



*Achieve Perfection by unattached action*

**Report on**  
**WEBINAR ON EXCELLENCE IN QUALITATIVE AND**  
**QUANTITATIVE JUSTICE IN CIVIL MATTERS**

**PART-I**

**Held on: 28<sup>th</sup> June 2020**

**Organised by:** Rajasthan State Judicial Academy, Jodhpur

**Hon'ble Resource Person:**

Hon'ble Mr. Justice Arun Bhansali  
(Judge, Rajasthan High Court)

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- Objective of Rajasthan State Judicial Academy is to educate and sensitize its officers and other stake holders about the latest laws and procedure to achieve the constitutional mandate of securing the “Rule of Law”.
  - With the restrictions on physical gathering due to the spread of novel coronavirus, the innovations in technology have come to aid us in our ever going quest for knowledge. Through the use of softwares and advancement of computer technology it is possible to continue imparting knowledge through webinars. A novel solution indeed for a novel crisis.
  - Making full use of the advances in the field of technology and keeping up with its constitutional mandate in mind, The Rajasthan State Judicial Academy on **28<sup>th</sup> June 2020** organized a **Webinar on “Excellence in Qualitative and Quantitative Justice in Civil Matters, Part I”** at **11 am**, which was presided over by **Hon’ble Mr. Justice Arun Bhansali (Judge, Rajasthan High Court)**.
  - The webinar was conducted under the aegis and guidance of **Hon’ble Mr. Justice Sandeep Mehta (Judge, Rajasthan High Court and Chairman, Rajasthan State Judicial Academy)**, under whose able leadership the series of webinars for providing in-service training to the Judicial Officers of the State of Rajasthan was envisaged and implemented. His Lordship also graced the webinar with his presence.
  - The webinar saw a participation of 35 Additional District Judges and 36 Additional Chief Judicial Magistrates and Senior Civil Judges across the various Judgeships of the State of Rajasthan.
  - **Ms. Poonam Durgan [Additional Director (Academics), Rajasthan State Judicial Academy]** welcomed **Hon’ble Mr. Justice Arun Bhansali (Judge, Rajasthan High Court)** on the webinar. The Hon’ble Resource Person began the discourse by discussing the powers of the court under Order X Rule 1 of CPC.
  - It was stated with reference to the concept of admission and denial that when admission and denial takes place, the controversy at hand is reduced to a large extent. The Hon’ble Resource Person stated that it was observed that various applications filed in the courts are seen to be allowed or rejected in a very cursory manner.
  - It is further observed that orders sometimes also state that large number of Supreme Court and High Court judgments are relied upon, upon which the order is passed, but no such judgment is indicated. It is also observed that when such an indication is made, then the application is decided contrary to the settled position of law.
  - It was, therefore, suggested by the Hon’ble Resource Person that the courts must indicate the judgment on which they are relying upon while passing the order. Further, the courts need not multiply the judgments for citation on a single matter but must cite the one single best judgment. They must inform the parties about the same, So that the courts while deciding the case, can deal with the judgment and further the High Courts can also look at the same while deciding it during appeal.
  - The courts must also ask the parties to confine their submissions and judgments and if they are cited, then one must deal with them. The lower courts must give their reasons for concurring or disagreeing with a particular citation.
  - The Hon’ble Resource Person stated that we can improve the quality of the judgments delivered by controlling the following matters:
    - A. Regulating the framing of issue(s)
    - B. Recording of Admission/Denial
    - C. Reasoning of Judgment/Order Passed
  - There must be reasoned orders and not mere indication to the position of law. Quality must take precedence over quantity.
  - The Hon’ble Resource Person also emphasized to the participants the need for taking control over the files listed before one’s court.
- Issue of lengthy affidavits**
- Another issue addressed was that the affidavits of the parties in support of their pleadings is often too lengthy and is mostly the recitation of the plaint or the written statement. There is

thus the problem of extremely lengthy examination in chief as because of Order XVIII Rule 4 of CPC, the examination in chief has to be by way of affidavits. It was suggested by the Hon'ble Resource Person that issues are to be framed after admission/denial has taken place. The parties would then have to deal with specific aspects only. Also while filing of affidavits for examination in chief, it can be indicated that the statement of affidavit should be confined to the issues only.

