

**Section 7(v-a) as amended by Punjab Finance Act, 1973.** Punjab Finance Act, 1973 came into force on 29th June, 1973, raising Court-fee on suits for possession of land on the basis of fifteen times of net profits arising from land during the year next before the date of presenting plaint. Trial Court although ordered filing of *Naqsha-Jhar Paidawar* for determination of Court-fee, yet it neither determined precise amount of Court-fee on the plaint nor called upon plaintiffs to pay the precise amount. Without determination of precise amount of Court-fee payable on a document and calling upon defaulting party for making good deficiency in Court-fee so determined penal action is not called for. [1994 MLD 402].

**Suit for possession of immovable property.** Court-fee has to be calculated on the market value of land. [1998 CLC 851 *Quetta*].

(b) Where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government, forms part of such estate and is recorded as aforesaid; and such revenue is settled, but not permanently five times the revenue so payable;

#### COMMENTS

**Pre-emption suits.** In the case land is assessed to land revenue the Court-fee is computed under clauses 7(v-a) and (b) and if not assessed to land revenue the Court-fee is computed in accordance with Section 7(v-d) of the Court Fees Act and valuation of the suit is determined under Section 8 of Suits Valuation Act. [2000 YLR 2104]. Suit land not assessed to separate revenue value, market value considered as value for the purpose of the jurisdiction. [1999 YLR 2668].

Suit land assessed to land revenue and out of a definite share of vendor. Provision of Section 7(v-d) not applicable. Jurisdictional value to be determined on the basis of revenue assessed on suit land as provided under S. 7(vi-c). [1999 CLC 1108]. Suit to be valued u/S. 3 Suit Valuation Act 1887. [1997 CLC 768].

**Non-compliance of order of appellate Court.** Appeal liable to be dismissed. [2004 YLR 974].

**Inaction on the part of Court.** Trial Court not passing order directing plaintiff to make up deficiency of Court-fee, plaintiff not to be made to suffer due to inaction on the part of the trial Court. [2004 SCMR 742].

(c) Where the land pays no such revenue, or has been partially exempted from such payment, or is charged with any fixed payment in lieu of such revenue,

and net profits have arisen from the land during the year next before the date of presenting the plaint fifteen times, such net profits;

but where no such net profits have arisen therefrom the amount at which the Court shall estimate the land with reference to the value of similar land in the neighborhood;

### COMMENTS

**Deficiency in Court-fee.** Court has mandatory duty to grant time to plaintiff to supply deficient Court-fee; it is only on plaintiff's contumacy that penal provision as to rejection of plaint can be invoked. [1994 SCMR 62].

(d) Where the land forms part of an estate paying revenue to Government, but is not a definite share of such estate and is not separately assessed as above-mentioned the market value of the land;

**Explanation.** The word "estate" as used in this paragraph means any land subject to the payment of revenue, for which the proprietor or farmer or raiyat shall have executed a separate engagement to Government, or which in the absence of such engagement, shall have been separately assessed with revenue:

(e) For houses and gardens. Where the subject-matter is house or garden-according to the market value of the house or garden:

Clause (v-e)

### COMMENTS

**Suit involving determination of title to property.** Suit being for determination of title of property, as also rights interests and liabilities and parties would be covered by provision of Section 7(v-e) Court Fee Act providing for computation Court-fee on the bases of market value. [1995 CLC 206].

### AMENDMENTS OF CLAUSE (V) OF S. 7

**Province of Punjab.** For the existing clause (v), the following shall be substituted:-

[v. In suits for the possession of land, houses and gardens according to the value to the of subject-matter; and such value shall be deemed to be-

- (a) Where the subject-matter is land and where net profits have arisen from such land during the year next before the date of presenting the plaint--  
Fifteen times such net profits;

(b) Where the subject-matter is land and where no such profits have arisen therefrom--  
market value of such land;

(c) Where the subject-matter is a house or garden--according to the market value of the house or garden]<sup>4</sup>

### Province of Sindh:

[v. In suits for the possession of land, houses or garden. According to the value of the subject-matter, and the market-value of the land, house or garden shall be deemed to be such value.]<sup>5</sup>

### Province of Baluchistan:

For the existing clause v, the following shall be substituted:-

[v. In suits for the possession of land, houses or garden. According to the value of the subject-matter, and the market-value of the land, house or garden shall be deemed to be such value.]<sup>6</sup>

(vi) To enforce a right of pre-emption. In suits to enforce right of pre-emption according to the value (computed in accordance with paragraph (v) of this section) of the land, house or garden in respect of which the right is claimed: -

### AMENDMENT OF CLAUSE (VI) OF S. 7

#### Province of Punjab.

In Section 7, for existing clause vi, the following shall be substituted:-

[vi. To enforce a right of pre-emption.

