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Report on

**TRAINING PROGRAMME ON SPEEDY
AND QUALITATIVE DISPOSAL OF CIVIL
AND CRIMINAL CASES WITH SPECIAL
REFERENCE TO RAJASTHAN LOCAL
AND LAND LAWS & IMPROVEMENT OF
COURT PERFORMANCE**

29th February-1st March, 2020

Organised by: Rajasthan State Judicial Academy, Jodhpur

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“Justice delayed is Justice denied”

- 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”. Keeping up with the constitutional mandate in mind, the Rajasthan State Judicial Academy is regularly organizing various training programmes, refresher courses, seminars, judicial colloquiums, conferences and workshops for Judicial Officers and other stakeholders.
 - In furtherance of the above, a ***Two day training programme on Speedy and Qualitative Disposal of Civil and Criminal Cases with Special Reference to Rajasthan Local and Land Laws & Improvement of Court Performance*** was organized on 29th February 2020-1st March 2020 in which a total of 71 Judicial Magistrates and Civil Judges presiding over different courts across the State of Rajasthan and 34 Trainee Officers from the Rajasthan Judicial Services 2019 Batch participated.
 - The training programme concluded in 6 (Six) independent sessions:
 - **Session I**
Managing the Docket: Court and Case Management
 - **Session II**
Execution of Orders and Decree: Relevant Provisions and their practical applications
 - **Session III (was divided into 2 Parts- A and B)**
Part A- *Relevant Provisions of Rajasthan Land Laws with special reference to jurisdiction of Civil Courts*
Part B- *Speedy and Qualitative Disposal of matters pertaining to Local Laws*
 - **Session IV**
Judging Skills and Concepts: Framing, amending and alteration of Issues in Civil Matters & Conferment of Burden of Proof
 - **Session V**
Principles of Evidence: Exhibition, Admissibility, and Appreciation of Evidence in Criminal and Civil Matters with special reference to Rajasthan Local Laws
 - **Session VI**
Judging skills and concepts: Framing, amending and alteration of charges in criminal matters
 - The Resource Persons for the training programme were:
 1. Hon’ble Mr. Justice Sandeep Mehta (Judge, Rajasthan High Court and Chairman, RSJA)
 2. Hon’ble Mr. Justice Vijay Bishnoi (Judge, Rajasthan High Court)
 3. Sh. Hari Om Sharma Attri (Director, RSJA)
 4. Sh. Kamal Chhangani (Judge, Family Court, Balotra)
 5. Ms. Shivani Singh (Judge, MACT, Rajsamand)
 6. Sh. Praveen Agarwal (Advocate, Supreme Court)
 - The training programme was inaugurated at 9:45 A.M. on February 29, 2020 by Hon’ble Mr. Justice Vijay Bishnoi (Judge, Rajasthan High Court), Sh. Hari Om Sharma Attri (Director, Rajasthan State Judicial Academy) and other officers of the Academy by lighting the lamp.
 - Welcome address was given by the Director (Rajasthan State Judicial Academy) wherein the Director stated that the purpose of such a training programme was to make the participants more aware regarding the speedy and qualitative disposal of matters and to have uniformity in the application of Rule of Law across the State of Rajasthan.
 - Issues that were being faced by the Courts dealing with civil and criminal matters were received in advance by the Academy and the same were deliberated upon during the course of the training programme. The training programme subsequently began with the deliberations by the Hon’ble Resource Persons.
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Day 01, February 29, 2020

Session I by Hon'ble Mr. Justice Vijay Bishnoi (Judge, Rajasthan High Court)

