

THE BENGAL, AGRA AND ASSAM CIVIL

COURTS ACT, 1887

(Act XII OF 1887)

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[11th March, 1887]

An Act to consolidate and amend the law relating to the Civil Courts in Bengal, the North - Western Provinces and Assam

Whereas it is expedient to consolidate and amend the law relating to civil Courts in Bengal, the North-Western Provinces and Assam;

It is hereby enacted as follows:

CHAPTER I

Preliminary

1. Title, extent and commencement.

- (1) This Act may be called the Bengal, Agra and Assam Civil Courts Act, 1887.
- (2) It extends to the territories (which were on the 11th March, 1887) respectively administered by the Lieutenant- Governor of the North -Western Provinces and the Chief Commissioner of Assam except such portions of those territories as for the time being are not subject to the ordinary civil jurisdiction of the High Court.
- (3) It shall come into force on the first day of July 1887.

2. Repeal of Acts 6 of 1871 and 9 of 1887.

- (1) [Repealed by the amending Act, 1891 (12 of 1891)].
- (2) All courts constituted, appointments, nominations, rules and orders made, jurisdictions and powers conferred, and lists published under the Bengal Civil Courts Acts, 1871 or any enactment thereby repealed, or purporting expressly or impliedly to have been so constituted, made, conferred and published shall be

deemed to have been respectively constituted, made, conferred and published under this Act; and

- (3) Any enactment or document referring to the Bengal Civil Courts Acts, 1871, or to any enactment thereby repealed, shall be construed to refer to this Act or to the corresponding portion there of.

COMMENTS

This Act has been extended in Assam-by-Assam Act VIII of 1947.

CHAPTER II

Constitution of Civil Courts

3. Classes of Courts, There shall be the following classes of Civil Courts under this Act, namely:

- (1) the Court of the District Judge;
- (2) the Court of the Additional judge;
- (3) the Court of the Assistant District Judge; and
- (4) the Court of the Munsif.

COMMENTS

In Item (3) of this section the words " Subordinate Judge" have been substituted by the words " Assistant District Judge" by Assam Act XII of 1967.

When other Acts refer to Civil Courts, they do not refer to some other Civil Courts; they refer to the Courts, which are known as Civil Courts under this Act. or Assistant District Judge, is one Court though there may be more than one Munsif, Assistant district Judge or as such. It is open for the High purposes to say that for exercising the jurisdiction of the Munsif in the district there may be one or more Munsif, but every Munsif is a Munsif for the district

although by an administrative order he exercises jurisdiction over a limited part of the district. Section 3 lays down classes of Civil Courts and as such the Registrar of a High Court is not authorised to determine the question covered by R. 5 of Order 22 [*Gyani Devi v. Lakshmi Devi*, AIR 1975 Pat 138.]

4. Number of District Judges, Subordinate Judges and Munsifs.

The State Government may alter the number of District judges, Subordinate judges and Munsifs now fixed.

5. Number of Munsifs.

[Repealed by the Decentralization Act, 1914 (4 of 1914)]

6. Vacancies among District or Subordinate Judges.

(1) whenever the Court of a District Judge or Subordinate Judge is vacant by reason of the death, resignation or removal of the Judge or other cause, or whenever an under the provisions of S. 4, the State Government, or as the case may be, the High Court may fill up the vacancy or appoint the Additional District Judge or subordinate Judges.

- (2) Nothing in this section shall be construed to prevent a State Government from appointing a District Judge or Subordinate Judge to discharge for such District Judge or Subordinate Judge, all or any of the functions of another District Judge or Subordinate judge, as the case may be.

COMMENTS

In Assam, there is no separate class of Court of Additional District Judge. The Additional District Judge appointed in that area under S.6 (1) of their Act must, therefore, be deemed to be a division Court of the District Judge and not a separate and distinct Court of its own. [*Sagar Choudhury v. Nalein Choudhury*. AIR 1970 Assam and Nagaland 111]. The power of transfer of all District Judges is vested in High by virtue of Art. 235 of the Constitution.

7. Vacancies among Munsifs.

[Repealed by the Adaptation of Laws Order, 1937].

8. Additional Judges.

- (1) When the business pending before any District Judge requires the aid of Additional Judges for its speedy

disposal, the State Government may, having consulted with the High Court, appoint such Additional judges as may be requisite.

- (2) Additional Judges so appointed shall discharge any of the functions of a District Judge which the District Judge may assign to them, and in the discharge of those functions they shall exercise the same powers as the District judge.

COMMENTS

The power to transfer particular class of cases or a particular case under this section is not barred. [*Bijan kumar Bose*, AIR 1975 Pat 131]. There is no Additional Judge in Assam.

