

Civil Procedural Code 1908

P. Mr. Tasadduq Hussain Baloch Advocate Sargodha and High Court
Lahore

Question

Q. State the rule determining the court in which civil suits relating to immovable property are instituted?

Ans.

IMMOVABLE PROPERTY.

Suits to be instituted where subject matter situate. – Subject to the pecuniary or other limitations prescribed by any law, suits.

- a. For the recovery of immovable property with or with rent or profits,
- b. For the partition of immovable property,
- c. For foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property.
- d. For the determination of any other right to or interest in immovable property,
- e. For compensation for wrong to immovable property,
- f. For the recovery of movable property actually under distraintⁿ or attachment, shall be instituted in the Court within the local limits of whose jurisdiction the property is situate, 1, (or in the case of *Suits referred to in clause 1 at the place where cause of action* wholly or partly arisen): **Section 16.**

JURISDICTION.

The term jurisdiction refer to the legal authority to administer justice in accordance with the means provided by law and subject to the limitations imposed by law, 1999 SCMR 900. It concerns the power of the court to hear, determine and adjudicate a cause by exercising its judicial power and authority. Whenever jurisdiction is given subject to certain terms, such terms must be complied with in order to create and raise the jurisdiction and in their absence jurisdiction does not arise. If no limit is placed, the jurisdiction

is unlimited. Jurisdiction consists in taking cognizance of the a case involving the determin^{-tion} of Jural relations, in ascertaining the essential points of it and in pronouncing upon them.

The^{re} is a distinction in the meaning and connotation of the terms 'want of jurisdiction, 'excess of jurisdiction and wrong ~~exercise~~^{excess} of jurisdiction'. 1999 SCMR 900.

TERRITORIAL JURISDICTION.

The rules relating to territorial jurisdiction of a court embody the principle that courts cannot have jurisdiction over matters in regard to which they cannot give an effective judgment. Civil courts in Pakistan cannot entertain suits respecting property situate outside Pakistan. PLD 1960 SC 229. The court can try questions regarding such property if it arises incidentally, or where the courts are adjudicating right in personam. PLD 1998 Kar. A. According to a recent judgment, Pakistani courts entertain suits regarding property situate outside Pakistan provided the subject matter is in personam and the decree or order can be enforced through personal obedience of the defendant. PLD 1968 Kar. 480. A court has jurisdiction to entertain suits respecting property situate within its territorial limits, even though the parties to the suit may be resident outside the local limits of its jurisdiction, initially only the contents of the plaint are determinative of the territorial jurisdiction.

DEFINITION OF IMMOVABLE PROPERTY.

The term 'immovable property' is not defined in the code. In section 2(26) of the General Clause Act, 1897, it is defined to include land, benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth. PLD 1976 Lah. 1233, The term benefits to arise out of land' refers to benefits which will accrue in the future and not to benefits ~~which will accrue in the future~~ and not to benefits already accrued. Land includes water, and right to fishery, and right to ferry. Trees until cut

and severed are immovable property. Rent that has already accrued is movable property, whilst future rent is immovable property. Machinery is movable property unless it is shown to be attached or permanently fastened to the earth.

SUIT FOR THE RECOVERY OF IMMOVABLE PROPERTY WITH OR WITHOUT RENT OR PROFITS.

A suit for the recovery of immovable property situate in Pakistan shall be instituted in the court within the local limits of whose jurisdiction the property is situate. Where such property is situate within the jurisdiction of various courts, the suit may be instituted in any court within the local limits of whose jurisdiction any portion of the property is situate, once a suit has been duly instituted, any subsequent transfer of the territory where the property is situate, to the jurisdiction of another court will not have the effect of divesting the jurisdiction of another court will not have the effect of divesting the court of jurisdiction to continue with the trial of the suit. PLD 1989 Lah. 546. However, by an order of transfer under section 24, a civil court can be given jurisdiction to decide interests in immovable property outside its jurisdiction.

A SUIT FOR PARTITION OF IMMOVABLE PROPERTY.