Managing the Docket: Court and Case Management

- The Hon'ble Resource Person started off the discussion by stating that managing the docket is one of the biggest issues that are currently being faced by the Trial Courts and the same needs to be addressed on an urgent basis keeping in mind the huge pendency of cases.
- For any management system to succeed and this equally applies to Court management, it is essential to identify the stakeholders. This is not particularly difficult so far as the judicial system is concerned. There are only four players in any judicial system. They are (not necessarily in order of importance):
 1. The judges
 2. The lawyers
 3. The litigants
 4. The Court staff and the Registry
- Each of these stakeholders has specific role to play for ensuring the success of case management and Court administration.
- The people of India have great faith in the judicial system and if the performance of the same is not up to the expectations of the people, then it will lead to weakening of the faith in the institution. Court management is basically how to manage the resources at one's disposal. It is related to how one can perform more with the limited resources at his/her disposal.
- The times have changed and so has the pace of life. The society that we live in nowadays, the litigants are very keen on having speedy justice. An officer must have the sense to do something extra or go the extra mile for the people in order to give them speedy justice.
- The Hon'ble Resource Person stated that the priority of the cases should be decided in a systematic manner by the judges and such cases should be managed as efficiently as possible. One aspect which might be helpful in achieving the same is the physical and mental well-being of the judges, as the well-known saying goes "A healthy mind resides in a healthy body." Thus, the Hon'ble Resource Person stressed on the physical and mental well-being of the Officers which will enable them to perform to the full extent of their potential.
- The session was concluded after providing the audience members guidance on how to manage the docket and addressing their concerns. The Hon'ble Resource person also suggested the audience members to learn from one another and adopt the best practices which can help them in working to the best of their potential.

Session II by Sh. Kamal Chhangani (Judge, Family Court, Balotra)

Execution of Orders and Decree: Relevant Provisions and their practical

- The Hon'ble Resource Person started off the session by discussing the case of **Damodaran Pillai v. South Indian Bank AIR 2005 SC 3460** in the which the Hon'ble Court held that Application u/s 5 of the Limitation Act is not maintainable in a proceeding arising under Order XXI of CPC and when execution application is dismissed in default, starting point of limitation for filing of restoration application would be date of order and not the knowledge thereof.
- The intricacies of execution were discussed with the participants, which included discussions pertaining to executions against property and person. The Hon'ble Resource Person also clarified the doubts of the participants in cases where the decree holder is not present then who may apply for the execution application.
- The concepts related to enforcement of decree against the Legal Representative, Civil Imprisonment, Decree of Specific Performance and abatement of the decree were also discussed with the participants.
- In the case of **V. Uthirapathi v. Ashrab Ali &Ors. (1998) 3 SCC 148**, the Hon'ble Supreme Court held that if after the filing of an execution petition in time, the decree holder dies and his legal representatives do not come on record - or the judgment debtor dies and his legal

representatives are not brought on record, then there is no abatement of the execution petition. If there is no abatement, the position in the eye of law is that the execution petition remains pending on the file of the Execution Court. If it remains pending and if no time limit is prescribed to bring the legal representatives on record in execution proceedings, it is open in case of death of the decree holder, for his legal representative to come on record at any time. The execution application cannot even be dismissed for default behind the back of the decree holder's legal representatives.