(a) Where the subject-matter is land, according to the value of the land in respect of which the right is claimed calculated by multiplying the produce index units of such land with the money value of a produce index as notified by the Government; and

(b) Where the subject-matter is a house or a garden, according to the value computed in accordance with clause-v of this section.

4. Subs. by Ordinance XIV of 1973, S. 8.

5. Subs. by Sindh XIII of 1974.

6. Subs. by Baluchistan IX of 1981, S. 3.

**Explanation.** "Produce index unit" means the measure notified by the Government in terms of which the productivity of an acre of land of a particular kind in a particular assessment circle or area is computed.]'

### COMMENTS

**Pre-emption suits.** Suit land forming a definite shares of estate assessed to revenue of rupees two, jurisdictional value thirty times of the land revenue in appeal. (2000 YLR 2404). Suit land assessed to land revenue and out of a definite share of vendor. Provision of Section 7(v-d) not applicable. Jurisdictional value to be determined on the basis of revenue assessed on suit land as provided under S. 7(vi-c). [1999 CLC 1108]. Market value at the time of sale and not at the time of presentation of suit regulates the valuation in the suit. [PLD 1985 Lah 645].

**Appeal (Province of Punjab).** In the Punjab in the matter of Court-fee, if the valuation of suit on the basis of 15 times of the net profits of the land in dispute falls below Rs. 25,000 no Court-fee is payable on the Memorandum of Appeal. The notification does not have retrospective effect, therefore a plaint filed before the date of the notification would remain liable to Court-fee, under Cl. (v) of S. 7 of the Court Fees Act. [1987 CLC 2428].

(vii) **For interest of assignee of land revenue.** 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:

(viii) **To set aside an attachment.** In suits to set aside an attachment of land or of an interest in land or revenue--

According to the amount for which the land or interest was attached:

Provided that, where such amount exceeds the value of the land or interest, the amount of fee shall be computed as if the suit were for the possession of such land or interest;

(ix) **To redeem.** In suits against a mortgagee for the recovery of the property mortgaged,

**To foreclose:** and in suits by a mortgagee to foreclose the mortgage, or, where the mortgage is made by conditional sale, to have the sale declared absolute:-

According to the principal money expressed to be secured by the instrument of mortgage;

(x) **For specific performance.** In suits for specific performance:-

s. 7]

- (a) of a contract of mortgage--  
according to the amount of the consideration;
- (b) of contract of mortgage--according to the amount agreed to  
be secured;
- (c) of a contract of lease--according to the aggregate amount of  
the fine or premium (if any) and of the rent agreed to be paid  
during the first year of the term;
- (d) of an award--according to the amount of value of the property  
in dispute;

### COMMENTS

**Payment of Court-fee.** Litigant was duty bound to pay proper Court-fee; at the time of initial presentation of the plaint. Non-payment of Court-fee at the time of filing of suit was not explained. Persistent contumacious negligence in making up deficiency did not merit to be excused when valuable right had accrued favouring the other party. [2005 CLC 197].

**Non-payment of Court-fee on memorandum of appeal.** Appeal against money decree with Court-fees of Rs. 10/. Even after the objection raised no Court-fees paid till expiry of one month, when deficient Court-fees paid as a measure of abundant caution. Appeal dismissed on the basis of contumacious conduct of appellant. [1997 SCMR 919].

