

Suits – Institutions, Place of Institution and Parties to the Suit

by
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I. Suits - Institutions: The word "suit" is not defined in the Civil Procedure Code. It is understood as a proceeding that commences in a civil Court upon the presentation of a plaint. As we know a plaint is a statement in writing of a cause of action in which the relief claimed is set out in detail. Sec.26 CPC provides that every suit shall be instituted by the presentation of a plaint.

For the purpose of understanding of the procedure we may refer to Rule 20 of A.P. Civil Rules of Practice which provides that all plaints, written statements, applications and other proceedings may be presented to the Chief Ministerial Officer of the Court before 4.00 p.m. In case if the limitation expires on the same day, the Judge may receive them even after 4.00 p.m. Rule 20 (2) provides that the Officer shall at once endorse on the documents so presented. The Rule also casts an obligation on the party to file sufficient number of copies of plaint or proceeding and the documents. Rule 24 envisages that the Court shall not entertain any proceeding sent by post. When the plaint is found to be in order, it shall be registered. Further the plaint shall be entered in what we popularly call as 17 Register. At the time of registering the office will check for pending Caveats if any and make a note of it.

It is generally said that while registering a suit, the Court shall not take too many untenable objections. All the objections shall be raised at a time and not on subsequent re-presentations. The Hon'ble High Court of Andhra Pradesh in the case of **Pujari Narsaiah Vs. Modem Sudhakar and another [2015 (3) ALT 649]** directed the Court to entertain the suit when the Court insisted the Plaintiff to produce the original cheque. The Hon'ble High Court referred to other important case law on the subject. Judicial precedents are to the effect that is not the function of the trial Court to involve itself in examination of a purported discrepancy in a

minute manner and reject the plaint on such ground at the threshold as such a procedure is not sanctioned by law.

When a suit is said to be registered

There appears to be some divergent views on the subject. According to some precedents, a suit is said to be instituted when the plaint is presented. Another view is that mere presentation is not the test and that a suit is deemed to be instituted only when it is registered as per the orders of the Court.

The Court has to further see the status of a Defendant such as a minor, company, Government. In each case the Court has to follow the prescribed procedure.

In addition the Court shall see the limitation, jurisdiction of the Court, Court fee and cause of action while registering the suit. Suitable instructions are available in A.P. Civil Rules of Practice for guidance.

II. Place of Institutions:

Simply stated competency of a Court to entertain a proceeding can be termed as jurisdiction. In general there are three categories of jurisdiction viz., statutory or subject matter; pecuniary and territorial. Section 15 of Civil Procedure Code provides that every suit shall be instituted in the Court of the lowest grade competent to try it.

Soon after a suit is filed, it is the duty of the Court to ascertain whether it has jurisdiction to entertain it. Particularly the Court should bestow its attention when subject matter jurisdiction is involved. Sometimes the Court will not be aware of lack of jurisdiction till the opposite party enters appearance and raises the plea that the Court has no jurisdiction. For example the jurisdiction of Civil Court is barred under SARFESI Act. No injunction can be granted against a financial institution once the proceedings under SARFESI Act are commenced. However this fact is usually suppressed by the Plaintiff. His property might be a subject matter of SARFESI proceedings. It is a usual practice to file a suit for permanent injunction against the bank to restrain its officials from

interfering with the possession of the plaintiff. Such a suit is expressly barred by the special Act. In such cases, the Defendant files a petition to reject the plaint under Order VII Rule 11 CPC. In my humble opinion by allowing the petition, the Court can rectify the irregularity in entertaining the suit.

In my considered view there can be occasions where jurisdiction changes in the course of the legal proceedings. For example, if a plaint is amended by adding a new relief and requisite court fee is paid, then, the pecuniary jurisdiction changes. Presently the Courts often come across suits pertaining to endowments. After the establishment of Endowment Tribunal, there appears to be some doubt about the competency of a Civil Court to entertain suits. Usually the advocates quote Sec.151 of the Act which bars jurisdiction of civil Courts in the matters of administration of endowments. In any event the Court has to be cautious while applying the provisions. In this context it is apt to remind ourselves of the fundamental provision that ouster of jurisdiction cannot be inferred in general.