- In **Barkat Ali v. Badri Narain (Dead) by Lrs. AIR 2008 SC 1272**, the Hon'ble Supreme Court held that where a judgment-debtor has an opportunity to raise an objection but failed to take and allowed the preliminary stage to come to an end, the judgment-debtor thereafter cannot raise such objections. This bar is subject, however to appeal against the order resulting in termination of preliminary stage. Also, Principles of res judicata not only apply in respect of separate proceedings but the general principles also apply at the subsequent stage of the same proceedings also; Same Court is precluded to go into that question again which has been decided or deemed to have been decided by it at an early stage.
- The discussion subsequently moved on to the issues pertaining to compromise in execution proceedings. It was stated that the same can be done and it mostly happens in money decrees.
- In the case of **Lakshmi Narayan v. S.S. Pandian AIR 2000 SC 2757**, the Hon'ble Supreme Court has held in a case where parties compromise after the decree in a case has been passed, the effect of the compromise on the executability of the decree depends upon the intention of the parties, which is a mixed question of law and fact and has to be determined by the executing court on an application under Section 47 of the C.P.C. on interpretation of the decree and the compromise in the light of the facts and circumstances of each case. If on such determination it is gathered that the intention of the parties is to extinguish the decree and either the decree holder or the judgment-debtor got the compromise recorded under Rule 2 of Order 21 of the C.P.C. by the court whose duty it is to execute the decree, the execution of the decree cannot be proceeded with by the executing court.
- The Hon'ble Resource Person discussed extensively with the participants the General Rules that one needs to refer prior to the execution. It was stated that for the non- appearance of the decree holder in the transferee court, it is not to be dismissed in default, but the court needs to wait for a period (One year as per the old rules) prior to returning it.
- The concepts pertaining to a composite decree were also discussed with the participants, some of the cases discussed in that regards were:
 - **Shyam Singh v. Collector Hamirpur (1993)Supp (1) SCC693**
 - **State Bank of India v. IndexPort Regd. (1992) 3 SCC 159**
- In the case of **Amarchand v. Bhano (1995) Supp (1) SCC 550**, the Hon'ble Supreme Court held that when a person has undertaken as a guarantor or a surety for due performance of a decree or any part thereof to that extent he is liable for due performances of liability of judgment-debtor to decree-holder.
- In **Rajasthan State Road Transport Corporation, Jaipur v. Smt. Poonam Pahwa & Ors. AIR 1997 SC 2951**; there was no intimation to the decree holder by the judgment debtor of the deposition of money. The Hon'ble Supreme Court held that Order XXI Rule 1(2) Code of Civil Procedure is applicable in respect of the claims u/s 110(c) of the Motor Vehicles Act, 1939 and it is imperative that the judgment debtor has to give notice to the decree holder about deposit of the decretal amount.
- In the case of **Jolly George Varghese v. Bank of Cochin (1980) 2 SCC 360**; the Hon'ble Supreme Court has held that where a judgment debtor if once had a means to pay the debt and subsequently after the date of decree has no such means or he has money on which there are other claims, it is violative of Article 11 of the International Covenant on Civil and Political Rights to arrest and confine him in jail so as to coerce him into payment. Further, after an enquiry under the proviso to Section 51 even if the Court is satisfied that the judgment debtor has neglected or refused to pay the amount of the decree, he is still to be given an opportunity to pay the amount and not immediately committed to the civil prison.

- The Hon'ble Supreme Court in **Mohit Bhargava v. Bharat Bhushan Bhargava AIR 2007 SC 1717** has held that if the execution is sought to be proceeded against any person or property outside the local limits of the jurisdiction of the executing court, nothing in Section 39 of the Code of Civil Procedure shall be deemed to authorise the court to proceed with the execution.
 - The concepts related to payment in installments were also discussed with the participants.
 - The Hon'ble High Court of Rajasthan in **Khem Chandra v. Budh Singh AIR 1961 Raj 243** has held that Rule 40 of Order 21 has to be read with sec. 51 itself and the object of these provisions is to execute the decree, though the manner in which the assistance of the court is sought is by arrest and detention of the judgment-debtor. The primary duty of the court, however, is to see that the amount is realised and paid to the decree-holder and it is open, therefore, to the court to adopt such reasonable procedure as it considers necessary in order to effectuate that purpose.
 - The concept related to misdescription of Property was also discussed with the participants as provided for in the case of **Pratibha Singh and Anr. v. Shanti Devi Prasad and Anr. AIR 2003 SC 643** in which the Hon'ble Supreme Court has held that when the suit as to immovable property has been decreed and the property is not definitely identified, the defect in the Court record caused by overlooking of provisions contained in Order 7 Rule 3 and Order 20 Rule 3 of CPC 1908 is capable of being cured by resort to Sections 152 or 47 of the CPC depending on the facts and circumstances of the case.
 - The peculiar situation of the requirement of a succession certificate in case of death of the decree holder was also discussed with the participants
 - In the case of **Ganeshmal v. Smt. Anand Kanwar AIR 1968 Raj. 273**; the Hon'ble Rajasthan High Court while interpreting Succession Act, Sec. 214(1)(b) dealing with a situation of the Decree holder dying during execution proceedings held that the Legal representative must obtain succession certificate to execute the decree.
 - However, the Hon'ble Himachal Pradesh High Court in **Rammurti Devi v. Ralla Ram AIR 1987 HP 1** has held that a plain reading of section 214 (1)(b) of the Act makes it clear that the production of a succession certificate is only necessary in case where an application to execute a decree is filed by a legal representative, that is, there should be a substantive application to execute the decree. An application for being substituted in place of the decree holder as legal representatives can only be treated to be an ancillary application to continue the execution proceedings and not a substantive application to execute the decree. In this case the petitioners only prayed for being substituted in place of the decree holder as their legal representatives and hence they were not required to produce any succession certificate.
 - In **Chhotey Lal v. District Judge AIR 1991 All 214**, the Hon'ble Allahabad High Court has held that S. 214 of the Succession Act do not apply to application of a person seeking to continue the execution proceedings after the death of decree-holder, inasmuch as the legal representatives merely request the execution court for continuation of the execution proceedings already initiated by the deceased decree-holder. The Hon'ble High Court declared that S. 214 of the Succession Act prohibits the institution of execution proceedings by a person claiming as successor but it does not bar the continuance of the proceedings if the execution proceedings had already started by the deceased decree-holder.
 - Lastly, it was also stated by the Hon'ble Resource Person that in the situations wherein there are more than one decree holders and in case one of them dies then there is no requirement of succession certificate, the cases cited in that regards were:
 - **Nandlal v. Mahaveer AIR 1974 Raj. 189**
 - **Venkatachalam v. Ram Murti AIR 1932 Mad 73**
 - **Jugal Kishore Saraf v. Raw Cotton Company Limited AIR 1955 SC 376**
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Session III (Part A and B) by Sh. Hari Om Attri (Director, RSJA) and Ms. Shivani Singh (Judge, MACT, Rajsamand)

