



RJS

Rajasthan Judicial Services

CIVIL JUDGE CADRE

Rajasthan High Court (HCRAJ)

Law Paper - 1

Volume 2



Index

1.	The Code of Civil Procedure, 1908	1
----	-----------------------------------	---

PART

Part-I Suits in General	(Section 1-35 B)
Part-II Execution	(Section 36-74)
Part-III Incidental Proceedings	(Section 75-78)
Part-IV Suits in Particular Cases	(Section 79-88)
Part-V Special Proceedings	(Section 89-93)
Part-VI Supplemental Proceedings	(Section 94-95)
Part-VII Appeals	(Section 96-112)
Part-VIII Reference, Review and Revision	(Section 113-115)
Part-IX Special provisions of HC which are not judicial commissions	(Section 116-120)
Part-X Rules	(Section 121-131)
Part-XI Miscellaneous	(Section 132-158)

Orders

Part - 1 Parties of Suits	(Order 1-20A)
Part - 2 Execution of Decrees and Orders	(Order 21)
Part - 3 Incidental Proceedings	(Order 22-51)
Order 22 (Death, marriage and Insolvency)	
Order 23 (Withdrawal and Adjustment)	
Order 24 (Payment in Court)	
Order 25 (Security of Cost)	
Order 26 (Commission)	
Order 27-35 (Suits)	
Order 38-40 (Supplemental Proceedings)	
Order 41-45 (Appeal)	
Order 46-51 (Reference, Review)	

2.	Transfer of Property Act, 1882	120
Chapter I	Preliminary	(Section 1-4)
Chapter II	Transfers of Property by Act of Parties	(Section 5-53A)
Chapter III	Sales of Immovable Property	(Section 54-57)
Chapter V	Leases of Immovable Property	(Section 105-117)
Chapter VI	Exchanges	(Section 118-121)
Chapter VII	Gifts	(Section 122-124)
Chapter VIII	Transfers of actionable claims	(Section 130-137)
Chapter IV	Mortgages of immovable property and charges	(Section 58-104)
3.	Rajasthan Rent Control Act, 2001	161
Chapter I	Preliminary	(Section 1-5)
Chapter II	Revision of Rent	(Section 6-7)
Chapter III	Tenancy	(Section 8-10)
Chapter IV	Restoration of Possession of Illegally Evicted Tenant and Procedure thereof	(Section 11-12)
Chapter V	Constitution of Tribunals, Procedure for Revision of Rent and Eviction, Appeal and Execution	(Section 13-22)
Chapter V-A	Appointment of Rent Authority, Tenancy Agreements and Period of Tenancy	(Section 22A-22B)
Chapter V-B	Revision of Rent in Certain Circumstances, Security Deposit, Depositing of Rent in Certain Circumstances, Etc.	(Section 22D-22G)
Chapter VI	Amenities	(Section 23-24A)
Chapter VII	Miscellaneous	(Section 25-32)

The Code of Civil Procedure, 1908

- * Act No. 5 of 1908
- * Assent: 27th March, 1908
- * Enforce: 1st January, 1908

CPC	
Sections (158)	Orders (51)

Sections Part-I Suits in General (1-35 B)		
Preliminary (1-8)	Res Judicata and Jurisdiction (9-14)	Place of Suing (15-25)
Institution of Suit (26)	Summon and Discovery (27-32)	Judgment and Decree (33)
Interest (34)	Lost (35-35B)	

Part-II
Execution (36-74)
Part-III
Incidental Proceedings (75-78)

Part-iv Suits in Particular Cases (79-88)		
Suits by or against govt.(79-82)	By or against foreign ruler (83-87 A)	By former Indian Ruler (87B)
Interpleader Suit (88)		

Part-V Special Proceedings (89-93)		
Arbitration (89)	Special Case (90)	Public Nuisance and wrongful Acts (91-93)

Part -VI
Supplemental Proceedings (94-95)

