

Stage 2

Compare that amount with:

The value of the land or interest.

Then:

Situation	Basis of valuation
Attachment amount $\leq$ value of land/interest	Amount for which attachment was made
Attachment amount $>$ value of land/interest	As if suit were for possession of the land/interest

Example 2 — Proviso applies

Suppose:

Market/statutory value of the land = ₹8 lakh

Amount for which attachment was made = ₹12 lakh.

Since:

₹12 lakh $>$ ₹8 lakh

the proviso applies.

The plaintiff is not required to pay court-fee on ₹12 lakh.

Instead, the court-fee is computed as if the suit were a suit for possession of the land.

The precise valuation of the land for this purpose would then be determined under the applicable provision governing valuation of a possession suit, principally Section 7(v), subject to the relevant State amendments.

This makes Section 7(viii) a protective ceiling: a person challenging an attachment should not be required to pay a higher fee merely

because the attachment amount happens to exceed the value of the property.

4. What kinds of attachment are contemplated?

Section 7(viii) expressly covers three types of subject matter:

(a) Attachment of land

Example: A's agricultural land is attached for ₹6 lakh and A files a suit to set aside the attachment.

(b) Attachment of an interest in land

Here the attachment may concern an interest or right in land rather than the entire ownership of the land.

(c) Attachment of an interest in revenue

For example, an attachable right to receive revenue may itself be the subject of attachment.

The provision is therefore wider than merely an attachment of the physical land.

The courts have recognised this distinction in interpreting Section 7(viii). The provision specifically speaks of land, an interest in land, and an interest in revenue.

5. A useful distinction — attachment suit versus ordinary declaratory suit

The substance of the relief is important.

If the real object of the suit is to obtain an order setting aside an existing attachment, Section 7(viii) is attracted even though the plaintiff may use declaratory language in drafting the prayer.

For example:

“Declare that the attachment dated 10.06.2026 is illegal and void and cancel/set aside the said attachment.”

If the substantive relief is the removal of the attachment, the court must examine whether Section 7(viii) applies.

However, a mere declaration concerning the plaintiff's title or status is not automatically converted into a Section 7(viii) suit merely because an attachment happens to exist.

An instructive decision is *Smt. Bhagwan Dei v. Firm Het Ram Suresh chandra*, AIR 1960 All 195, where the court emphasised the distinction between a suit actually seeking to set aside an attachment and a mere declaratory suit concerning the legal effect of an attachment.

6. Relationship with Order XXI, Rule 58 CPC

There is an important procedural distinction.

Where property has been attached in execution of a decree, the Code of Civil Procedure provides a summary remedy under Order XXI Rule 58 for adjudication of claims and objections to attachment.

Section 7(viii), however, concerns a suit to set aside an attachment.

The traditional case law has treated the two remedies distinctly in appropriate circumstances. A classic illustration is *Asit Baran Choudhary v. Prafulla Chandra Bose*, AIR 1984 Cal 366, which explains the scope of Section 7(viii), including attachments of land, interests in land and interests in revenue.

Accordingly, one should not mechanically apply Section 7(viii) to every proceeding in which an attachment is mentioned. The nature of the proceeding and relief actually sought must first be identified.

7. Comparison between Section 7(vii) and Section 7(viii)

Point	Sec.7(vii)	Sec.7(viii)
Subject	Interest of an assignee of land-revenue	Setting aside attachment
Plaintiff's interest	Revenue-assignee's interest	Owner/person claiming interest in attached property
Basic valuation	15 × net profits	Amount for which property/interest was attached
Relevant Period	Immediately preceding year	Amount stated in attachment
Special proviso	None in sec.7(vii)	If attachment amount exceeds value, calculate as possession suit
Market value normally relevant?	No	No, unless proviso becomes applicable
Main question	What were the assignee's net profits?	For what amount was the property attached?

8. Combined practical illustrations

Illustration A — Assignee of land revenue

A is an assignee of land revenue.

Net profit from the assigned revenue interest during the year immediately preceding the suit:

₹40,000

Therefore:

$₹40,000 \times 15 = ₹6,00,000$

Valuation under Section 7(vii) = ₹6,00,000.

Court-fee is calculated ad valorem on ₹6 lakh according to the applicable court-fee rate.

Illustration B — Attachment below property value

Value of land = ₹25 lakh

Amount of attachment = ₹10 lakh

Since ₹10 lakh does not exceed ₹25 lakh:

Valuation under Section 7(viii) = ₹10 lakh.

Illustration C — Attachment above property value

Value of land = ₹10 lakh

Amount of attachment = ₹18 lakh

Since ₹18 lakh exceeds ₹10 lakh, the proviso operates.

The suit is valued as if it were a suit for possession of the land, rather than on ₹18 lakh.

9. A simple way to remember both provisions

Section 7(vii)

ASSIGNEE → NET PROFIT → × 15

15 × preceding year's net profit

Section 7(viii)

ATTACHMENT → ATTACHMENT AMOUNT

Amount of attachment

But remember the proviso:

If attachment amount > property value → value it as a possession suit.

Conclusion

Section 7(vii) deals with a specialised and historically rooted category—the interest of an assignee of land-revenue. The assignee is concerned with the right to receive land revenue, not necessarily ownership of the underlying land. The Act values that interest by taking 15 times the net profits for the year immediately preceding the filing of the suit.

Section 7(viii), in contrast, deals with a challenge to an attachment of land, an interest in land, or an interest in revenue. Ordinarily, the valuation is the amount for which the attachment was made. However, where that amount is greater than the value of the property or interest, the proviso protects the plaintiff by requiring valuation as if the suit were one for possession.