Part A- Relevant Provisions of Rajasthan Land Laws with special reference to jurisdiction of Civil Courts

Part B- Speedy and Qualitative Disposal of matters pertaining to Local Laws

- The Hon'ble Resource Persons discussed in detail with the participants issues pertaining to Court fee and Suit Valuation Act, Stamp Act and the procedure regarding impounding for the deficiency on Stamp.
- The cases of Panchayati Raj Act with regards to election were also discussed with the participants. The requirement of compulsory serving of a notice as provided for in Section 109 was also explained to the participants in great detail. Queries of the participants with respect to the Court Fees and Suit Valuation Act were also addressed by the Hon'ble Resource Persons.
- In **Hasti Cement Pvt. Ltd v. Sandeep Charan AIR 2018 Raj. 143**; the Hon'ble High Court of Rajasthan dealing with Civil Procedure Code – Order 7 Rule 11 read with Rajasthan Tenancy Act, 1955 - Section 207 – wherein an Application against the jurisdiction of the court was in issue; specifically does the civil court have jurisdiction to cancel an instrument pertaining to agricultural land under Section 207 Tenancy Act. Held, if the allegation made are making the instrument void then only revenue courts have the jurisdiction and if the allegation pertain to making the document as voidable then civil courts can make relevant orders.
- The Hon'ble High Court of Rajasthan in **Jagdish Narain Pareek v. Kamlesh Jain son of Shri Ghan Shyam Lal Chaudhary (2017) 3 DNJ 1022**; while relying upon **Vijay Singh v. Buddha, 2012 (3) WLC (Raj.) 673** held that it is well settled that the question of jurisdiction namely whether a suit is exclusively triable by a revenue court or a Civil Court can take cognizance of it, has to be decided on the basis of allegations made in the plaint. It is also further settled that it is the substance of the plaint and the true nature of the suit that is to be seen to determine the question of jurisdiction. If in substance the relief claimed is one which the revenue court alone is entitled to give, the jurisdiction of the civil court will be ousted even though it may require the revenue court to incidentally determine some ancillary facts. In order to determine the true nature of the relief claimed in a suit, the pith and substance and not the form in which the relief may be couched has to be considered. Each case has to be examined on its own particular facts and no universal rule can be applicable to every case. If the aforesaid principles are not kept in view, it may be open to a party to evade the liability as to exclusiveness of jurisdiction. But care should be taken not to introduce anything in the plaint which may not be found there or which may be foreign to its purpose. A plaint should be construed as it is and not as it ought to be.
- The Hon'ble Supreme Court in **Pyarelal v. Shubhendra Pilonia (2019) 3 SCC 692** has held that jurisdiction of civil court is barred in respect of suits and applications of the nature specified in Third Schedule of the Rajasthan Tenancy Act, 1955. Jurisdiction to determine khatedari rights vests exclusively in the revenue court. The appellant had no right to seek relief before civil court without first getting his khatedari rights decreed by the revenue court.
- The Hon'ble Resource Persons also discussed with the participants, the issues pertaining to Rajasthan Municipality Act and the Registration Act.
- In the case of **Kale and Ors v. Deputy Director of Consolidation AIR 1976 SC 807**; Hon'ble Supreme Court has said that memorandum of partition is not required to be registered in case of family settlement but when we look at the definition of Instrument of Partition under Section 2 (XX), of Rajasthan Stamp Act, it is very clear that memorandum of partition is also included in the definition of instrument of partition. Therefore, in Rajasthan, memorandum of partition is also required to be registered.
- The session was concluded after discussing with the participants what stamp is payable on an instrument, the Hon'ble Supreme Court in **State of Rajasthan v. M/s Khandaka Jain Jewellers (2007) 14 SCC 339** has held that Stamp duty on a sale has to be assessed on the market value of the property at the time of the sale, and not at the time of the prior agreement to sell, nor at the time of filing of the suit. This is evident from section 17 of the Stamp Act. It is true that as per Section 3, the instrument is to be registered on the basis of the valuation disclosed therein. But