Part-VII Appeals (96-112)		
Appeal from Original Decree (96-99A)	Appeal from Appellate Decrees (100-103)	Appeal from Orders (104-106)

General Provisions Relating to Appeal (107- 108)		Appeal to Supreme Court (109-112)
--	--	--------------------------------------

Part-VIII		
Reference (113)	Review (114)	Recursion (115)

Part-IX	
Special provisions of HC which are not judicial commissions (116-120)	

Part-X
Rules (121-131)

Part-XI	
Miscellaneous (132-158)	

Orders

Part-I (01-20A)

- 01 = Name of Parties
- 02 = Frame of Suit
- 03 = Recognized Agents and Pleadings
- 04 = Institution of suits
- 05 = Issue and service of Summons
- 06 = Pleadings
- 07 = Plaint
- 08 = Written Statement
- 09 = Appearance of Parties and Consequences of Non appearances
- 010 = Examination of Parties
- 011 = Discovery and Inspection
- 012 = Admission
- 013 = Production, Impounding and Return of Documents
- 014 = Settlement of Issues and Determination of suit or issues of law or issues agreed upon
- 015 = Disposal of the suit of the 1st hearing
- 016 = Summon of Witness
- 016A = Attendance of witnesses confirmed or detained in prisons
- 017 = Adjournment
- 018 = Hearing

- 019 = Affidavit
- 020 = Judgment and Decree
- 020A = Cost

Part-II (Execution (021))

Part-III (Incidental Proceedings (022-51))

- 022 = Death, marriage and Insolvency
- 023 = Withdrawal and Adjustment
- 024 = Payment in Court
- 025 = Security of Cost
- 026 = Commission

Suits (027-35)

- 027 = Govt.
- 027A = Constitution
- 028 = Army
- 029 = Corporation
- 030 = Firm/Hindu Undivided Family
- 031 = Trustee, Executor and Administrator
- 032 = Minor/Unsound Mind
- 032A = Family
- 033 = Indigent
- 034 = Mortgage
- 035 = Inter-pleader
- 036 = Special Case
- 037 = Summary Procedure

Supplemental Proceedings (038-40)

- 038 = Arrest and Attachment before Judgment
- 039 = Temporary Injunction and Interlocutory orders
- 040 = Appointment of Receiver

Appeal (041-45)

- 041 = Appeals from original decrees
- 042 = Appeals from Appellate decrees
- 043 = Appeals from orders
- 044 = Appeals by Indigent persons
- 045 = Appeals to the Supreme Court

Reference, Review

046 = Reference

047 = Review

048 = Miscellaneous

049 = Chartered High Court

050 = Provincial Small cause court

051 = Presidency Small Cause Courts

Part-A		
Sec	Mix	Order
1-6		
	7 + 050	
	8 + 051	
9-14		
15-25		1, 2, 3
	26 + 04	
	27 - 29 + 05	
		6 - 10
	30 + 011	
		12 - 15
	31 - 32 + 016	
		16 A, 17, 18, 19
	33 - 20	
34		
	35 + 20A	
35 A, B		
	Part-B	
	36 - 74 + 021	
	Part-C	
		22 - 25
	75 - 78 + 026	
	79 - 82 + 027	
		27A, 28 - 34
83 - 87A		
87 B		
	88 + 035	
89		
	90 + 36	
91 - 95		
		37
	94 - 95 + 038 - 40	
	96 - 99A + 041	

	100 – 103 + 042	
	104 – 106 + 043	
107 – 108		
		44
	107 – 112 + 045	
	113 + 046	
	114 + 047	
115		
116 – 120		
121 – 131		
132 – 158		
		48
		49

Q. What is the object of CPC?

Ans. An Act to consolidate and amend the laws relating to the procedure of the courts of civil Judicature.

There were many amendments, so there is a history of CPC also.

Act no. 8, 1859

Act no. 10, 1877

Act no. 14, 1882

Presently Act no. 5, 1908

In present CPC also has various amendments including Mali math Committee.