#### **Issues under Rajasthan Stamp Act, 1998**

- Another aspect which was dealt with by the Hon'ble Resource Person was the issue of delay because of insufficient stamp documents or non-execution of proper stamps.
- Section 42 of the Rajasthan Stamp Act, 1998 provides for in instruments impounded, how dealt with and gives power to recover duty and penalty. The Hon'ble Supreme Court in **Chilakuri Gangulappa v. Revenue Divisional Officer, Madanpalle & Anr. (2001) 4 SCC 197** held that with regards to impounding of document; *“Insufficiently stamped document--If appellant agrees to remit the said amount--Court has to proceed with trial after admitting the document in evidence--If not then court is to forward the original document itself to the Collector for the purpose of adjudicating on the question of deficiency of stamp duty and the penalty.”*
- The Hon'ble Rajasthan High Court relied on the above judgment in **Sunita and Ors. v. Municipal Council and Ors. S.B. Civil Writ Petition Nos. 9977 and 9978/2013** decided on 10.04.2015 and held that if the court determines the duty and penalty and that amount is paid then that entire issue is taken care of.
- Apex Court's court decision, **Jupudi Kesava Rao vs. Pulavarthi Venkata Subbarao and Ors. AIR 1971 SC 1070** is cited to indicate that copy of an instrument cannot be impounded; since deficiency in a copy can't be cured as there is no question of permitting the leading of secondary evidence. But for Rajasthan, the situation is different, one must see the proviso (e) to Section 39 of the Rajasthan Stamp Act, 1998 which provides that nothing shall prevent the admission of a copy of an instrument on deficient stamp duty and the admission of the same cannot be denied.
- Further, the Hon'ble Resource Person also addressed the queries of the participants with regards to conducting mandatory mediation at the pre-litigation stage, similar to one being conducted in commercial courts matters. It was stated that mandatory mediation cannot be adopted and the courts have to work within the parameter of Section 89 of CPC.
- The aspect of law as to objection and exhibition and admissibility in evidence of documents was next dealt with the participants in detail. The modalities of unstamped, unregistered, not stamped properly documents at the stage of cross examination were explained to the participants keeping in mind the aspect of speedy disposal. Usually what is observed is that an issue is raised in Written Statement on the insufficiency of stamps for framing an issue. Even when the document is sought to be tendered with evidence, the courts usually indicate that the same would be decided with the issue.
- It was explained that if the document is inadmissible, while tendering the document in evidence, that aspect should be decided at that stage itself. The only point that remains to be seen is that the nature of the document is such that it goes to the root of the matter, so that one is aware of the foundational nature of the document.
- The Hon'ble Rajasthan High Court, while dealing with the issue that at what stage such objections as to the admissibility have to be decided, held in **Ramesh Chandra and Ors v. Additional District Judge and Ors 2010 (2) RLW 1785 (Raj.)** while dealing with C.P.C., Order 13 Rule 4 and Order 18 Rule 4(1) - Postponing and deferring decision on the question of admissibility of evidence till final hearing of the suit itself held that; *“It will depend upon the nature of objection of the defendants as to whether such objection is as to the admissibility of the evidence itself or as to the mode of proof of such evidence by other parties - If the objection is to the admissibility of the evidence itself, that goes to the root of the matter, then such objection is required to be decided forthwith and immediately”*

### **Issue pertaining to decree of partition**

- The Hon'ble Resource Person then addressed the query pertaining to decree of partition by metes and bounds. The issue specifically pertained to the fact that if one of the parties fails to appear at the time, what is the law by which such a suit is governed. It was stated that Order XX Rule 18 provides for Decree in suit for partition of property or separate possession of a share therein. The decree in such cases is normally of a nature of preliminary decree and the court is first required to determine the right of the party to the partition and if they are entitled to seek partition, their share and the share of the other parties. If we look at Order XX Rule 18 we find that failure of the appearance of one of the parties would not make a difference to the outcome of the suit.