One-line practical formula

7(vii): Net profit × 15.

7(viii): Attachment amount — but if attachment amount exceeds property value, use possession-suit valuation.

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Section 7(ix) is a comparatively simple provision once the three types of mortgage suits are separated. The important point is that, under this provision, valuation is not based on the market value of the mortgaged property; it is based on the principal money expressed to be secured by the mortgage instrument.

Short Note: Section 7(ix) — Suits for Redemption and Foreclosure of Mortgage

Section 7(ix) of the Court-fees Act, 1870 — Redemption and Foreclosure of Mortgage

Section 7(ix) — Suits for Redemption and Foreclosure of Mortgage

1. **Statutory provision**

Section 7(ix) of the Court-fees Act, 1870 provides for the computation of court-fee in three categories of mortgage suits:

Suit against a mortgagee for recovery of the mortgaged property — commonly a suit for redemption;

Suit by a mortgagee to foreclose the mortgage; and

Suit by a mortgagee, where the mortgage is by conditional sale, to have the sale declared absolute.

In all the three cases, the suit is to be valued according to the principal money expressed to be secured by the instrument of mortgage.

Thus, the formula is:

Valuation for court-fee = Principal money expressed to be secured by the mortgage instrument.

The provision therefore adopts a statutory or artificial valuation, rather than the market value of the mortgaged property.

2. **First category** — Suit by mortgagor for redemption and recovery of property

What is a redemption suit?

A mortgage is essentially a security for repayment of a debt. After the mortgage debt is paid or tendered according to law, the mortgagor has the right to get back the property and the mortgagee's interest comes to an end.

Therefore, where the mortgagee is in possession of the property, the mortgagor may institute a suit seeking:

redemption of the mortgage; and

recovery of possession of the mortgaged property.

Such a suit falls under the first part of Section 7(ix).

Example

Suppose A mortgages his house to B for ₹5,00,000.

The mortgage deed states that ₹5,00,000 is the principal money secured by the mortgage.

Later A wants to redeem the mortgage and recover possession of the house from B.

Even if the market value of the house is ₹40 lakh, the suit is not valued at ₹40 lakh for purposes of Section 7(ix).

The valuation for court-fee purposes will be:

₹5,00,000 — the principal money expressed to be secured by the mortgage.

Thus, the applicable ad valorem court-fee is calculated on ₹5,00,000, subject of course to the applicable State amendments and court-fee schedule.

The courts have recognised that a suit which in substance seeks redemption of a mortgage and recovery of the mortgaged property is governed by Section 7(ix), rather than the provision applicable to an ordinary suit for possession. A recent illustration is *M/s Fateh Jee & Co. v. L.M. Nagpal*, decided on 17 October 2025, where the court treated the suit as one for redemption and held that Section 7(ix) governed the court-fee valuation.

3. **Second category** — Suit by mortgagee for foreclosure

What is foreclosure?

Foreclosure is a remedy available to a mortgagee in appropriate cases whereby the mortgagee seeks a decree finally barring the mortgagor from redeeming the mortgage, thereby extinguishing the mortgagor's right of redemption.

Thus, this is essentially the reverse situation:

In a redemption suit, the mortgagor approaches the court against the mortgagee.

In a foreclosure suit, the mortgagee approaches the court against the mortgagor.

Example

Suppose A mortgages his property to B for ₹8,00,000.

The mortgage deed expressly secures principal money of ₹8,00,000.

If B, as mortgagee, institutes a suit for foreclosure of the mortgage, the suit is valued under Section 7(ix) at:

₹8,00,000

The market value of the property, say ₹30 lakh, is irrelevant for determining the valuation under Section 7(ix).

The court-fee is therefore calculated on the principal money expressed to be secured by the mortgage instrument.

4. Third category — Conditional-sale mortgage: suit to have sale declared absolute

This is a special situation.

Under a mortgage by conditional sale, the ostensible sale is made subject to a condition connected with repayment of the mortgage money. The mortgagee may, in the circumstances recognised by law, seek a decree making the sale absolute.

Section 7(ix) specifically provides that such a suit is also valued according to:

the principal money expressed to be secured by the instrument of mortgage.

Example

A executes a mortgage by conditional sale in favour of B. The instrument provides that ₹10,00,000 is the principal money secured. If B institutes a suit seeking to have the conditional sale declared absolute, the valuation for court-fee purposes is:

₹10,00,000

It is not the market value of the property, even if the property is worth ₹50 lakh.

5.The three situations at a glance:

Situation	Who files	Relief Claimed	Basis of valuation under section 7(ix)
Redemption	Mortgagor	Redemption and recovery of mortgaged property	Principal money secured
Foreclosure	Mortgagee	Foreclosure of mortgage	Principal money secured
Conditional	Mortgagee	Sale declared absolute	Principal money secured

Common principle

Although the nature of relief is different in all three cases, the same valuation rule applies:

Court-fee valuation = principal money expressed to be secured by the instrument of mortgage.

6. Why does the Act use the principal money instead of market value?
A mortgage suit is fundamentally concerned with the mortgage transaction and the secured debt, rather than with the market value of the property.

For example:

Market value of property = ₹50 lakh

Principal secured by mortgage = ₹6 lakh

For a suit falling under Section 7(ix), the relevant valuation is ₹6 lakh, not ₹50 lakh.