- i. Act no. 104, 1976
- ii. Act no. 46, 1999
- iii. Act no. 22, 2002
- iv. Act no. 4, 2016 (Commercial courts for Rs. 1 Cr. Or more)
- v. Act no. 28, 2018 (Amendment in commercial courts)

* Now CPC apply in J and K also Schedule 5 entry 8 of J and K reorganization Act, 2019.

* It has prospective effect and not retrospective effect.

Q. Where CPC doesn't apply?

Ans. Sec 1 Not apply on J and K (Now apply refer J and K reorganization Act, 2019)

- * Not apply to the tribal areas and Nagaland
- * Tribal area = such area which before 31 Jan, 1992 was tribal area of Assam, as referred in Para 20 of the sixth Schedule of the constitution.

Wherever following matter there CPC shall apply along with local laws:

- a. Amindivi Island
- b. East Godavari
- c. West Godavari and Vishakhapatnam agencies.
- d. In state of AP (Andhra Pradesh)
- e. Lakshadweep
 - * Consent of Governor General 21 Mar 1908
 - * Came into force 1 Jan 1908.

Sec 4: wherever special law, local law or special proceedings CPC shall not apply.

- * Wherever any landholder or landlord receives rent from the produce of land then CPC shall not apply for his remedies.

Sec 5: wherever matter certain to revenue courts then CPC shall apply only when special procedures (Act) are silent.

- * SC can issue notification that the provisions of CPC apply with or without modification.
- * Revenue court does follow; court having jurisdiction under any local law to entertain suit or other proceedings relating to the rent revenue or profits of land used for agriculture purposes but does not include a civil court having original jurisdiction under this code. (CPC does not apply)
- * If provisions of revenue courts are silent then CPC apply.

Revenue court-Raj Land Revenue Act, Raj, Tenancy Act.

Sec 3: District court is subordinate to HC and every civil court of inferior grade i.e., small because court subordinate to DC & HC. 4 other courts are also subordinate to DC or HC.



Tribunals are created to reduce the burden of courts, they perform the quasi-judicial function and can exercise only certain powers under CPC & CrPC. They are headed by judicial officer which doesn't make it a Court.

Q. What do you understand by jurisdiction?

Ans.

- a. Subject Wise: (Family Courts, Raj Appellate Tribunal)
- b. Territorial Jurisdiction (15-25)
- c. Pecuniary Jurisdiction (Sec 6)

- i. Civil Judge- 0 – 2 Lakh
- ii. Senior Civil Judge – 2 – 5 Lakh
- iii. District Judge – 5 Lakhs or more
- d. Original or Appellate Jurisdiction

Sec 2: Definitions

- i. Code
- ii. Decree
- iii. Decree holder
- iv. District
- v. Foreign Court
- vi. Foreign Judgment
- vii. Govt. Pleader
- viii. A. High Court
- ix. B. India
- x. Judge
- xi. Judgment
- xii. Judgment Debtor
- xiii. Legal Representative
- xiv. Mesne profit
- xv. Moveable Property
- xvi. Order
- xvii. Pleader
- xviii. Prescribed
- xix. Public Officer
- xx. Rules
- xxi. Share in-corporation
- xxii. Signed
- xxiii. Public officer: means an person falling under any of the following descriptions namely.
 - a. Every Judge
 - b. Every member of all India Service.
 - c. Army
 - d. Officer of Court
 - e. Confine person (Police)
 - f. Information of offence and Protect health safety (CID/Doctor)
 - g. Revenue
 - h. Any person who is in pay or remuneration by govt. or perform public duty.

Legal Representative		
<u>De Jure</u> Such person who is law represents the estate of a deceased person.	<u>De Facto</u> Such person who intermeddles (interfere) with the property of the deceased.	<u>National LR</u> Such person where suit is of representative character then to whom estate evolves. Eg: Labor Union Vice President.

Mesne Profit: Such benefit which was received by person having wrongful possession.

- * Such property actually received, or person could have received by ordinary diligence.
 - ° Different from sec 144; there possession is rightful. (Lower court gave different judgment.)
- * It doesn't include improvements (MP = Profit + Interest – Improvements.)