### **Issue of Bar to suits under Section 207 of Tenancy Act**

- The Hon'ble Resource Person dealt with the issue of maintainability of the suit and the fact if they are barred under Tenancy Law, these suits mostly pertain to suits for specific performance/partition/injunction/agricultural land. An application is moved under Order VII Rule 11 of CPC read with Section 207 of the Rajasthan Tenancy Act, 1955.
- The Hon'ble Rajasthan High Court in **Lal Singh Jhala v. Panna Lal S.B. Civil Misc. Appeal No. 1644/2012 decided on 22.08.2016** dealt with the aspect that if a land continues to be recorded as agricultural land, however, the same is used for non-agricultural purposes then which court would have jurisdiction? The Hon'ble High Court held that, it is well settled that with respect to an unconverted agricultural land, the suit would lie before the Revenue Court only and the Civil Court's jurisdiction would be barred under the provisions of Section 207 of the Tenancy Act.
- Further, it was also stated that the nature of the suit filed would also further assist in the determination of the jurisdiction of the Courts. In case the plea raised is of sale deed, transfer document being void, then the jurisdiction would lie with the revenue court and in case, the plea is that the document is voidable, then the jurisdiction would lie with the civil court.
- The Hon'ble Rajasthan High Court in **Hasti Cement Pvt. Ltd & Anr. v. Sandeep Charan and Ors. 2018 (1) RLW 826 (Raj.)** held that,

*“From what has been noticed hereinbefore, it can be safely concluded that if the allegation in the plaint/substance of the allegations in the plaint allege the instrument to be void and no cancellation is required and without seeking such cancellation the relief of declaration pertaining to tenancy rights with regard to the agricultural land in question can be obtained by the plaintiff, only the revenue courts would have jurisdiction to deal with the subject matter of the suit and consequently the jurisdiction of civil courts would be barred. However, if the allegations made in the plaint make out a case of document being voidable, relief of cancellation of such a voidable document can only be granted by civil court and irrespective of the fact that the instrument pertains to agricultural land, the suit would not be barred under Section 207 of the Tenancy Act. Therefore, the trial court in each case, where a issue in this regard is raised, based on the stage of the suit i.e. either based on the plaint averments or the evidence available on record would have to come to a conclusion as to whether the facts as alleged, if established or as established in a case where evidence has been led makes the instrument void or voidable and decide accordingly.”*

- Further, the Hon'ble Supreme Court in **Pyarelal v. Shubhendra Pilania and Ors (2019) 3 SCC 692** while dealing with “Whether suit before a civil court was maintainable even though a suit for declaring khatadari rights had been filed?”, held that  
*“A claimant whose khatadari rights had been decreed by a revenue court was however on a different footing from a claimant whose khatadari rights were pending adjudication by a revenue Court. Where khatadari rights were yet to be decreed, a claimant must first approach revenue courts. Appellant had no right to seek relief before civil court without first getting his khatadari rights decreed by revenue court. Civil court might decree relief prayed only if it was first determined that Appellant was entitled to khatadari rights in suit property. Under provisions of Tenancy Act, jurisdiction to declare khatadari rights vested exclusively with revenue courts. Only after such determination might civil court proceed to decree relief as prayed. Explanation to Section 207 clarified that, if cause of action in respect of which*

*relief was sought could be granted only by revenue Court, then it was immaterial that, relief asked from civil Court was greater than, or in addition to or not identical with relief which revenue court would have granted. In view of this matter, civil court might not grant relief until khatedari rights of Appellant had been decreed by a revenue Court."*

- The Hon'ble Supreme Court in **Govt. of Orissa v. Ashok Transport Agency & Ors. (2002) 9 SCC 28**, has held that,

