

How to file a Civil Suit under Code of Civil Procedure?

The term suit has been defined in the Black's Law Dictionary (1990) as "Suit" is a generic term of comprehensive signification referring to any proceeding by one person or persons against another or others in court of law wherein the plaintiff pursues the remedy which the law affords him for the redress of any injury or the enforcement of a right, whether at law or in equity." in general term suit is the proceedings happen in furtherance of dispute between parties to it. In order to file a suit the basic requirements to determine first are (1) to determine the place of suing (2) Compliance with the essentials of suit (3) Frame of suit, (4) Institution of Suit. In the following paragraphs it has been defined with all the important ingredients.

Place of Suing

To determine the jurisdiction of civil court one must first check whether the suit fall under category barred under section 9 of Code of Civil Procedure deals (hereinafter CPC).

Section 9 states that The Courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. Hence if a suit is barred under section 9 there can be no institution of such suit in any civil court.

The meaning of place of suing is simply the venue of the trial. Section 15 to 20 of CPC deals with this. Every court has specific pecuniary and territorial jurisdiction. Section 15 of CPC states that the suit to be filled in the court of lowest grade competent to try it.

Pecuniary Jurisdiction

The suit must be instituted in the court of lowest grade. This rule is a rule of procedure and does not affect the jurisdiction in a case which means its mere a irregularity under section 90 of CPC and not a illegality. The valuation done by the plaintiff in the plaint will be considered and not the amount decided in the decree by the court. Generally a court accepts the valuation of the suit by plaintiff but sometimes whenever plaintiff overestimated or underestimated the amount for his some personal benefits then its duty of court to estimate the amount again. In the case of *Tara Devi v. Shree Rhakur Radhakrishna Maharaj (1987) 4 SCC 69* , the court stated that " When

there is an objective standard of valuation, to put a valuation on relief by ignoring such objective standard might be demonstratively arbitrary and unreasonable valuation and the court would be entitled to interfere in the matter”

The pecuniary jurisdiction of each court varies from state to state.

Territorial Jurisdiction

For territorial purpose the suits can be divided in the following respects:-

1. Suits concerning immovable property
2. Suits concerning movable property
3. Suits concerning compensation for wrong
4. Other suits

Immovable Property (Section 16-18 CPC)

Section 16 clause (a) to (e) deals with the matter of immovable property. This includes the following type of suit:-

- For the recovery of immovable property with or without rent or profits,
- For the partition of immovable property,
- For foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property,
- For the determination of any other right to or interest in immovable property,
- For compensation for wrong to immovable property.

The suit must be filled in that court only within which jurisdiction the immovable property lies. But the question arises when the property falls under the jurisdiction of more than one court. To curb this phenomenon Section 17 of the CPC come into picture. Section 17 states that in any court the case can be instituted, if it falls under the pecuniary jurisdiction of the court.

Section 19 : Movable Property

Section 19 states that Where a suit is for compensation for wrong done to the person (Tort) or to movable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business or personally works for gain, within the local limits of the jurisdiction of another Court, the suit may be instituted at the option of the plaintiff in either of the said Courts. In simpler words the suit can be instituted by the plaintiff at the place of residence of the respondent, or at the place of his business, or at the place where the wrong has been committed. This can be best understood by the way of illustration.

Illustration A person “A” who lives in Gurugram carries his business of transportation of goods from Delhi. “B” ordered some goods to be transferred from Delhi to Calcutta but in middle i.e. Lucknow the goods were misplaced.

Now B can sue A at Gurugram as this is his place of residence, may be at Delhi as this is his place of caring business, may be at Lucknow as the wrong was committed here.

Section 20

Section 20 of the act covers all the other cases not covered by any of the earlier discussed provisions. The plaintiff can file suit in the following place

- a) The defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or
- b) Any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or
- c) The cause of action, wholly or in part, arises.

Illustration - A resides at Shimla, B at Calcutta and C at Delhi. A, B and C being together at Benares, B and C make a joint promissory note payable on demand and deliver it to A. A

may sue B and C at Benares, where the cause of action arose. He may also sue them at Calcutta, where B resides, or at Delhi. There C resides; but in each of these cases, if the non-resident defendant objects, the suit cannot proceed without the leave of the Court.