Decree: Formal expression of adjudication

- * Which conclusively determine the rights of parties.
- * With regard to all or any matter of controversy in a suit.
- * It is preliminary or final.
- * It includes following things 'Dined Decree'.
 - a. Rejection of Plaintiff (O7, R11)
 - b. Question under sec 144
 - c. It excludes following things:
 - A. Appeal from orders (O43, sec 104-106)
 - B. Order of dismissal for default.

Formal Expression: Court shall specifically state whether relief is granted or not.

Adjudication: Court has used its discretion, where there is discretion there are following things: -

- a. Heard both the parties.
 - b. Judgment is on merit.
- * Decision: May be on merit or may not be on merit.
 - Adjudication –Decree
 - Decision – Order
 - * Conclusively Determines: That judgment is final. (If aggrieved, go to higher authorities)

- * Suit: Decree on suit and not on application, but there are exceptions:
 - i. By indigent person
 - ii. Where application of arbitration is rejected.
 - iii. Order 36 Rule 3 (Special matter)

- * Hansraj Gupta Vs official liquidator Dehradun
 - General rule is that civil proceedings are instituted by presentation of plaint.

- * Venkata Reddyvs Patties Reddy
 - Wherever in decree there is adjudication then there pleading of parties shall be seen and proceedings of court.

Decree is of two types

Preliminary Decree	Final Decree
a. Wherever shares of parties are determined b. Further proceedings are required. c. Preliminary decree can be more than one. d. Preliminary not dependent on final decree.	a. Wherever rights of parties are determined completely. b. Finally decided. c. Final decree is only one. d. Dependent on preliminary decree i.e., if preliminary is to set aside then final decree also set aside.

Sec97: Appeal from final decree where no appeal from preliminary decree:

- * If preliminary decree is not appealed, then later on an appeal of final decree there shall be no objection.

Shankar Vs Chandrakant

- * In preliminary decree right and duties of parties are determined but further proceedings are required.

Q. Can there be partly preliminary and partly final decree?

Ans. Yes, suit for possession or mesne profit.

Deemed Decree: Such orders which are just like decree but principle of res judicata not apply E.g.: 07 R13

- * CIT Vs Bombay Trust Corporation
- * It is not decree but treated as decree.

Order: Means the formal expression of any decision of a civil court which is not a decree.

Decree 2 (2)	Order 2 (14)
<ul style="list-style-type: none"> * Formal expression of adjudication. * Conclusively determines the rights of parties. * Right of first appeal. * There can be second appeal. * There is one final decree. * Decree is of two types. 	<ul style="list-style-type: none"> * Formal expression of decision * May or may not conclusively determine. * No appeal except appeal lie as appeal of order (D43, Sec 104 105) * No second appeal * Application itself * Any number of orders. * No types.

Decree	
What is included	What is excluded
<ul style="list-style-type: none"> * Order of at a battement of suit * Appeal which is time barred and dismissed. * Where there is no cause of action. * Sec 92 of (PC [Public Nuisance]) * E.g.: Right to sue ends 	<ul style="list-style-type: none"> * Dismiss in default * Appointment of Commission * Temporary Injunction. * Return of plaint. * O23 R1, Withdrawal and adjustment.

Q. What is judgment?

Ans. Sec2 (ix): Statement of any judge on the grounds of decree or order (Refer O20 R4)

Judgment General	Judgment of Small Cause Court.
<ul style="list-style-type: none"> a. Concise statement of the case. b. Points for determination. c. The Decision. d. Reason of decision 	<ul style="list-style-type: none"> It contains only <ul style="list-style-type: none"> a. Points of determination. b. Decision

Decree holder	Decree Debtor
Such person in whose favor decree is passed.	Such person against who decree is passed.
Order capable of execution is passed.	Order capable of execution is passed.
Person also includes mortgagee	Person also includes Guarantor

A
(Judgment Debtor)

Vs

B (Winning)
(Judgment Holder)

Rules: Means rules and forms contained in the first schedule and made under section 122 or 125.