*"The expression "void" has several facets. One type of void acts, transactions, decrees are those which are wholly without jurisdiction, ab initio void and for avoiding the same no declaration is necessary, law does not take any notice of the same and it can be disregarded in collateral proceeding or otherwise. The other type of void act, e.g., may be transaction against a minor without being represented by a next friend. Such a transaction is good transaction against the whole world. So far the minor is concerned, if he decides to avoid the same and succeeds in avoiding it by taking recourse to appropriate proceeding the transaction becomes void from the very beginning. Another type of void act may be which is not a nullity but for avoiding the same a declaration has to be made. Voidable act is that which is a good act unless avoided, e.g., if a suit is filed for a declaration that a document is fraudulent and/or forged and fabricated, it is voidable as apparent state of affairs is real state of affairs and a party who alleges otherwise is obliged to prove it. If it is proved that the document is forged and fabricated and a declaration to that effect is given, a transaction becomes void from the very beginning. There may be a voidable transaction which is required to be set aside and the same is avoided from the day it is so set aside and not any day prior to it. In cases, where legal effect of a document cannot be taken away without setting aside the same, it cannot be treated to be void but would be obviously voidable."*

The Hon'ble Rajasthan High Court in **Sunil Bhandari and Anr. v. Shakuntala Kumari Alias Sangeeta Kanwar Rajput and Ors. 2018 (3) RLW 2396 (Raj.)** while relying upon the judgment of the Hon'ble Supreme Court in **Govt. of Orissa v. Ashok Transport Agency & Ors. (2002) 9 SCC 28**, held that,

*In the case of Ashok Transport Agency, it has been specifically indicated that voidable act is that, which is a good act unless avoided and example has been given that if a suit is filed for a declaration that a document is fraudulent and/or forged and fabricated, it is voidable as apparent state of affairs is real state of affairs and a party who alleges otherwise is obliged to prove it. Once the allegations made in the plaint seeks to make out a case of a fraudulent/forged power of attorney, which formed the basis for execution of sale deed, the said transaction would only be voidable and cannot be said to be void and therefore, the suit for seeking cancellation of such voidable documents would only be maintainable before a civil court.*

#### **Issue pertaining to money decree execution**

- The Hon'ble Resource Person addressed the query pertaining to what all options are available in case of money decree execution, where the judgment debtor does not have any property in his name or the decree holder fails to furnish the details of such property. It was stated that the burden of execution was on the decree holder to produce the said documents.

#### **Issue pertaining to appointment of Local Commissioner**

- The question pertaining to objection to the Local Commissioner Report was also discussed, it was suggested to the participants that while appointing a Local Commissioner, the court should take an opinion from both the parties and indicate their mutual consent in the order sheet.

#### **Issue of unnecessary applications being filed to delay trial**

- It was stated that the courts must see prima facie the substance in the application and not indulge in entertaining them in a routine manner. If the application does not have any substance then it can be rejected without seeking a reply.

#### **Issue pertaining to service of summons**

- With regards to streamlining and making practicable the process of personal or substituted service of summons, the Hon'ble Resource Person stated that the courts must start insisting on **National Service and Tracking of Electronic Processes (NSTEP)**.

- National Service and Tracking of Electronic Processes is an Android OS APP developed for service and delivery of Court Processes. This App is used by Bailiffs of the Courts for delivery of processes. CIS (Case Information System) software is deployed across all Courts in India. CIS provides facility to generate electronic processes in PDF format. Once the electronic processes are generated, process admin of the respective court will assign the delivery of processes to Bailiffs.