**(xi) Between landlord and tenant.** In the following suits between landlord and tenant--

- (a) for the delivery by a tenant of the counterpart of a lease,
- (b) to enhance the rent of a tenant having a right of occupancy,
- (c) for the delivery by a landlord of a lease,
- [(cc) for the recovery of immovable property from a tenant including a tenant holding over after the determination of a tenancy.]
- (d) to contest a notice of ejection,
- (e) to recover the occupancy of immovable property from which a tenant has been illegally ejected by the landlord, and
- (f) for abatement of rent:-

according to the amount of the rent of the immovable property to which the suit refers, payable for the year next before the date of presenting the plaint;

**Suit for recovery of possession by tenant.** Valuation of Court-fee for recovery of possession to be computed according to annual rental value of the property. Valuation for the purposes of Court-fees and jurisdiction would be the same. [1997 MLD 3110].

(xii) In suits not expressly provided for in this section, according to the value claimed but such value shall not be less than a value which would attract a Court-fee of less than fifteen rupees.

### COMMENTS

Deficiency of Court-fee can be made up by order Appellate Court [1999 SCMR 1049]. Definite shares "means fractional shares of estate may be a half, one third or any other fractional shares. [1999 YLR 2668]. Government cannot claim to be treated in any manner differently from ordinary litigant. Delay of each day must be explained. Dismissal of appeal for non payment of Court-fee upheld. [1998 MLD 389].

**8. Fee on memorandum of appeal against order relating to compensation.** The amount of fee payable under this Act on a memorandum of appeal against an order relating to compensation under any Act for the time being in force for the acquisition of land for public purposes shall be computed according to the difference between the amount awarded and the amount claimed by the appellant.

**Appeal against Award.** In appeal against award of Collector, Court-fee must be paid ad valorem on difference of amount of award and amount allowed by Court. [1996 CLC 2002].

**9. Power to ascertain net profits or market value.** If the Court sees reason to think that the annual net profits or the market value of any such land, house or garden as is mentioned in Section 7, paragraphs (v) and (vi), have or has been wrongly estimated, the Court may, for the purpose of computing the fee payable in any suit therein mentioned, issue a Commission to any proper person directing him to make such local or other investigation as may be necessary, and to report thereon to the Court.

### COMMENTS

**Investigation by Court.** An inquiry under this Section should not be embarked upon without due reason, as otherwise even on a frivolous objection plaintiff would have to suffer hardship of going through an extra stage of litigation before he could persecute the suit. For purposes of preliminary satisfaction of Court whether there existed reasonable grounds for an inquiry as contemplated by S. 9 Court Fees Act it is open to Court to refer to any material brought before it. [PLJ 1985 SC 104].

**10. Procedure where net profits or market value wrongly estimated.** (i) If in the result of any such investigation the

Court finds that the net profits or market value have or has been wrongly estimated, the Court, if the estimation has been excessive, may in its discretion refund the excess paid as such fee, but, if the estimation has been insufficient, the Court shall require the plaintiff to pay so much additional fee as would have been payable had the said market-value or net profits been rightly estimated.

(ii) In such case the suit shall be stayed until the additional fee is paid. If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed.

**11. Procedure in suits for mesne profits or account when amount decreed exceeds amount claimed.** (1) In suits for mesne profits or for immovable property and mesne profits, or for an account, if the profits or amount decreed are or is in excess of the profits claimed or the amount at which the plaintiff valued the relief sought, the decree shall not be executed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits or amount so decreed shall have been paid to the proper officer.

Where the amount of mesne profits is left to be ascertained in the course of the execution of the decree, if the profits so ascertained exceed the profits claimed, the further execution of the decree shall be stayed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits so ascertained is paid. If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed.

(2) **Refund where amount decreed is less than amount claimed.** Where in any such suit as is referred to in sub-section (1) the Court-fee paid is found to be in excess of the amount of fee which would be payable if the suit had been valued at the amount decreed, the decree holder shall be entitled to the refund of the excess of Court-fee paid by him.

## AMENDMENT

Province of Sindh.

For the second paragraph the following substituted:

"In every such suit the difference if any, between the fee which would have been payable if the suit had comprised the whole of the profits or amounts found due shall, on judgment being signed, be leviable from the plaintiff whether he applies or does not apply for the execution of the decree and upon the certificate of a judge of the Court in which such suit was pending be recoverable by any Collector as an arrear of land revenue."