The Supreme Court and High Courts have explained that Section 7 contains special rules for converting different kinds of relief into a money value for purposes of court-fee. In *Madhusudan Dahyabhai v. Manilal Harilal*, the court specifically noted that Section 7(ix) fixes the valuation of mortgage suits by reference to the principal money expressed to be secured by the mortgage instrument.

7. An important distinction: principal amount vs. amount actually due

The expression used in Section 7(ix) is significant:

“Principal money expressed to be secured by the instrument of mortgage”

Therefore, for the original suit, the statutory basis is the principal amount expressed in the mortgage instrument, and not simply the market value of the property.

For example, if the mortgage deed secures ₹5 lakh but, because of accumulated interest, the mortgagee claims ₹7 lakh at the time of suit, Section 7(ix) still directs the court-fee valuation by reference to the statutory criterion of the principal money expressed to be secured.

However, appeals present a separate question. If an appeal concerns only the amount found payable on redemption, rather than the very right of redemption, the valuation of the appeal may depend upon the subject-matter actually in dispute. This distinction has been recognised in the case law.

8. A useful judicial principle

In *B. Asaithambi v. Praveen Chordia* (28 August 2017), the court considered the operation of Section 7(ix) in the context of an appeal

arising from a redemption suit. It explained the important distinction between:

an appeal questioning the right of redemption; and

an appeal questioning only the amount payable for redemption.

Where the dispute in appeal is confined to the amount payable, the court-fee may be calculated with reference to the amount actually in dispute rather than mechanically applying the valuation of the original redemption suit.

This distinction is particularly useful when dealing with appeals in mortgage suits.

9. Simple illustration covering all three categories

Assume that a mortgage deed secures ₹12 lakh over a property whose market value is ₹60 lakh.

A. Redemption

Mortgagor files suit against mortgagee for redemption and recovery of possession.

Valuation under Section 7(ix) = ₹12 lakh.

B. Foreclosure

Mortgagee files suit seeking foreclosure of the mortgage.

Valuation under Section 7(ix) = ₹12 lakh.

C. Conditional sale

The mortgage is by conditional sale and the mortgagee seeks to have the sale declared absolute.

Valuation under Section 7(ix) = ₹12 lakh.

Thus, in all three cases:

Market value ₹60 lakh → irrelevant for Section 7(ix) valuation. Principal secured ₹12 lakh → basis of valuation.

10. Conclusion

Section 7(ix) creates a special rule of valuation for mortgage litigation.

It covers three situations:

- (i) Redemption: Mortgagor sues the mortgagee to recover the mortgaged property.
- (ii) Foreclosure: Mortgagee sues to extinguish the mortgagor's right of redemption.
- (iii) Conditional sale: Mortgagee sues to have the conditional sale declared absolute.

In each case, the valuation for court-fee is determined by the principal money expressed to be secured by the mortgage instrument, and not by the market value of the mortgaged property.

One-line rule for practical use

“Mortgage suit under Section 7(ix) → identify the principal money secured in the mortgage instrument → use that amount for court-fee valuation.”

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Section 7(x) is an important provision because it lays down a special method of valuation for suits seeking specific performance of different kinds of contracts. The valuation is not ordinarily based on the market value of the property; it is determined according to the particular measure prescribed in the relevant sub-clause.

Section 7(x) — Suits for Specific Performance

Valuation and Court Fee

Section 7(x) of the Court-fees Act, 1870 provides four different methods of valuation

Clause	Nature of suit	Basis of valuation
7(x) (a)	Specific performance of contract of sale	Amount of consideration
7(x) (b)	Specific performance of contract of mortgage	Amount agreed to be secured
7(x) (c)	Specific performance of contract of lease	Fine/premium + rent for the first year
7(x) (d)	Specific performance of an award	Amount or value of property in dispute

:

The court fee payable is the ad valorem fee prescribed in the applicable Schedule, calculated on the statutory valuation arrived at under Section 7(x).

1. Contract of sale — Section 7(x)(a)

Where the plaintiff asks the court to compel the defendant to perform an agreement for sale, the suit is valued according to the amount of consideration mentioned in the contract.

It is important that the valuation is not ordinarily made on the present market value of the property.

Example:

A agrees to sell a house to B for ₹20 lakh. B files a suit seeking specific performance of the agreement.

Contract consideration = ₹20,00,000

Suit valuation under Section 7(x)(a) = ₹20,00,000

Court fee = applicable ad valorem court fee on ₹20,00,000.

The fact that the house may presently have a market value of ₹35 lakh does not, by itself, make ₹35 lakh the valuation under Section 7(x)(a).

The Orissa High Court has specifically considered this distinction in *Haramani Devi v. Balaram Panda*, 1957, explaining that Section 7(x)(a) prescribes consideration as the measure for court-fee purposes.

2. Contract of mortgage — Section 7(x)(b)

Where specific performance of a contract to execute a mortgage is sought, valuation is according to:
the amount agreed to be secured.

Example:

A agrees to execute a mortgage in favour of B to secure a loan of ₹10 lakh. A refuse to execute the mortgage. B files a suit for specific performance.

Suit valuation = ₹10 lakh.

The court fee is calculated ad valorem on ₹10 lakh.

3. Contract of lease — Section 7(x)(c)

For specific performance of a contract of lease, valuation is:

Fine or premium, if any + rent agreed to be paid during the first year of the lease.

The important point is that rent for the entire period of the lease is not taken.

Example:

A agrees to grant B a 10-year lease:

Premium = ₹2,00,000

Monthly rent = ₹10,000

First year's rent = ₹1,20,000

Therefore:

Suit valuation = ₹2,00,000 + ₹1,20,000 = ₹3,20,000.