The principles enunciated will also be applicable to suits for partition, and such suits must be brought in the court withⁱⁿ whose jurisdiction the property is situate. A court cannot order the partition of immovable property situate outside Pakistan. The same rule applies to partition of movable property.

SUITS FOR FORE-CLOSURE, SALE OR REDEMPTION IN THE CASE OF A MORTGAGE OF OR CHARGE UPON IMMOVABLE PROPERTY.

Such suits may be ^{filed} ~~filed~~ either in the court within whose jurisdiction the property is situate, or in the court within the local limits of whose

jurisdiction the cause of action arises wholly or in part or the defendant resides, carries on business or personally works for gain. PLD 1996 Kar. 179.

DETERMINATION OF ANY OTHER RIGHT TO OR INTEREST IN IMMOVABLE PROPERTY.

This is a general provisions whereby all types of suits involving the determination of any right to or interest in immovable property, shall be ^{filed} filed in the court within the local limits of whose jurisdiction the property is situate. 1993 CLC 448. For example suit to realize future rent, or for the specific performance of a an agreement regarding immovable property, or for the declaration of title to immovable property, or for a declaration that an amount is charge on property. A suit for administration of the estate is not governed by this section. A court will have jurisdiction to entertain a suit under section 16, provided it is situate in Pakistan, even though the parties may be resident outside Pakistan. However the suit should be for the purposes of determining rights in such property and it is not enough that the relief would indirectly affect rights in immovable property. The term [right] is not confined to existing rights.

SUCH FOR COMPENSATION FOR WRONG TO IMMOVABLE PROPERTY

The provisions cover cases of tort affecting immovable property. Excepting cases covered by the proviso to Section 16, suits falling within the provisions will have to be filed in the court within whose limits the property is situate. Suits for compensation for trespass upon, or nuisance to, immovable property, will also be instituted where immovable property is situated.

SUIT FOR THE RECOVERY OF MOVABLE PROPERTY ACTUALLY UNDER DISTRAINT OR ATTACHMENT.

There is an exception to the general rule that movables follow the person of the owner (mobilia sequester personam), as they do not have any fixed or

permanent 'situs'. However, once movable are attached by actual seizure as provided by Order 21 rule 43 or order 38, or are put under distraint, they acquire the basic characteristic of immovable property which is immobility or a fixed location, and suits for recovering possession of such property can only be filed in the court within the local limits of whose jurisdiction the property is situate.

DIFFERENT COURTS

In order to avoid multiplicity of litigation, the Code provides that where immovable property is situate within the local limits of the jurisdiction of two or more courts, a suit under section 16 may be filed in any court where a portion of the property is situate. Such court will have jurisdiction over the entire suit property even though a part of it may be situate beyond the local limit of its jurisdiction, provided it is capable of being described as a single entity. However, the property must be situate in Pakistan, and in jurisdiction to which the code applies. These provisions will apply where the suit arises out of a mortgage of several properties situate in different districts, or for the partition, or recovery, of such like property. This section would not apply unless the cause of action in respect of the properties is the same, unless where in cases of several causes of action, joinder is permissible.

The plaintiff is given an option in selecting the forum, and where a court acquires jurisdiction under this section it can even execute decrees against such immovable property situate outside its jurisdiction. The only condition is that some part of the property must be situate within the local limits of the jurisdiction of such court, that such court should possess pecuniary jurisdiction over the entire subject matter of the suit, and that there should be some cause of action. However, the plaintiff may also bring separate suits wherever the property is situate.

UNCERTAIN LOCATION

A remedy has been provided where it is uncertain within the local limits of the jurisdiction of which court the immovable property is situate. By passing an order regarding the existence of uncertainty, the court, gives itself the jurisdiction to try the suit. The court must determine upon the allegation of uncertainty. Non-recording of the allegation of uncertainty will not necessarily vitiate the decree. The principle of this section will be applicable to execution proceedings. An objection to the territorial jurisdiction of the court must be raised before the court of first instance, otherwise the decree of the trial court will not be set aside on the ground of uncertainty of jurisdiction.