Ex dolo malo non oritur actio this concept states that consent can neither confer nor take away jurisdiction of any court. When a court has jurisdiction neither consent, nor waiver, nor estoppel, nor acquiescence can take it away. An Agreement for the same is void. In the case of *Hakam Singh v. Gammon (India) Ltd.*, (1971) 1 SCC 286 stated that when two or more courts have jurisdiction to the case, then agreement by the parties to submit to the jurisdiction to one of those courts is valid, binding and enforceable.

Objection to the Jurisdiction

Section 21 of the CPC states, that objection regarding the jurisdiction must be taken as early as possible in a suit. In the case of *Hira Lal v. Kali Nath.*, AIR 1962 SC 199 it has been stated that no objection as to place of suing will be allowed by an appellate court unless the following three conditions are satisfied:-

1. The objection was taken in the court of first instance.
2. It was taken at the earliest possible opportunity and in cases where issues are settled at or before settlement of issues
3. There has been a consequent failure of justice.

Also now after the amendment act of 1976, which inserted section 21-A which bars the filling of any suit to set aside a decree passed by any court on objection as to place of suing.

After deciding the court which falls under the territorial and pecuniary jurisdiction of the case. The next step is of completing the essentials of a plaint.

Essentials of Suit

There are four essentials of a suit

1. Opposing party/parties

2. Subject-matter in dispute
3. Cause of action
4. Relief

Parties to Suit: Order 1

Rule 1 this rule deals with the joinder of plaintiff. All persons may be joined in one suit as plaintiffs where-

1. any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist in such persons, whether jointly, severally or in the alternative; and
2. If such persons brought separate suits, any common question of law or fact would arise.

The “and” here means that both the condition must be fulfilled.. In the landmark case of *Krishna Laxman Yadav and Ors. v. Narsingh Rao Vithal Rao Sonawane and Anr.*, it was observed that, “The result of the provisions of Order 1, Rule 1 of the Civil Procedure Code is that where right to relief exists in favour of several plaintiffs as a result of the same transaction even if the right is several the plaintiffs would be entitled to join in the same suit for the several reliefs the only precondition being that common question of law or fact arose between the plaintiffs.”
Illustration- A publishes a defamatory article against B, C in local daily newspaper. Now B and C can jointly file a suit against A for defamation since the relief arises out of same act of transaction and also there is a common question of fact and law is there.

Rule 3 Now the other party to a suit is defendant. Rule 3 of the CPC state about who can be joined as defendants. It is very much same as Order 1 rule 1.All persons may be joined in one suit as defendants where-

- (a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist against such persons, whether jointly, severally or in the alternative; and

(b) if separate suits were brought against such persons, any common question of law or fact would arise.

The plaintiff may join in one suit all or any of the persons severally or jointly and severally liable on any contract. Similarly, where the plaintiff is in doubt as to the person from whom he is entitled to obtain redress, he may join two or more defendants in one suit. Illustration

In between the concept of plaintiff and defendant to a suit there lies a concept of **necessary and proper party**. A necessary party is indispensable to the constitution of suit, against whom the relief is sought and without whom no effective order can be passed. A proper party is one in whose absence an effective order can be passed, but whose presence is necessary for a complete and final decision on the question involved in the proceedings.

Rule 9 of order 1 deals with the non-joinder and mis-joinder of parties to a suit. Where a person who is necessary or proper party to suit has not been joined this is called non joinder of parties. Any non-joinder of necessary party leads to the dismissal of case. Also if any person has been joined to a suit in contravention of rule 1 and 3 this will lead to misjoinder of part.

Representative Suit: Rule 8

Representative suit is a suit filed by or against one or more persons on the behalf of themselves and others having the same interest in the suit. It provides that when there are number of person similarly interested similarly interested in a suit, one or more of them can, with the permission of the court or upon a direction from the court, sue or be sued on behalf of themselves and others. When suit is filled by or against person in representative capacity, the fact should be stated in body of plaint as well as in the title of the suit. In

The following are the conditions need to be fulfilled for representative suit:-

1. The parties must be numerous.
2. They must have same interest in the suit- explained in the case of *Duke of Bedford v. Ellis.*, 1901 AC I (HL)., “given a common interest and a common grievance a representative suit was in order if the relief sought was in its nature beneficial to all whom the plaintiff proposed to represent”. In the case of *T.N Housing Board v. T.N.*

Ganapathy., (1990) I SCC 608., residential buildings were given to the applicants of low income group. After all the procedure excess demand was made by the Board. The allottees challenged the demand by filling a representative suit. This was challenged as separate demand notice was issued to each allottees, giving rise to separate cause of action. Negating this court held that all has same interest and thus suit was maintainable.