The court fee is calculated on ₹3,20,000.

4. Specific performance of an award — Section 7(x)(d)

Where the suit seeks specific performance/enforcement of an award, valuation is according to:

the amount or value of the property in dispute.

Thus, unlike Section 7(x)(a), where the consideration of the sale contract is the measure, clause (d) expressly adopts the amount or value of the property in dispute.

Important point regarding additional relief of possession

A frequent question is: If a plaintiff seeks specific performance of an agreement for sale and also asks for possession of the property, should the suit be valued under Section 7(v) on the market value of the property?

The general principle is that where possession is merely a consequential relief flowing from the specific performance of the sale agreement, the suit continues to be governed by the special provision of Section 7(x)(a) rather than being valued separately under Section 7(v).

The Supreme Court has also recognised this approach in cases concerning suits for specific performance coupled with possession. The controlling consideration is the substance of the relief and the nature of the cause of action, rather than merely the wording of the prayer.

An important Orissa High Court decision

A particularly useful recent decision is *Davinder Kaur Flora v. Debaraj Bidhar*, Orissa High Court. The Court examined a plaint where a relief described as a "mandatory injunction" was, in substance, a prayer for specific performance of a contract.

The Court held that the court must look at the substance of the relief claimed and the plaint as a whole, rather than being misled by the label attached to the prayer. Since the relief was really one for specific performance, Section 7(x) applied and the plaintiff was required to

value the suit according to the consideration mentioned in the agreement.

This principle is very useful in practice:

A plaintiff cannot avoid the court fee prescribed by Section 7(x) merely by describing a prayer for specific performance as a prayer for "mandatory injunction."

Important distinction: Court-fee valuation vs. appellate subject-matter value

There is an interesting qualification in *Haramani Devi v. Balaram Panda*, 1957 Supreme (Ori) 9. The Orissa High Court held that although ₹9,500 was the valuation for court-fee purposes under Section 7(x)(a), the "value of the subject-matter" for the separate purpose of determining the right of appeal to the Supreme Court could be the market value of the property.

Therefore, it is useful not to confuse:

Section 7(x) valuation for court fee with valuation of the subject matter for a particular appellate/jurisdictional purpose.

Quick revision formula

Section 7(x)(a) → Sale → Consideration

Section 7(x)(b) → Mortgage → Amount agreed to be secured

Section 7(x)(c) → Lease → Premium/fine + first year's rent

Section 7(x)(d) → Award → Amount/value of property in dispute

Section 7(xi), Court-fees Act, 1870 — Suits between Landlord and Tenant

Section 7(xi) contains a special method of valuation for certain suits arising out of the landlord–tenant relationship. The important point is that, in the suits covered by this clause, the valuation is generally not based on the market value of the immovable property. Instead, it is based on the annual rent payable for the year immediately preceding the presentation of the plaint.

1. Suits covered by Section 7(xi)

The provision covers the following principal disputes:

Clause	Nature of suit	Basis of valuation
7(xi)(a)	Tenant's suit for delivery of counterpart of lease	Amount of annual rent
7(xi)(b)	Suit to enhance rent of a tenant having occupancy right	Amount of annual rent
7(xi)(c)	Tenant's suit for delivery of lease by landlord	Amount of annual rent
7(xi)(cc)	Landlord's suit for recovery of immovable property from tenant, including tenant holding over	Annual rent payable for preceding year
7(xi)(d)	Suit to contest notice of ejectment	Amount of annual rent
7(xi)(e)	Tenant's suit to recover possession after illegal ejectment by landlord	Annual rent payable for preceding year
7(xi)(f)	Suit by tenant for abatement of rent	Annual rent payable for preceding year

Thus, the common thread is that the suit must genuinely be between landlord and tenant and must fall within one of the specified categories.

2. How is valuation made?

For the relevant suits, the statutory formula is:

Suit valuation = Rent of the immovable property payable for the year immediately preceding the date of presentation of the plaint.

For example, suppose:

Monthly rent = ₹5,000

Suit is filed on 1 September 2026

Rent payable during the preceding year = ₹5,000 × 12

Therefore:

Valuation = ₹60,000.

The court fee is then calculated ad valorem on ₹60,000 according to the applicable Court-fees Act/Schedule as in force in Odisha.

3. Important point: actual rent payable, not necessarily gross contractual rent

The Orissa High Court has given an important interpretation to the expression "rent ... payable" in Section 7(xi)(cc).

In *Bijay Kumar Sahoo v. Gokula Bihari Mohanty & Ors.*, W.P.(C) No. 21896 of 2010, decided on 10 May 2011, the Court held that where part of the contractual rent was being adjusted towards expenditure incurred for the benefit of the tenant, the amount so adjusted and not actually received by the landlord was not to be included in the "rent payable" for valuation. The Court ultimately treated ₹550 + ₹250 per month × 12 = ₹9,600 as the relevant annual rent for valuation.

Thus, "rent payable" has to be determined from the actual circumstances of the tenancy and not merely by mechanically multiplying the gross figure mentioned in the lease.

4. Special provision prevails over general provision

This is particularly important in a landlord's suit for recovery of possession.

In *Khalli Dalai v. State of Orissa*, AIR 1988 Ori 218, the Orissa High Court held that Section 7(v)(d), which deals generally with suits concerning land, is a general provision, whereas Section 7(xi)(cc), dealing specifically with recovery of immovable property from a tenant, is a special provision. Therefore, where the requirements of Section 7(xi)(cc) are satisfied, valuation must be made under Section 7(xi)(cc) rather than under Section 7(v)(d) on the market value of the property.