9. Administrative control of Courts.

Subject to the Superintendence of the High Court the District Judge shall have administrative control over all the Civil Courts under this Act within the local limits of his jurisdiction.

10. Temporary charge of District Courts.

- (1) In the event of the death, resignation or the removal of the District Judge, or of his being incapacitated; by illness or otherwise for the performance of his duties, or of his absence from the place at which his Court is held, the Additional Judge, or, if an from the place at which his Court is held, the Additional Judge, or, if an Additional Judge is not present at that place, the senior Subordinate Judge present thereat, shall, without relinquishing his ordinary duties, assume charge of the duties of the District Judge, and shall continue in-charge there of until the office is resumed.
- (2) While in charge of the office of the District Judge, the Additional Judge or Subordinate Judge, as the case may be, may, subject to any rules which the High Court may make in this behalf, exercise any of the powers of the District Judge.

COMMENTS

The senior Subordinate Judge, without relinquishing his ordinary duties, may so assume temporary charge of the duties of the District Judge subject, however, to any rules, which the High Court may make to exercise any of the powers of the District Judge. There being no Subordinate Judge in Assam, the exclusive powers of a District Judge cannot be assumed by others.

11. Transfer of proceedings on vacation of office of Subordinate Judges.

- (1) In the event of the death, resignation or removal of a Subordinate Judge. or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence from the place at which his Court is held, the District judge may , transfer all or any of the proceedings pending in the Court of the Subordinate Judge, either to his own Court or to any Court under his administrative control competent to dispose of them.
- (2) Proceedings transferred under sub-S (1) shall be disposed of as if they have been instituted in the Court to which they are so transferred.
- (3) Provided that the District Judge may re-transfer to the Court of the Subordinate Judge or his successors any proceedings transferred under sub S. (1) to his own Court or any other Court.
- (4) For the purposes of proceedings which are not pending in the court of the subordinate Judge on the occurrence of any event referred to in sub-S. (1), and with respect to which that Court has exclusive jurisdiction, the District judge may exercise all or any of the jurisdictions of that Court.

COMMENTS

In absence of Assistant District Judge, the District Judge is competent to hear an appeal from the order or decree of a Munsif, [*Mangilal Agarwalla v. Jamunalal Agarwalla*, AIR 1971 Assam and Nagaland 122]

12. Temporary charge of office of Munsifs.

[Repealed by the Adaptation of Laws Order, 1937].

13. Power to fix local limits of jurisdiction of Courts.

- (1) The State Government may, by notification in the official Gazette, fix and after the local limits of the jurisdiction of any Civil Court under this Act.
- (2) If the same local jurisdiction is assigned to two or more Subordinate Judge or two or more Munsifs, the District Judge may assign to each of them such civil business cognizable by the Subordinate Judge or Munsif as the case may be, as subject to any general or special order of the High Court, as he thinks fit.
- (3) When civil business arising in any local area is assigned by the District Judge under sub- S. (2), to one or two or more Subordinate Judges or Munsif shall not be invalid by reason only of the case in which

it if that place is within the local limits fixed by the State Government by sub-S (1).

- (4) The Judge of a Court of Small Causes appointed be also Subordinate Judge or Munsif, as the case may be, within the meaning of this section.
- (5) The present local limits of the jurisdiction of every Civil Court under this Act shall be deemed to have been fixed under this section.

COMMENTS

An order under S. 13 (2) does not affect a transfer of jurisdiction, because it merely distributes, as a matter of administrative convenience and with reference to certain local areas, the civil business amongst two or more Courts each of which has jurisdiction over the whole area. But where the State Government has conferred on him a particular jurisdiction that cannot be divested by District Judge.

The District Judge cannot take away the jurisdiction of a Court to execute a decree passed by it, when it is the only Court, which can execute it under the provisions of S. 38 read with S. 37 of the Civil Procedure Code. Where the trial Judge who tried the case at Gauhati, had jurisdiction to try the case of Tezpur and vice versa, the fact that he did not try

the case at Tezpur but at Gauhati would not make the order or judgment invalid for that reason [AIR 1952 Assam 88].

The Supreme Court held in *Triogi Nath v. Indian Iron and Steel Co. Ltd.* [AIR 1968 SC 205] that the labour Courts constituted under the Industrial Disputes Act have no comparison with the courts constituted under this Act.

The Allahabad High Court held in *Nand Kishore v. Mool Chandra* [AIR 1966 All 613], that S. 31 of the Arbitration Act does not prevent a District judge from exercising his power of transfer under S. 13. or under the provisions of C.P.C.