III. Parties to the suit : The basic requirements for a suit are:

- (i) parties
- (ii) cause of action
- (iii) subject-matter
- (iv) reliefs claimed (prayer)

Availability of proper and necessary parties to the suit is essential to adjudicate a dispute. Order I of Civil Procedure Code gives various dimensions of joining parties to the suit in the capacity of either plaintiffs or defendants.

Who are Necessary & proper parties?

In **Razia Begum Vs. Anwar Begum (AIR 1958 SC 886)** Hon'ble Supreme Court held:

“Rule 10(2) gives a wide discretion to the court to meet every case of defect of parties and is not affected by the inaction of the plaintiff to bring the necessary parties on record. A NECESSARY PARTY IS ONE WITHOUT WHOM NO ORDER CAN BE MADE EFFECTIVELY. A proper party is one in whose

absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. The addition of parties is a question of judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case."

Order I Rule 1 deals with joinder of Plaintiffs whereas Order I Rule 3 deals with joinder of Defendants. Further we have to look into Order 2 Rule 3 which deals with joinder of causes of action.

Order 1 Rule 1 reads as follows: *All persons may be joined in one suit as Plaintiffs 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 in such persons, whether jointly, severally or in the alternative;*
- (b) if such persons brought separate suits, any common question of law or fact would arise.*

Illustration: A & his wife were beaten by B. Here both A & his wife may join as Plaintiffs in one suit for damages against B. (THE TEST IS NOT THE IDENTITY OF CAUSE OF ACTION; BUT OF THE ACT/TRANSACTION)

Order 1 Rule 3 reads as follows: *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;*
- (b) if such persons brought separate suits, any common question of law or fact would arise.*

Illustration 1: A riding in a bus belonging to B is injured through a collision between the bus and a lorry belonging to C. In this case A may join B & C in one suit for damages for personal injury caused by their negligence or the negligence of either of them, because the case involves common questions of fact arising out the same transaction, namely collision.

Illustration 2: A, B & C each enters into an agreement with D to supply coal to his factory. A, B & C fail to deliver the coal. In this case D cannot join A, B & C as Defendants in one suit for damages, for there are three distinct agreements and therefore three different transactions.

(THE TEST IS NOT THE IDENTITY OF CAUSE OF ACTION; BUT OF THE ACT/TRANSACTION)

Illustration 3: It is not enough that the causes of action arise out of the same transaction, and that there are common questions of law or fact. It is further necessary that the defendants should be jointly interested in the main questions raised by the litigation.

A is the exporter of frozen meat. B is the owner of a line of steamers. There was a contract between A & B where under B agrees to carry frozen meat from Argentina to Europe. For this B procured a steamer called "Devon" belonging to C. The steamer turned out to be unseaworthy. The meat in the result was damaged. A sues B & C, claiming damages against B on the terms of contract between them, and against C upon the bill of lading. It is an implied condition of a bill of lading that the ship is seaworthy. The suit is not bad for misjoinder, for the causes of action arise out of the same transaction, namely, the alleged unseaworthiness of the Devon; there is a common question of fact, namely whether the ship was unseaworthy. The Defendants pleaded that they had no joint interest. The Court held that the defendants were properly joined as parties.

How cause of action arises : An act/transaction gives rise to either one cause of action or many causes of action. It is a bundle of facts. Here action means suit. Thus it is cause of suit. In **Pittapur Raja Vs. Suriya Rau** the Privy Council held that the term meant "the cause of action for which the suit was brought". Generally it means "every fact which is necessary to establish to support a right or obtain a judgment. It means every fact which will be necessary for the Plaintiff to prove (if traversed).

Whenever a new party is added the Petitioner has to seek consequential amendment provided under Rule 28 Civil Rules of Practice. Sometimes parties need to be transposed. [2006 (4) ALD 441]. It is said in execution proceedings there can be no adding of parties {1998 (1) ALT 621 (D.B)}.

These are some instances of parties to the suit. With this I humbly conclude my presentation.



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