Share in corporation: Includes stock debenture—stock, debentures, or bonds.

Signed: Same in the case of a judgment or decree, includes stamp.

Pleader: Means any person entitled to appear and plead for another in court, and includes an advocate, a Vakil or an attorney of high court.

Prescribed: Means prescribed by rules.

Code: includes rules

District: Means the local limits of the jurisdiction of a principal civil court or original jurisdiction (DC) and includes the local limits of the ordinary original civil jurisdiction of a HC.

Foreign Court: Means

A court situated outside India and not established or continued by the authority of the central govt.

Foreign Judgment: Means the judgment of a foreign court.

Government Pleader: Includes any officer appointed by the state govt. to perform all or any of the function expressly imposed by this code & also any pleader acting under the direction of the govt. pleader.

High Court: In relation to Andaman and Nicobar Islands means the High Court in Calcutta?

India: Means the territory of India excluding J and K.

Judge: Means the presiding officer of a civil court.

Moveable property: Includes growing crops.

Q. What do you understand by civil nature suits?

Ans. Sec 9: Courts to try all civil suits unless barred except

a. Expressly barred (Refer Sec 4 and 5)

b. Impliedly barred (Refer Arbitration clause which is by consent of parties).

Explanation 1: Wherever matter is of right of property or office then it shall be of civil nature then although such right is based on religious rites and ceremonies.

Explanation 2: It is immaterial that such post is attached with fees or particular place.

- * Wherever matter is of civil nature or not then we have to see rights and liabilities.
If matter is of civil nature and rights are infringed then compensation shall be given.
- * A.R. Anantulu Vs R.S. Nayak
By consent of parties nobody can be given jurisdiction.
- * Most Rev. P.M.A. Metropolitan Vs Moran Mar Marthoma
In sec 9, the civil nature given is both positive as well as negative.
- * Firm Seth Radha Krishan Vs Administrator Municipality Committee Ludhiana
In sec 9, all types of matters shall be considered civil matters except impliedly or expressly barred.
- * Dhulabhai Vs State of M.P.
Civil courts are exclusively barred by special tribunals and special provisions in enactment and special laws.
- * Premier Automobile Vs Kamalakar Shantaram
- * RSRTC Vs Krishnakant
- * Chandrakant Vs Municipal Corporation of Ahmadabad
In all the three cases matter pertains to Industrial Dispute Act and Jurisdiction of civil Court.
Court held ID Act is a special provision and civil courts have no jurisdiction.

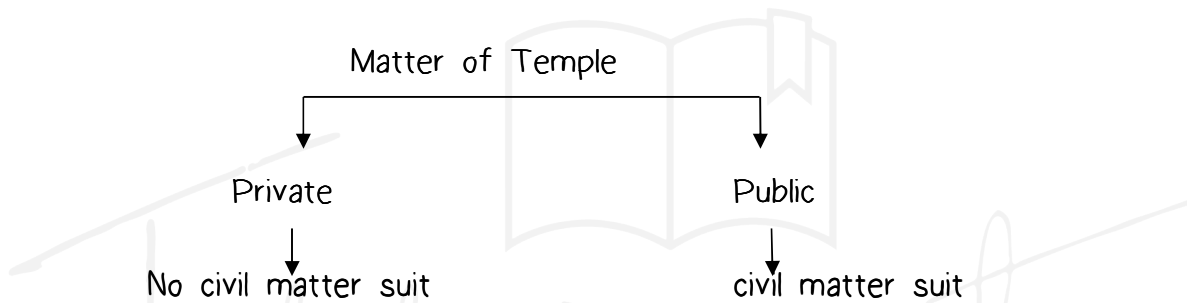
Following things considered in civil matter

1. Where main question relates to civil nature (rights) although it depends on religious question.
2. Injuria sine Damnum (Injury without damage)
3. Right to property.
4. On breach of contract.
5. Compensation
6. Right to Worship

7. Right to divorce
8. Right to procession
9. Right to specific performance
10. Right to Brig Gij Mani
11. Right to divisible of property inheritance.