14. Place of sitting of Courts.

- (1) The State Government may, by notification in the Official Gazette, fix or alter the place or places, which any Civil Court under this Act is to be held.
- (2) All places at which any such courts are now held shall be deemed to have been fixed under this section.

COMMENTS

It is not the actual sitting on a particular day that determines the situation of the Court but the situation is determined by the places of sitting as required by the law for that purpose.

15. Vacations of Courts.

- (1) Subject to such orders as may be made by the State Government the High Court shall prepare a list of days to be observed in each year as holidays in the Civil Courts.
- (2) The list shall be published in the official Gazette.
- (3) A judicial act done by a Civil Court on a day specified in the list shall not be invalid by reason only of its having been done on that day.

COMMENTS

Under the Negotiable Instruments Act, when a day is declared to be a holiday, the High Court may also by a notification declare a holiday for the Civil Courts subordinate to it under this section.

16. Seal of Court.

Every Civil courts under this Act shall use a seal of such form and dimensions as are prescribed by the State Government.

17. Continuance of proceedings of Courts ceasing to have jurisdiction.

- (1) Where any Civil Court under this Act has for any cause ceased to have jurisdiction with respect to have any case, any proceeding in relation to that case which, if that court have not ceased to jurisdiction, might have been, had the case therein may be had in the Court to which the business of the former Court has been transferred.
- (2) Nothing in this section applies to cases from which provision is made in Ss. 36, 37 and 114 of, and R. 1 of Order XLVII to Schedule 1 to the Code of Civil procedure, 1908, or in any other enactment for the time being in force.

COMMENTS

Under the circumstances when the court which passed the decree is abolished, it is the court which its business is transferred is competent to execute the decree.

CHAPTER III

Ordinary jurisdiction

18. Extent of original jurisdiction of District or Subordinate Judge.

Save as otherwise provided by any enactment for the time being in force, the jurisdiction of a district Judge or subordinate Judge extends, subject to the provisions of S. 15 of the Code of Civil Procedure, [1908] to all original suits for the time being cognizable by civil courts.

COMMENTS

The figure "1908" has been inserted by Assam Act VI of 1935.

19. Extent of jurisdiction to Munsif.

(1) Save as aforesaid and subject to the provision of sub-S. (2), the jurisdiction of a Munsif extends to all the like suits of which the value does not exceed seven thousand rupees.

(2) The state Government may, on the recommendation of the High Court direct, by notification in the official

Gazette with respect to any; Munsif named therein that his jurisdiction shall extend to all like suits of such value not exceeding twenty- five thousand rupees as may be specified in the notification;

Provided that the State Government may, by notification in the official Gazette, delegate to the High Court its power under this section.

COMMENTS

Sub- clause (b) of sub-S. (2) has been deleted by Assam Act IX of 1965 and by the same Assam Amendment Act sub-CI (a) has been merged in sub-S. (2) and for the words "one thousand" occurring in sub -S .(1) the words" three thousand" had been substituted and in sub-S.(2) for the words "two thousand", the words "five thousand" had been substituted.

In sub -S.(1) , the words " three thousand rupees " were substituted by the words. "Seven thousand rupees" vide Assam Act No. VII of 1993 with retrospective operation.

In sub-S (2) the words" five thousand rupees" were substituted by the words" ten thousand rupees" vide Assam Act No.1 of 1979 with retrospective operation but re-substituted by the words "twenty-five thousand rupees" vide Assam Act No. VII of 1993 with retrospective operation.

20. Appeals from District and Additional Judge.

- (1) Save as otherwise provided by any enactment for the time being in force, an appeal from a decree or order of a district Judge or an Additional Judge shall lie to the High Court.
- (2) Any appeal shall not lie to the High Court from a decree or order of an Additional judge in any case in which, if the decree or order has been made by the District Judge, an appeal would not lie to that Court.

COMMENTS

This section does not give right of appeal from every order of a District Judge to the High Court. It only deals with the form of appeal.

In Assam there is no Additional Judge at present.

21. Appeals from Subordinate Judges and Munsifs.

- (1) Save as afore said, an appeal from a decree or order of a subordinate Judge shall lie-

- (a) to the district Judge where the value of the original suit in which or in any proceeding arising out of which the decree or order was made did not exceed fifty thousand rupees;
 - (b) to the High Court in any other case.
- (2) Save as aforesaid, an appeal from a decree or an order of a Munsif shall lie to the district Judge.
 - (3) Where the function of receiving any appeals which lie to the District Judge under sub-S. (1) or sub-S. (2) has been assigned to an Additional Judge, the appeals may be preferred to the Additional judge.
 - (4) The High Court may, with the previous sanction of the State Government, direct, by notification in the official Gazette that appeals lying in the Court of the District judge under sub-S. (2) from all or any of the decree or orders of any Munsif shall be preferred to the Court of such Subordinate Judge as may be mentioned in the notification, and the appeals shall thereupon be preferred accordingly.