5. But the relationship of landlord and tenant must actually exist

The benefit of Section 7(xi) cannot be claimed merely by describing the defendants as tenants.

In *Krushna Chandra Tripathy v. Lokanath Mohapatra*, decided 13 September 1968, the Orissa High Court held that where, on the plaintiff's own pleadings, the defendants were effectively trespassers and the suit was really one for declaration of title and recovery of possession, Section 7(xi)(e) could not be invoked. Court fee had to be paid on the market value of the land.

Similarly, in *Sadhya Chandra Behera v. State of Orissa*, decided 28 February 1961, the Court emphasised that where the real dispute involves title between rival claimants rather than merely the landlord–tenant relationship, the special landlord–tenant provision may not apply.

Simple example

A, the owner of a house, lets it to B at ₹8,000 per month. After termination of the tenancy, B continues in possession. A files a suit under Section 7(xi)(cc) for recovery of possession.

If the rent payable during the preceding year was ₹8,000 per month:

Annual rent = ₹8,000 × 12 = ₹96,000.

Therefore:

Valuation of the suit for court-fee and jurisdiction = ₹96,000, and the applicable court fee is calculated on that statutory valuation—not on the market value of the house.

This is precisely the type of situation for which Section 7(xi)(cc) provides a special rule. The Orissa High Court in *Khalli Dalai* confirmed that the special provision prevails over the general market-value provision in Section 7(v).

In one sentence

Section 7(xi) is a special landlord–tenant provision under which specified suits are valued principally with reference to the annual rent payable for the year immediately preceding the plaint, rather than the market value of the property; however, the provision applies only when the suit is genuinely of the landlord–tenant character and falls within one of the specified categories.

Key Orissa High Court authorities:

Khalli Dalai v. State of Orissa, AIR 1988 Ori 218 — special provision of s.7(xi)(cc) prevails over general s.7(v)(d).

Bijay Kumar Sahoo v. Gokula Bihari Mohanty, W.P.(C) No.21896/2010, decided 10.05.2011 — meaning of "rent payable" and computation of annual rent.

Annexure-II

(Quick reference table of sec.7 of Court fees act)

Suit for	Court fee calculated on	Relevant provision in court fees Act
Money (Loan & past interest)	Ad- valorem C.F. on the amount claimed	Sec.7(i) of C. F. Act
Damages	Ad- valorem C.F. on the amount claimed	Sec.7(i) of C. F. Act
Compensation	Ad- valorem C.F. on the amount claimed	Sec.7(i) of C. F. Act
Arrear maintenance	Ad- valorem C.F. on the the amount claimed	Sec.7(i) of C .F. Act
Other arrear annuities	Ad- valorem C.F. on the the amount claimed	Sec.7(i) of C. F. Act
Past mesne profit	Ad- valorem C.F. on the the amount claimed	Sec.7(i) of C. F. Act
Maintenance	Ad- valorem C.F. on 5 times of Annual due	Sec. 7(ii) Odisha amendment (V of 1939)
Other Annuities (future)	Ad- valorem C.F. on 10 times of Annual due	Sec.7(ii) of C. F. Act
Movable property having market value	Ad- valorem C.F. on such value at the time of filing suit	Sec. 7(iii) of C. F. Act
Section 7(iv-b) of central act (for partition) omitted and instead section 7(vi-A) is inserted by Odisha amendment Act V of 1939		
Declaratory decree with consequential relief	Ad-valorem C.F. on Plaintiff's own valuation (should not be arbitrary)	Sec. 7(iv-c) of C. F. Act
Injunction	Ad-valorem C.F. on Plaintiff's own valuation (should not be arbitrary)	Sec. 7(iv-d) of C. F. Act
Easement rights	Ad-valorem C.F. on Plaintiff's own valuation (should not be arbitrary)	Sec. 7(iv-e) of C. F. Act
Accounts	Ad-valorem C.F. on Plaintiff's own valuation (should not be arbitrary)	Sec. 7(iv-f) of C. F. Act
Cancellation of a document (decree for money or a document with money value) i.e. when plaintiff is executant	Ad-valorem C.F. on the money value that the document bears	Sec.7(iv-A) of C.F. Act (Odisha amendment)
Declaration that the document is not binding upon the plaintiff (i.e. when plaintiff is not an executant)	Ad-valorem C.F. on Plaintiff's own valuation (should not be arbitrary)	Sec. 7(iv-c) of C. F. Act
Declaratory decree without consequential relief	Ad-valorem C.F. on Plaintiff's own valuation (should not be arbitrary)	Art. 3 (A-i) of Sch-I of C. F Act

Suit for	Court fee calculated on	Relevant provision in Court fees Act
Possession of land paying revenue i.e. entire estate/definite share/separately assessed part+ permanently settled revenue	20 × annual revenue (as per Orissa amendment Act V of 1939)	Sec. 7(v-a) of C. F. Act.
Possession of Same category as above but revenue not permanently settled	10 × annual revenue (as per orissa amendment Act V of 1939)	Sec. 7(v-b) of C. F. Act.
Possession of Land that pays no revenue/partly exempted/fixed payment in lieu of revenue	15 × net profits; if no net profits → Court's estimate with reference to similar land	Sec. 7(v-c) of C. F. Act.
Possession of land that forms part of revenue-paying estate but is neither a definite share nor separately assessed (such suits are Frequently filed)	Market value of the land	Sec. 7(v-d) of C. F. Act.
Possession of house or garden	Market Value of the house or Garden	Sec. 7(v-e) of C. F. Act.
However, under sec. 3 of suits valuation act, if the state Govt makes rules for determining the value of the land for the purpose of jurisdiction, such values shall be accounted for & in absence of such rules, the market value of land shall be counted. This has been incorporated in sec. 7(v) by virtue of Odisha amendment Act V of 1939.		
To enforce a right of pre-emption on land	As per above i.e. sec. 7(v) of the Court fees act	Sec.7(vi) of C. F. Act
Partition when plaintiff is excluded from his share as per plaint	Ad valorem court fee on the market value of the share claimed by plaintiff	Sec. 7(vi-A) of C.F. Act inserted by Odisha amendment Act V of 1939