Section 47-A of the Rajasthan (Amendment) Stamp Duty Act contemplates that in case it is found that properties are undervalued then it is open for the collector (Stamps) to assess the correct market value.

Day 02, March 01, 2020

Session IV by Sh. Praveen Agarwal (Advocate, Supreme Court)

Judging Skills and Concepts: Framing, amending and alteration of Issues in Civil Matters & Conferment of Burden of Proof

- The Hon'ble Resource Person started off the session by discussing in detail with the participants the details and intricacies of framing the issues. It was stated that due care must be exercised while framing the issues as the same would determine the scope of the suit eventually. It has been stated by the Supreme Court that a devotion and dedication of just Twenty Minutes while framing the issue can at times result in saving years of tiring litigation.
- Framing of issues forms the most important part of a suit but it is generally neglected. Issues are material propositions that are averred by one party and denied by the other party. Issues decide the scope of a suit.
- The participants were also given a mock exercise with a factual situation and asked to frame issues on the factual matrix provided. The exercise provided great insights in various aspects of framing the issues and was an intellectually enriching experience. The Hon'ble Resource Person also addressed the queries from the participants and lucidly answered the same on various issues related to framing of issues, discharge of burden of proof, period of limitation in claim of a relief and alteration of issues by the courts
- The Hon'ble Resource Person provided some solutions to the problem of improper framing of issues such as following the practice of obtaining propose issues from both the parties, this would drastically help in avoiding any conflicts that may arise during the course of the trial and save valuable time of the courts.

Session V by Sh. Praveen Agarwal (Advocate, Supreme Court)

Principles of Evidence: Exhibition, Admissibility, and Appreciation of Evidence in Criminal and Civil Matters with special reference to Rajasthan Local Laws

- The Hon'ble Resource Person started off the discussion by elaborating on the legal provisions contained in the Civil Procedure Code pertaining to Oral and documentary evidence. It was stated that a practice of admission or denial at the very beginning, if followed, would help in saving the time of the courts.
- The Hon'ble Resource Person also discussed with the participants the issues related to acceptance of documents at the various stages of a trial. The queries of the officers were answered with the help of the legal provisions as provided in Order VII Rule 14 and Order VIII Rule 1A.
- It was stated that the exhibition of documents should always be before the presiding officer of the court. Further, queries pertaining to filing of certified copies, photocopies with affidavits and return of original documents were answered.
- It was stated that in order to avoid delay costs may be imposed in proportionate measures on the party instrumental in wasting the time of the courts.
- The Hon'ble Resource Person concluded the session after discussing the following cases:
- The Supreme Court in **Shiv Narain v. Tej Singh Manohar and Anr. Civil Appeal No. 370 of 2020**, order dated 17 January 2020 has held that wherein written statement as well as the counter claim was not validly taken on the record prior to the dismissal of the suit. The basis on which the counter claim was decreed was flawed. As in this particular case the time for filing a written statement in the suit had expired and after the expiry of the period of thirty days, no application was filed on behalf of the respondent to condone the delay; Also, no reasons were recorded by the learned Trial Judge for taking the written statement on the record; consequently, the counter claim could not have been entertained having regard to the provisions of Order VIII Rule 6A.