COMMENTS

In Cl. (a) of sub- S (1) for the words "five thousand rupees" the words "seven thousand rupees" had been substituted by Assam act IX of 1965, and these provisions

were to apply irrespective of the fact that suits, proceedings, decrees or orders out of which the appeals referred to therein arose were instituted or made prior to the commencement of Assam Amendment Act IX of 1965.

In CL. (a) the word "fifteen" were substituted for the word "seven" by Assam Amendment Act XVII of 1974.

In CL. (a) of sub - S. (1) for the words "fifteen thousand rupees" the words "twenty thousand rupees" have been substituted vide Assam Act 1 of 1979, S .3 (with retrospective operation).

Section 5(2) of the Assam Amendment Act, 1979, provides; "notwithstanding anything to the contrary contained in the Limitation Act, 1963, an appeal from a decree or order made before the commencement of this Amendment Act, which but for the provisions of such Act, would have been preferred before the High Court within ninety days from the date of such decree or order, shall be preferred before the District Judge, within the said period. Nothing in this Amendment Act Shall be deemed to affect any appeal instituted prior to the commencement of such Act.

It is true that an appeal from an original order or decree of the Court of Munsif shall lie to the Assistant District Judge; even then on the occurrence of an event under S. II (4) of the Act, a District judge may exercise all or

any jurisdiction of the Court of Assistant District Judge. [*Mangilal Agarwalla v. Jamunalal Agarwalla*, AIR 1971 Assam and Nagaland 122].

Their Lordships in the case of *Satish Chandra Bairhya v. Pannatal Jain* [AIR 1978 Gau 2] considered the amendment to S. 21 by Assam Act No.17 amendment the proper forum of appeal against the impugned order was and is District Judge at Gauhati and the appeals had to be preferred as per amendment Act which had retrospective effect.

In CL. (a) of sub -S. (1), the words "twenty thousand rupees" vide Assam Act No. VII of 1993 with retrospective operation.

CHAPTER IV

Special jurisdiction

22. Power to transfer to Subordinate Judges, appeals from Munsifs.

- (1) A District Judge may transfer to any Subordinate Judge Under his administrative control any appeals pending before him from the decrees or orders of Munsifs.
- (2) The district Judge may withdraw any appeal so transferred and either hear and dispose of it himself or transfer it to a Court under his administrative control competent to dispose of it.
- (3) Appeals transferred under this section shall be disposed, of subject to the rule applicable to like appeals when disposed of by the District Judge.

COMMENTS

A District Judge, to whom an appeal is preferred under S.21 against an order of the Munsif, has power to transfer the appeal to a Subordinate Judge and the latter has the jurisdiction to dispose of the appeal.

23. Exercise by Subordinate Judge or Munsif of jurisdiction of District Court in certain proceedings.

(1) The High Court may, by general or special order, authorise any Subordinate Judge or Munsif to take Cognizance of, or any District judge to transfer to a Subordinate Judge or Munsif under his administrative control, any of the proceedings next hereinafter mentioned or any class of those proceedings specified in the order.

(2) The Proceedings referred to in sub-S. (1) are the following namely:

(a) Proceedings under Bengal Regulation 5, 1799 (to limit the interference of the Zila and City Courts of Diwani Adalat in the execution of wills and administrations to the estates of persons dying intestate).

[(b) ***].

[(c) ***]

(d) Proceedings under the Indian Succession Act, 1925 which cannot be disposed of by District Delegates; and

(e) Reference by Collectors under paragraph 5 of the Third Schedule to the Code of Civil Procedure, 1908.

(3) The District Judge may withdraw any such proceeding taken cognizance of by, or transferred to, a subordinate Judge or Munsif, and may either himself dispose of them or transfer them to a Court under his administrative control competent to dispose of them.

COMMENTS

This section has been amended by Assam Act VI of 1935.

24. Disposal of proceedings referred to in last foregoing section.

(1) Proceedings taken cognizance of by, or transferred to, a Subordinate Judge or Munsif, as the case may be under the last foregoing section shall be disposed of by him subject to the rules applicable to like proceedings when disposed of by the District Judge:

Provided that an appeal from an order of a Munsif in any such proceedings shall lie to the District Judge:

(2) An appeal from the order of the District Judge on the appeal from the order of a Munsif under this section shall lie to the High Court if a further appeal from the order of the District Judge is allowed by the law for the time being in force.

