

# The Code of Civil Procedure, 1908

( ACT NO. V OF 1908 )

## ♣An Act to consolidate and amend the laws relating to the Procedure of the Courts of Civil Judicature.

WHEREAS it is expedient to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature; It is hereby enacted as follows:-

### PRELIMINARY

**Short title,** 1.(1) This Act may be cited as the Code of Civil Procedure, 1908.

**commencement and extent.** (2) It shall come into force on the first day of January, 1909.

(3) It extends to the whole of Bangladesh.

**Definitions** 2. In this Act, unless there is anything repugnant in the subject or context,-

(1) "Code" includes rules:

(2) "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within <sup>1</sup>[\* \* \*] section 144, but shall not include-

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

Explanation.-A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such

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adjudication completely disposes of the suit. It may be partly preliminary and partly final:

(3) "decree-holder" means any person in whose favour a decree has been passed or an order capable of execution has been made:

(4) "district" means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction (hereinafter called a "District Court"), and includes the local limits of the ordinary original civil jurisdiction of the High Court Division:

(5) "foreign Court" means a Court situate beyond the limits of Bangladesh which has no authority in Bangladesh and is not established or continued by the Government:

(6) "foreign judgment" means the judgment of a foreign Court:

(7) "Government Pleader" includes any officer appointed by the Government to perform all or any of the functions expressly imposed by this Code on the Government Pleader and also any pleader acting under the directions of the Government Pleader:

(8) "Judge" means the presiding officer of a Civil Court:

(9) "Judgment" means the statement given by the Judge of the grounds of a decree or order:

(10) "Judgment-debtor" means any person against whom a decree has been passed or an order capable of execution has been made:

(11) "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued:

(12) "mesne profits" of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits but shall not include profits due to improvements made by the person in wrongful possession:

(13) "movable property" includes growing crops:

(14) "order" means the formal expression of any decision of a Civil Court which is not a decree:

(15) "pleader" means any person entitled to appear and plead for another in Court <sup>2</sup>[\* \* \*]:

(16) "prescribed" means prescribed by rules:

(17) "public officer" means a person falling under any of the following descriptions, namely:-

(a) every Judge;

(b) every member of the Civil Service of <sup>3</sup>[The Republic];

(c) every commissioned or gazetted officer in the military, naval or air forces of Bangladesh while in the service of the <sup>4</sup>[Republic];

(d) every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order, in the Court, and every person especially authorised by a Court of Justice to perform any of such duties;

(e) every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

(f) every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

(g) every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue-process, or to investigate, or to report on, any matter affecting the pecuniary interest of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government; and

(h) every officer in the service or pay of the <sup>5</sup>[Republic], or remunerated by fees or commission for the performance of any public duty:

(18) "rules" means rules and forms contained in the First Schedule or made under section 122 or section 125:

(19) "share in a corporation" shall be deemed to include stock, debenture stock, debentures or bonds: and

(20) "signed", save in the case of a judgment or decree, includes stamped.

### **Subordination of Courts.**

3. For the purposes of this Code, the District Court is subordinate to the High Court Division, and every Civil Court of a grade inferior to that of a District Court and every Court of Small Causes is subordinate to the High Court Division and District Court.

### **Savings**

4.(1) In the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special <sup>6</sup>[\* \* \*] law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force.

(2) In particular and without prejudice to the generality of the proposition contained in sub-section (1), nothing in this Code shall be deemed to limit or otherwise affect any remedy which a land-holder or landlord may have under any law for the time being in force for the recovery of rent of agricultural land from the produce of such land.

### **Application of the Code of Revenue Courts.**

5.(1) Where any Revenue Courts are governed by the provisions of this Code in those matters of procedure upon which any special enactment applicable to them is silent, the Government may, by notification in the official Gazette, declare that any portions of those provisions which are not expressly made applicable by this Code shall not apply to those Courts, or shall only apply to them with such notifications as the Government may prescribe.

(2) "Revenue Court" in sub-section (1) means a Court having jurisdiction under any <sup>7</sup>[\* \* \*] law to entertain suits or other proceedings relating to the

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rent, revenue or profits of land used for agricultural purposes, but does not include a Civil Court having original jurisdiction under this Code to try such suits or proceedings as being suits or proceedings of a civil nature.

**Pecuniary  
Jurisdiction.**

6. Save in so far as is otherwise expressly provided, nothing herein contained shall operate to give any Court jurisdiction over suits the amount or value of the subject-matter of which exceeds the pecuniary limits (if any) of its ordinary jurisdiction.

**Small  
Cause  
Courts.**

7. The following provisions shall not extend to Courts constituted under the 8[\* \* \*] Small Cause Courts Act, 1887, or to Courts exercising the jurisdiction of a Court of Small Causes under the said Act, that is to say,-

(a) so much of the body of the Code as relates to-

(i) suits excepted from the cognizance of a Court of Small Causes;

(ii) the execution of decrees in such suits;

(iii) the execution of decrees against immovable property; and

(b) the following sections, that is to say,-

section 9,

sections 91 and 92,

sections 94 and 95 so far as they authorise or relate to-

(i) orders for the attachment of immovable

property,

(ii) injunctions,

(iii) the appointment of a receiver of immovable property, or

(iv) the interlocutory orders referred to in clause (e) of section 94; and

sections 96 to 112 and 115.

**[Omitted]**

8. [Omitted by the Adaptation of Central Acts and Ordinance Order, 1949].

**PART I**

**SUITS IN GENERAL**

Jurisdiction of the Courts and Res Judicata