- The Hon'ble Resource Person concluded the session after discussing in details with the participants how the documents are required to be proved, specifically with regards to secondary evidence. Admissibility of RTI copies/documents was also discussed with the participants.

Session VI by Hon'ble Mr. Justice Sandeep Mehta (Judge, Rajasthan High Court and Chairman, RSJA)

Judging skills and concepts: Framing, amending and alteration of charges in criminal matters

- The Hon'ble Resource Person started off the session by explaining in great detail to the participants what a charge is; what is the object behind having it and what are the contents of a charge by referring to the relevant provisions of CrPC. It was stated that Section 2(b) of Cr.P.C. provides the definition of a charge.
 - The Hon'ble Resource Person also referred to many cases to explain the concept of framing of charge, its alteration and amendment in a detailed manner, some of the cases discussed were:
 - The Hon'ble Supreme Court in **Kanti Bhadra Shah & Anr. v. The State of West Bengal (2000) 1 SCC 722** while dealing with the issue of framing of charges has held that there is no legal requirement that trial Court should pass an order specifying reason for framing charge. Also, Trial Court need not write detailed order for framing charges and reasons are required to be recorded only for discharging the accused.
 - The Hon'ble Supreme Court in **Suresh Budharmal Kalani @ Pappu Kalani etc. v. State of Maharashtra AIR 1998 SC 3258** while dealing with TADA Act, 1987-Section 3 (4) on the issue that the charge was framed relying upon alleged confessional statement of accused himself. Held, that confessional statement is self-exculpatory and inadmissible in evidence as confession, thus the Hon'ble Court quashed the charge so framed.
 - Further in, **Atma Ram and ors v. State of Rajasthan 2019 (2) Crimes(SC) 144**; the Hon'ble Supreme Court has held that it is certainly in societal interest that guilty must be punished and at the same time procedural requirements which ensure fairness in trial must be adhered to. Further, it has also been held that recording of evidence in absence of accused is against the law.
 - The code gives ample power to the courts to alter or amend a charge whether by the trial court or by the Appellate Court provided that the accused has not to face a charge for a new offence or is not prejudiced either by keeping him in the dark about that charge or in not giving a full opportunity of meeting it & putting forward any defence open to him, on the charge finally preferred against him (**Kantilal Chandulal Mehta v. State of Maharashtra, (1969) 3 SCC 166**). The court has a very wide power to alter the charge; however, the court is to act judiciously and to exercise the discretion wisely. It should not alter the charge to the prejudice of the accused person. (**Harihar Chakravorthy v. State of W.B., AIR 1954 SC 266**)
 - The Hon'ble Resource Person emphasized on the fact that a charge can't be framed for an offence requiring prior sanction.
 - In the case of **Om Prakash & Ors. v. State of Rajasthan (2013) 3 RLW (Raj) 2781**, the Hon'ble Rajasthan High Court held that trial judge is not supposed to be a mouth piece of prosecution while considering a Sessions case at the stage of framing of charges. Proceeding u/S. 227 and 228 Cr.P.C. is not an empty formality. Trial Judge, before proceeding to frame charges has to form an opinion after hearing accused and prosecution and after considering papers submitted alongwith charge sheet with his own wisdom that there is ground for presuming that the accused has committed the offence and thereafter only, the charges can be framed.
 - The Hon'ble Resource Person concluded the session after discussing with the participants the difficulties faced in the framing, alteration and amendment of charges and provided his valuable solutions to the same.
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- The Training programme was concluded with vote of thanks to the Hon'ble Dignitaries and all those who contributed in organizing the same.

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