25. Power to invest Subordinate Judges and Munsifs with Small Causes Court jurisdiction.

The state Government may, by notification in the official Gazette, confer, with such local limits as it thinks fit, upon any Subordinate Judge or Munsif the jurisdiction of a Judge of a Court of small Causes under the Provincial Small Cause Courts Act. 1887 for the trial of suits cognizable by such Courts up to such value not exceeding seven hundred and fifty rupees in the case of a Subordinate Judge or three hundred rupees in the case of a Munsif as it thinks fit, and may withdraw any jurisdiction so conferred;

Provided that the State Government may by notification in the official Gazette delegate to the High Court its powers under this section.

COMMENTS

Section 25 is amended by Assam Act VI of 1935.

**[Chapters V and VI containing Ss. 26 to 29 and 30 to 35 have
been repealed]**

CHAPTER VII

Supplemental provisions

36. Power to confer powers of Civil Courts on officers.

- (1) The State Government may invest with the powers of any Civil Court under this Act, by name or in virtue of office-
 - (a) any officer in the Chota Nagpur (Sambalpur), Jalpaiguri or Darjeeling District, or in any part of the State of Assam; or
 - (b) After consultation with the High Court, any officer serving in any other part of the territories to which this Act extends and belonging to a class defined in this behalf by the State Government.
- (2) Nothing in S.4, 5,6,8,10 or 11 applies to any officer so invested, but all the other provisions of this Act, shall so far as those provisions can be made applicable, apply to him as if he were a Judge of the Court with the powers of which he is invested.

- (3) Where in the territories mentioned in Cl. (a) of sub - S (1), the same local jurisdiction is assigned to two or more officers invested with the powers of a Munsif the officers invested with the powers of a District Judge may, with the previous sanction of the State Government, delegate his functions under sub-S .(2) of S. 13 to the officer invested with the powers of a Subordinate Judge or to one of the officers invested with the powers of a Munsif.
- (4) Where the place at which the Court of an officer invested with the powers under sub-S. (1) is to be held has not been fixed under S. 14 , the Court may be held at any place within the local limits of his jurisdiction.

37. Certain decisions to be according to native law.

- (1) Where in any suit or other proceeding it is necessary for a Civil Court to decide any question regarding succession, inheritance, marriage or caste, or any religious usage or institution, the Mohammadan Law in cases where the parties are Mohammadans, and the Hindu Law in cases where the parties are Hindus shall form the rule of decision except in so far as such law, by legislative enactment, been altered or abolished.
- (2) In cases not provided for in sub-S (1) or by any other law for the time being in force, the Court shall act according to justice, equity and goods conscience.

COMMENTS

Under this section neither Hindus nor Mohammadans against their will should be subjected to the law of the other. It allows a person to adopt for himself any special custom, which he pleases. In a case of a dispute about and apparently the section does not contemplate that any contract between the parties could alter the rule of decision applicable.

38. Judges not to try suits in which they are interested.

- (1) The presiding officer of a civil Court shall not try any suit or other proceeding to which he is a party or in which he is personally interested.
- (2) The presiding officer of an Appellate Civil Court under this Act, shall not try an appeal against a decree or order passed by himself in another capacity.
- (3) When any such suit, proceeding or appeal as is referred to in sub-S. (1) or sub - S. (2) , comes before any such officer, the officer shall forthwith transmit the record of the case to the Court to which he is

immediately subordinate with a report of the circumstances attending the reference.

- (4) The superior Court shall thereupon dispose of the case under S. 24 of the Code of Civil Procedure, 1908.
- (5) Nothing in this section shall be deemed to affect the extraordinary original civil jurisdiction of the High Court.

COMMENTS

This section has been amended by Assam Act VI of 1935.

39. Subordination of Courts to District Court.

For the purpose of the last foregoing section, the presiding officer of a subject to the administrative control of the District Judge shall be deemed to be immediately subordinate to the Court of the District Judge, and for the purpose of the Code of Civil Procedure, 1908 the Court of such an officer shall be deemed to be of a grade inferior to that of the Court of the District Judge.

40. Application of Act to Provincial Courts of Small Causes.

- (1) This section, and Ss. 15, 31, 37, 38 and 39 shall apply to the Court of Small Causes constituted under the Provincial Small Causes Courts Act. 1887.
 - (2) Save as provided by this Act, the other sections of this Act do not apply to those Courts
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