Suit for	Court fee calculated on	Relevant provision in Court fees Act
Partition when plaintiff is in joint/constructive possession as per plaint	Fixed court fee on Plaintiff's own valuation.	Sec. 17-A of Sch.II of C. F act as no such provision is made otherwise
for interest of an assignee of land - revenue	Ad- valorem court fee on 15 times the net profit as such for the year next before filing of suit	Sec. 7(vii) of C. F. Act
To set aside an attachment of land/of an interest in land revenue	Ad valorem court fee on the amount for which the land or interest was attached	Sec. 7(viii) of C. F. Act
For Redemption and recovery of mortgaged property	Ad valorem court fee on the principal money secured	Sec. 7(ix) of C. F. Act
For foreclosure of a mortgage (i.e mortgagee sues to extinguish the mortgagor's right of redemption)	Ad valorem court fee on the principal money secured	Sec. 7(ix) of C. F. Act
To declare the conditional sale absolute	Ad valorem court fee on the principal money secured	Sec. 7(ix) of C. F. Act
For specific performance of a contract of sale	Ad valorem court fee on the amount of consideration	Sec. 7(x-a) of C. F. Act
For specific performance of a contract of Mortgage	Ad valorem court fee on the amount agreed to be secured	Sec. 7(x-b) of C. F. Act
For specific performance of a contract of Lease	Ad valorem court fee on Fine/premium + rent for the first year	Sec. 7(x-c) of C. F. Act
For specific performance of an award	Ad valorem court fee on the value of the property in dispute	Sec. 7(x-d) of C. F. Act

Suit between landlord and tenant	Court fee calculated on	Relevant provision in Court fees act
For the delivery by a tenant of the counterpart of a lease	Ad valorem court fee on the rent of the immovable property, to which the suit refers, payable for the year next before the filing of the suit	Sec. 7(xi-a) of C. F. Act
To enhance the rent of a tenant having a right of occupancy	Ad valorem court fee on the rent of the immovable property, to which the suit refers, payable for the year next before the filing of the suit	Sec. 7(xi-b) of C. F. Act
For the delivery by a landlord of a lease	Ad valorem court fee on the rent of the immovable property, to which the suit refers, payable for the year next before the filing of the suit	Sec. 7(xi-c) of C. F. Act
For the recovery of immovable property from a tenant	Ad valorem court fee on the rent of the immovable property, to which the suit refers, payable for the year next before the filing of the suit	Sec. 7(xi-cc) of C. F. Act
To contest a notice of ejectment	Ad valorem court fee on the rent of the immovable property, to which the suit refers, payable for the year next before the filing of the suit	Sec. 7(xi-d) of C. F. Act
To recover the occupancy of immovable property from which a tenant has been illegally ejected by the land lord	Ad valorem court fee on the rent of the immovable property, to which the suit refers, payable for the year next before the filing of the suit	Sec. 7(xi-e) of C. F. Act
For abatement of rent	Ad valorem court fee on the rent of the immovable property, to which the suit refers, payable for the year next before the filing of the suit	Sec. 7(xi-f) of C. F. Act

Some additional Points for reference:

- 1) When no provision is made i.e. for a partition suit of joint possession of property, Section 17-A of Sch.-II of the act is applicable.
- 2) 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.

COURT FEE & VALUATION AS PROVIDED IN SCH-I & II OF COURT FEES ACT		
Suit/Petition for	Court fee calculated on	Relevant provision
For Possession under sec. 6 of Specific relief act	One Half of the amount due under foregoing scale i.e. 1/2 of the amount due under relevant provision	Art.2 of Sch-I of C. F. Act
Declaratory decree without consequential relief	Valuation as per Plaintiff's own valuation	Art.3-A(i) of Sch-I of C. F. Act
To set aside an award	As per value of award	Art.3-A(ii) of Sch-I of C. F. Act
To obtain a declaration that an alleged adoption is invalid & never took place	Valuation as per Plaintiff's own valuation	Art.3-A(iii) of Sch-I of C. F. Act
Application for Review of Judgment (if filed after 90 days of date of decree)	The fee leviable on the plaint or memo of appeal	Art. 4 of Sch-I of C.F. Act
Application for Review of Judgment (if filed before 90 days of date of decree)	One half of fee leviable on the plaint or memorandum of appeal	Art. 5 of Sch-I of C.F. Act
Probate of a will or letter of administration	The value of the property for which will is executed	Art. 11 of Sch-I of C. F. Act
Succession Certificate under Indian succession Act	The value of the debt or security for which case filed	Art.12 of Sch-I of C.F. Act
Suit for relief under sec. 14 of Religious Endowment Act or under sec. 91 of the CPC	Fixed court fee on Plaintiffs' own valuation	Art.17(iii) of Sch-II of C.F.Act
Plaint or memorandum of appeal in every suit where it is not possible to estimate the money value of subject matter and which is not otherwise provided by this act	Fixed court fee on Plaintiffs' own valuation	Art.17-A of Sch-II of C. F. Act
Every petition under Indian Divorce Act except petition u/sec.44 of the same act. Ans memorandum of appeal under the same act	Fixed court fee on Plaintiffs' own valuation if no monetary relief is sought	Art.20 of Sch-II of C. F. Act
For a Suit of appeal under Parsi marriage and Divorce Act	Fixed court fee Plaintiffs' own valuation if no monetary relief is sought	Art.21 of Sch-II of C. F. Act
Caveat petition	No valuation is necessary	Art.12(Sch-II of C. F. Act)
Crl. Complaint petition except u/sec. 138 of N.I.,Act	No valuation is necessary	Art.1(b) (i) of Sch-II
Complaint petition u/sec. 138 of N.I. Act	No valuation is necessary	Art.1 (b) (ii) of Sch-II (Orissa amendment)
Above fees are subject to Odisha Court fee (Surcharge amendment) Act,1958		