No civil nature suit

1. Purely religious matter.
2. Purely custom
3. Caste related question
4. Personal matter
5. Political matter
6. Internal question (indoor management)
7. Wherever matter is of priest, pujari



Sec 10: Res Subjudiced

- * Directly and Substantial Same
(100%) (99.99%)
- * Same title or litigating under the same title.

A vs. B

B is dead

A vs. LR of B

Res Subjudice	Res Judicata
1. Sec 10 * Pending in court 2. 1 st case is pending 2 nd case stay i.e., proceeding stops. 3. Here institution is seen for that order sheet shall be seen. 4. Not apply to foreign judgment.	* Sec 11 * Sec 12 (In orders) Sec 13, 14 foreign judgments 1. 1 st case is decided 2 nd case is dismissed i.e., matter ends. 2. Judgment is seen. 3. Apply (Sec 13, 14)

E.g.: Res Subjudice

A vs. B (divorce case)

Kota
Case filed 10-6-2020

Jaipur
15-6-2020
Notice and Then reply.

In practical res subjudice and res judicata is taken as objection.

Reply + annexure (order sheet) that case is first instituted in Kota.

Res Subjudice: No court shall proceed (stay) with the trial in any suit if;

- a. Matter in issue is directly and substantially same.
- b. Between the same parties or parties litigating under the same title.
- c. If there is a previous suit instituted and suit is pending.
 - (i) In the same court
 - (ii) Other court within jurisdiction in India.
 - (iii) Any other court beyond the limits of India but established or continued by CG or Supreme Court.

- * Not apply on foreign court.
- * This is mandatory i.e., court must adapt it there is no discretion.
- * Life Pharmaceuticals Ltd vs. Bengal Medical Hall.
The application u/s 10 can be in any stage.
- * V. P. Samnathi (RE)
It applies or applicable in appeal or revision also.

Sec 17: Res Judicata

No court shall try any suit or issue if

- a. Matter in issue is directly or substantially same.
- b. Between the same parties or parties litigating under the same title.
In any former suit.

Court is competent to try such subsequent suit or in former suit the matter was heard and finally decided by such court.

Ex. 1: Former Suit

Such suit which is first decided irrespective of when instituted.

Ex. 2: Wherever there is competence of court then it shall be determined that right to appeal is immaterial.

Ex. 3: Wherever matter that shall be alleged by one party and denied or admitted by another.

Ex. 4: Might or Ought (Constructive Res Judicata)

If any matter might and ought to be made a ground of defense or attack, then it shall be deemed too that it was made.

Ex. 5: Deemed to have been refused:

Wherever any relief is not given expressly then it shall be considered that is refused.

Ex. 6: Representative suit

Wherever any person litigate bonafidely for public or private right and right is common for several people and all persons are interested then it shall be deemed that suit is by person claiming under litigation. If representative suit, then on all person's res-judicata shall apply.

Ex. 7: Execution

Apply on execution proceedings also.

Ex. 8: Limited Jurisdiction

Wherever any matter is finally heard or decided by court of limited. Jurisdiction then res judicata applies in subsequent suit although court of limited jurisdiction is not competent to hear subsequent suit.
We must go in past tense to see jurisdiction.

Section 12: Bar to further suit

Where a plaintiff is precluded by rules from instituting suit in respect of a particular cause of action, he shall not be entitled to institute a suit in respect of such cause of action in any court (res Judicata or Other places):

- a. Section 21A
- b. Section 47 (1)
- c. Section 95 (2)
- d. Section 144 (2)
- e. O2 R2
- f. O9 R9
- g. O11 R21
- h. O22 R9
- i. O23 R1 (1)
- j. O23 R1 (3)
- k. O23 R3A

Q. The general rule is res judicata applies on foreign judgment? Is there any exception?