#### **Issues under Rajasthan Court Fees and Suit Valuation Act, 1961**

- The question pertaining to seeking suit for declaration or suit for cancellation was also dealt with. Suit for Declaration is provided under Section 24 of Rajasthan Court Fees and Suit Valuation Act, 1961 and Section 38 of Rajasthan Court Fees and Suit Valuation Act, 1961 provides for Suits for cancellation of decree, etc.
- The Apex Court in **Suhrid Singh v. Randhir Singh and Ors (2010) 12 SCC 112**, while dealing with the question of difference between a prayer for cancellation and declaration with regard to a deed of transfer/conveyance has held that;
 

*“Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non-est, or illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to 'A' and 'B' -- two brothers. 'A' executes a sale deed in favour of 'C'. Subsequently 'A' wants to avoid the sale. 'A' has to sue for cancellation of the deed. On the other hand, if 'B', who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by 'A' is invalid/void and non-est/ illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding. But the form is different and court fee is also different. If 'A', the executant of the deed, seeks cancellation of the deed, he has to pay ad-valorem court fee on the consideration stated in the sale deed. If 'B', who is a non-executant, is in possession and sues for a declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed court fee of Rs. 19.50 under Article 17(iii) of Second Schedule of the Act. But if 'B', a non- executant, is not in possession, and he seeks not only a declaration that the sale deed is invalid, but also the consequential relief of possession, he has to pay an ad-valorem court fee as provided under Section 7(iv)(c) of the Act. Section 7(iv)(c) provides that in suits for a declaratory decree with consequential relief, the court fee shall be computed according to the amount at which the relief sought is valued in the plaint. The proviso thereto makes it clear that where the suit for declaratory decree with consequential relief is with reference to any property, such valuation shall not be less than the value of the property calculated in the manner provided for by Clause (v) of Section 7.”*
- With regards to computation of court fee and suit valuation it was suggested that, if a document falls in more than one category then the entry which is beneficial to the assessee or the person who is required to pay, is adopted but in these provisions there is an exception; Section 9 of Rajasthan Court Fees and Suit Valuation Act, 1961 provides that if a suit falls in more than one category then wherever the court fees is higher, that will be charged.
- The query pertaining to the fact that whether the plaintiff as a matter of right can inflate or deflate a suit valuation just to bring it within the jurisdiction of the higher court or lower court was also addressed. It was stated that Section 11 of the Rajasthan Court Fees and Suits Valuation Act, 1961 takes care of this situation.
- The case of **Mallu Ram Swami v. Ravi Khurana S.B. Civil Writ Petition No. 18568/2019** decided on 15.01.2020 was also discussed, wherein the Hon'ble Rajasthan High Court while placing reliance upon the judgment of the Apex Court in **Suhrid Singh v. Randhir Singh and Ors (2010) 12 SCC 112** has held that;
 

*“The suit being in essence a suit for cancellation of sale deeds, the mere fact that petitioner sought declaration in the suit and attempted to value the same for the purpose of court fees based on the provisions of Section 24 read with Section 7 of the Act was indeed not justified and the provisions of Section 38 of the Act alone would be applicable to the said case and as Section 7 of the Act has no application, for determination of market value under section*

*38 of the Act, the petitioner was required to pay the court fees on the value of the documents and, therefore, the order passed by the trial court does not call for any interference.”*

- It was further clarified with respect to Section 2 of the Power of Attorney Act, 1882 that even if a sale has been executed by the Power of Attorney holder, then, it would be deemed that the transfer has been made by the plaintiff. Suitable consequences would follow so far as the court fee is concerned.
  - The Hon’ble Resource Person concluded by stating that in order to ensure speedy disposal a balanced approach to arguments, evidence recording and oral arguments is needed.
  - The webinar concluded with a vote of thanks by **Mr. Sanuj Kulshrestha [Deputy Director (Academics), Rajasthan State Judicial Academy]** thanking **Hon’ble Mr. Justice Arun Bhansali (Judge, Rajasthan High Court)** for imparting his valuable knowledge with regards to “**Excellence in Qualitative and Quantitative Justice in Civil Matters**”; Deputy Director further extended his most sincere gratitude to **Hon’ble Mr. Justice Sandeep Mehta (Judge, Rajasthan High Court and Chairman, Rajasthan State Judicial Academy)** for his guidance and all the participants for making the webinar an interactive and fruitful discussion.
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