Court fee in MACT cases:

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

Motor Accident Claims tribunals are fully empowered to grant an amount higher than what the claimant originally asked for if the evidence warrants it—**subject to the condition that the claimant must deposit the additional/deficit court fee. [K.Parvathi vs Mfa on 24 March, 2026]**

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CHAPTER-V

(Special provisions in certain Proceedings under special Acts)

Family Court matters:

a) Statutory waiting period

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:

The Hindu Marriage Act, 1955's Section 13B(2) mandates a **six-month waiting time** known as the cooling period for couples looking for a mutual consent divorce. This time is meant to allow the couple to rethink their choice and try at reconciliation before the divorce is official.

However, in *Amardeep Singh v. Harveen Kaur* (2017)], case, the Supreme Court of India ruled that the cooling-off period under Section 13B(2) of the Hindu Marriage Act is directory and not mandatory. Courts have the discretion to waive this waiting period based on the specific facts and circumstances of a case.

Section 13B(1) Requirement: Before filing, the couple must have lived separately for **at least one year**.

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;

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.

For MACP cases:

In **Asit Kumar Mohanty v. Second Motor Accidents Claims Tribunal, Cuttack, 1989 ACJ 207 (Orissa)**, the Orissa High Court held that:

after issues are framed, the Claims Tribunal has to proceed with the case, hold the inquiry, decide the issues and record its findings, **notwithstanding the default of either party.**

The Court specifically held that after framing of issues the Tribunal **has no jurisdiction to dismiss the claim petition for default or refuse to make an award.**

This principle was subsequently followed by the Orissa High Court in **Bhagaban Mallik v. Nagendra Biswal (1996)**, where the Court stated that after settlement/framing of issues, dismissal for default is without jurisdiction and the Tribunal is obliged to make an award.

3. Supreme Court-level formulation of the principle

A particularly useful judgment explaining the legal reasoning is **Lukose v. Govindan Nair (Kerala)**. It relied upon the statutory scheme applicable to MACT proceedings and explained that once a claim survives the stage of summary dismissal, the Tribunal must proceed to the final stage and make an award.

The Court observed that the Tribunal's duty is to record findings on **each issue**, and therefore even where the claimant does not appear or ultimately fails to establish entitlement, the proper course is a **reasoned judgment/award on the issues**, rather than merely saying “dismissed for default.”

For MACP cases: The format of application is provided 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 Orissas 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 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.

New Guidelines for Cheque Bounce Cases

In Sanjabij Tari v. Kishore S. Borcar (September 2025) case in order to streamline and speed up Section 138 Negotiable Instruments (NI) Act (cheque bounce) cases, the Supreme Court issued binding directions for all courts:

- 1) Dual Service of Summons: Summons must be served through regular modes, dasti (by complainant), and electronic means (email, WhatsApp, SMS).
- 2) Online Payment Facilities: District Courts must create QR codes/UPI links so accused persons can pay cheque amounts directly at the initial stage.
- 3) Mandatory Synopsis: Every complaint must include a standardized synopsis of key details (cheque number, date, amount, bank, etc.) at the top.
- 4) No Pre-Cognizance Summons: Magistrates need not issue summons before taking cognizance, reducing delays.
- 5) Structured Questioning: Trial Courts must ask the accused specific questions about the cheque, signature, and liability at the start to decide if a summary trial is possible.
- 6) Physical Court Hearings: After summons, cases should be heard in physical courts to encourage settlement.

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.

CHAPTER-VI

(Materials for reference)

PLEADINGS, PETITIONS AND AFFIDAVITS NEEDS TO BE SCRUTINIZED KEEPING IN VIEW THE FOLLOWING POINTS:

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

➤ **Rule 14.** Parties shall where practicably 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.Appeal.No. 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 & circumstances upon which the applicant relies,

2) the matter of complaint if any & the relief sought/ 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.

Order VII, Rule.2. In money suits. — Where the plaintiff seeks the recovery of money, the plaint shall state the precise amount claimed. But where the plaintiff sues for mesne profits, or for an amount which will be found due to him on taking unsettled accounts between him and the defendant, or for movables in the possession of the defendant, or for debts of which the value he cannot, after the exercise of reasonable diligence, estimate, the plaint shall state approximately the amount or value sued for

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.

Order VII, Rule 7. 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 & 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 pleader 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".