3. Permission by court
4. Notice should be given to all the parties who would be bound by the decree, otherwise a person might be prejudicially affected by such decree even though he was not on record and was not aware of the suit.

Before framing of suit every kind suit it is very necessary for the plaintiff to test his case on two things (1) limitation period, (2) Res judicata and Res subjudice.

Limitation period- Section 3 of the limitation act bars the institution of suit , appeal in the court after the expiration of time prescribed under law. Unless under section 5, of the limitation act, the party proved the reason for his delay to reasonable and acceptable in the court of law. Hence every suit need to be checked on the grounds of limitation before filing it.

Res subjudice (section10)- No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.

Res subjudicata (Section 11) - No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Framing Of Suit

Order 2 deals with the framing of suit. Rule 1 and 2 of order 2 state that every suit must include the whole of the plaintiff claim in respect of the cause of action, and as far as practicable, all the matters in dispute between the parties be disposed of finally. The clear intention of the legislature here is to prevent multiplicity of suit. Also it has been stated in case of *Deva Ram v. Ishwar Chand.*, (1995) 6 SCC 733. The cardinal principal of order 2 rule 2 is that the defendant should not be vexed for the same cause of action twice.

Joinder of Claim

Rule 4 and 5 deals with the concept of joinder of claim. It states that for the recovery of immovable property, a plaintiff is not entitled, without the leave of the court, to join any claim, except:

- Claims for mesne profit or arrears of rent of the property claimed.
- Claim for damages for breach of contract under which property or any part of is held
- Claim in which relief sought is based on same cause of action.

Rule 5 specifically deal with the suit by or against three class of persons viz executors, administrators and heirs.

Joinder of Cause of action

Rule 3 deals with joinder of cause of action. This means several cause of action in one suit in certain circumstances subject to the provision of this code. It include following types of situations:-

1. One Plaintiff, one defendant and several cause of action- when such situation is there the plaintiff can unite the several cause of action in one case.
2. Joinder of plaintiffs and cause of action- when there are two plaintiff, several cause of action against the same defendant the cause of action can be joined when-
 - A. The cause of action arises from same cause of action.

- B. Common question of law and fact is there.
- 3. Joinder of defendants and causes of action- one plaintiff several cause of action and several defendants can be joined if defendants are interested. following
 - A. The cause of action arises from same cause of action.
 - B. Common question of law and fact is there
- 4. Joinder of plaintiffs, defendants and cause of action

Institution of Suit

Every civil suit commences with the presentation of plaint. Plaint meaning a private memorial tendered to a court in which a person sets forth his cause of action, the exhibition of action in writing. *Assan v. Bathumma* ILR (1899) 22 Mad 494.

Essential of Plaint

Order 7 rule 1-8 defines the essentials of plaint as follows:-

1. Plaint should contain name of that court in which suit is brought.
2. Plaint should contain name, description and residence of plaintiff.
3. Plaint should contain name, description and residence of defendant.
4. When plaintiff or defendant is minor or person of unsound mind, plaint should contain a statement to that effect.
5. Plaint should contain those facts, which have constituted cause of action. In addition to this, it should also be described in plaint when cause of action has arisen.
6. Plaint should contain those facts, which show the court has jurisdiction.
7. Plaint should contain that relief, which plaintiff claims.
8. When plaintiff has allowed set off or has relinquished a portion of his claim, plaint should contain that amount, which has been so allowed or so relinquished.

9. Plaint should contain statement of value of subject-matter of suit not only for purpose of jurisdiction, but also for purpose of court-fees.
10. Plaint should contain plaintiff's verification on oath

Time and presentation of plaint

A plaint usually gets resented in front of court on a working day. A plaint must be presented to the courts or such officer as it appoints in that behalf. After the presentation the plaint will be scrutinized by the Stamp Reporter. If there are defects, the plaintiff or his advocate will remove them. Then suit will be numbered.