Regarding contents of the suit/petition Rule 4 of the Rules under the Hindu Marriage Act, 1955 provides that:

4. **Contents of petitions-** (i) In addition to the particulars required to be given under Order 7, Rule 1 of the Code of Civil Procedure and Section 20 of the Act every petition for judicial separation, nullity of marriage & divorce shall contain the following particulars:
- (a) The place and date of marriage;
 - (b) The name, status and domicile of the wife and husband, before and after the marriage;
 - (c) The principal permanent address where the parties cohabited including the address where they last resided together.
 - (d) Whether he is living any issue of the marriage if so the names and dates of birth or ages of such issues:
 - (i) In every petition presented by a husband for divorce on the ground that his wife is living in adultery with any person or persons or for judicial separation on the ground that his wife has committed adultery with any person or persons the petitioner shall state the name occupation and place of residence of such person or persons so far as they can be ascertained;
 - (ii) In every petition presented by a wife for divorce on the ground that her husband is living in adultery with any woman or women or for judicial separation, on the ground that her husband has committed adultery with any woman or women the petitioner shall state the name, occupation and place of residence of such women, so far as they can be ascertained;

- (e) Whether there have been in any Court in India and if so, what previous proceedings with reference to the marriage by or on behalf of either of the parties, and the result of such proceedings;
- (f) The matrimonial offence or offences charged, set out in separate paragraphs with the time and place of its or their alleged commission
- (g) Property mentioned in Section 27 of the Act if any;
- (h) The relief or reliefs prayed for;

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.

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 CHAPTER II regarding "[Examination of 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 · n o	subject		points	Reference Act/rule
1	Jurisdiction of-civil-court	Territorial	Whether the suit is filed in proper court having territorial jurisdiction	Rule 15 to 21 of the C.P.C.
2		Pecuniary	Whether the suit is filed in proper court having pecuniary jurisdiction	Rule 6 of C.P.C & Notifications of Hon'ble High Court
3		Original	Whether the suit is filed in proper court having original/subject wise jurisdiction	Orissa civil courts act/connected special statues
		Appellate	Whether the court is having appellate Jurisdiction.	As per the statue/CPC
4	Limitation		Whether the suit/case is filed within the prescribed time limit	Limitation Act/Special statues
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	Whether Plaint/Petition is duly verified	Or-VI, R-15 of CPC
9		Plaint in duplicate	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	Rule 44 of GR & CO & Or V rule 1 of CPC
11		Party/Scribe to sign	Dated and signed by the person presenting it & scribe	Rule 15(3) & (4) of GR & CO
12		corrections	Corrections to be Authenticated	Rule 18 GR & CO
13			Page Should be typed on Pie- paper in English, signed by the person presenting it/scribe-Separate petitions for separate matters	Rule 14 and 15 of GR & CO
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		

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 be 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 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.

Q7: Whether the provisions of Limitation act, 1963 is applicable to courts only or it extends to tribunals also ?

Ans: The provisions and timelines laid down in the [Limitation Act, 1963](#) apply only to **suits, appeals, or applications** (except petitions u/o XXI CPC) meant to be filed before the established judicial branch of the state (i.e., Civil Courts, High Courts, and the Supreme Court). They do not naturally extend to statutory authorities or tribunals. [Bar and Bench](#)

2. Exception: Express Statutory Power

A tribunal or quasi-judicial body can only invoke the provisions of the Limitation Act (such as Section 5 for the condonation of delay) if its **governing parent statute expressly empowers it to do so.**

- **Example of Inclusion:** The **National Company Law Tribunal (NCLT)** can apply the Limitation Act because Section 433 of the Companies Act, 2013 explicitly states that its provisions apply to the tribunal.
- **Example of Exclusion:** In contrast, older bodies like the erstwhile **Company Law Board (CLB)** lacked this statutory

provision, meaning they had no inherent power to condone delays using the Limitation Act.

Q.8 If a civil suit was instituted before 5 March 2015, but the decree was passed after 5 March 2015, should the appeal be filed before the High Court if the suit value exceeds ₹5 lakh?

Answer: Not necessarily—and this is where the decision in *Padmini Panda v. Pramila Samantaray*, Orissa High Court, dated 29.01.2016, becomes important. The Court held that the amended Section 16 is procedural in nature and applies to appeals filed after 5 March 2015. Therefore, even where the underlying suit was instituted before the amendment, an appeal filed after 5 March 2015 from a Civil Judge's decree is to be presented before the District Judge, irrespective of the valuation.

Q.9. A suit valued at ₹10 lakh was instituted in 2014 and decreed by the Civil Judge in 2016. Should the first appeal be filed before the High Court because the suit was instituted when the ₹5 lakh pecuniary limit was still in force?"

Answer: No. The relevant change brought by the 2014 Amendment came into force on **5.3.2015**, and *Padmini Panda* held that the amended forum provision applies to an appeal filed after that date. The appeal is therefore to be presented before the **District Judge**, notwithstanding the fact that the suit was instituted before 5.3.2015.

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. $\frac{1}{3}^{\text{rd}}$ (Rs.1,00,000) in favour of one and $\frac{2}{3}^{\text{rd}}$ (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: i.e.

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.)“Mediation” 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
5	PARTEIS ARE NOT TAKEN AS 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 (Land acquisition 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	GROUNDS 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 COMAPLAINTS IS NOT FILED WITHIN PERIOD
28	IDEDNTIFICAION MARKS OF THE ACCUSED NOT FURNISHED
29	LEGIBLE COPIES OF RELEVANT PAPERS NOT ATTACHED
30	MUDDEMAL PROPERTY NOT MENTIONED IN CHARGE SHEET

About the compiler

The compiler happens to be a staff of Rayagada Judgeship and retired 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