

# **Filing the case in Indian Jurisdiction**

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Courts are there to settle the disputes between individual persons and to declare and establish their rights regarding the matters in dispute. So whenever persons fail to solve a dispute among themselves, they can approach the Court by filing a suit. It is called institution of suit.

There are various categories of Courts. All categories can be classified under Courts of First instance and appellate Courts. As per Section 15 of Civil Procedure Code every suit shall be instituted in the Court of the lowest grade competent to try it. Every Court has specific pecuniary and territorial jurisdiction. So we cannot file suits as per our convenience. Rules regarding filing of suits are guided by various provisions of Civil Procedure Code. Now let us have a look at those provisions.

## **1. Where to file the case:**

Before filing a suit one should know where or before which Court the suit has to be filed. It is called place of suing. Place of suing is subjected to two limitations:

(1) territorial jurisdiction of the Court; and

(2) pecuniary jurisdiction of the Court, Territorial jurisdiction depends upon the nature of the suit, i.e. subject matter of the dispute. Depending upon the nature of subject matter, suits are divided into 3 categories. They are-

# Suits relating to immovable property.

# Suits relating to compensation for wrongs to person and movables.

# Other suits.

**2. In case of Suits relating to immovable property:-** As a general rule suits relating to immovable property shall be filed in the Court within the local limits of whose territorial jurisdiction the property is situate, In other words, where the property in dispute is situated.

## **Section 16 of the Civil Procedure Code is as follows:**

"Suits to be instituted where subject matter situate: Subject to the pecuniary and other limitations prescribed by any law, suits-

(a) for the recovery of immovable property with or without rent or profits.

(b) for the partition of immovable property.

(c) for the foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property.

(d) for the determination of any other right to or interest in immovable property.

(e) for compensation for wrong to immovable property.

(f) for the recovery of immovable property actually under distraint or attachment,

shall be instituted in the Court within the local limits of whose jurisdiction the property is situate:

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain."

Here it should be noted that the **pecuniary jurisdiction of Courts differ from State to State.**

There is yet another limitation regarding the filing of suits on immovable property. It is clear from the proviso to Section 16. The proviso relates to the suits for compensation in relation to immovable property held by or on behalf of defendant and where the relief sought can be entirely obtained through his personal obedience. That means, the relief for compensation is independent of its own and has nothing to do with other relief's regarding immovable property referred to in clauses (a) to (d) of Section 16.

**3. Property at distant places:-** 1, 2, 3, 4 are brothers. They are living at different places like A and B. They are having their immovable ancestral properties at A, B and C. 1 prefers to file a suit for partition against 2, 3 and 4. He can file the suit at A, B or C i.e where a portion of the property is situate. But in such cases, the entire suit claim has to be taken into consideration for purpose of payment of court fee and pecuniary jurisdiction. In the above example, no doubt the suit for partition can be filed at A provided the total value of property situated at A, B and C is less than rupees one lakh. This is so because only Junior Civil Judge Court is located at A. If the total value of the entire property is more than rupees one lakh the suit cannot be filed at A. The suit can be filed at B,, or at C where Senior Civil Judge are located. It is clear from the wording of Section 17 of Civil Procedure Code which runs as follows :

**Suits for immovable property situate within jurisdiction of different courts:-** Where a suit is to obtain relief respecting, or compensation for wrong to, immovable property situate within the jurisdiction of different courts, the suit may be instituted in any court within the local limits of whose jurisdiction any portion of the property is situate:

Provided that, in respect of the value of the subject-matter of the suit, the entire claim is cognizable by such court. '

**4. Suits for compensation for wrongs to persons or movables:-** As far as suits relating to immovable properties and the relief is by way of compensation, suit can be filed at two places

(1) where the defendant resides or

(2) where the wrong was done to the movables. The same will apply to the suits for compensation for wrongs to persons. Section 19 of Civil Procedure Code reads as under:

**Suits for compensation for wrongs to person or movables:** Where a suit is for compensation for a wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one court and the defendant resides, or carries on business or personally works for gain, within the local limits of the jurisdiction of another court, the suit may be instituted at the option of the plaintiff in either of the said courts.

To put it differently, this section corresponds to suits for damages or compensation in relation to persons or movable property. Suits involving tortious liability are covered by this section. We are aware that Tort is a civil wrong for which the relief lies by way of claiming unliquidated damages. Nuisance, negligence, defamation, accident, trespass etc. come under tortious liability. In such cases the two options where to file the suit are where the defendant resides or carries on business or work for gain or where the tortious act takes place. It is for the plaintiff to choose either of those places. Of course, this section is also subjected to pecuniary jurisdiction.

**5. Filing of suits in other cases:-** As far as other suits not covered under Sections 16, 17 and 19 of Civil Procedure Code, the suits have to be filed where the defendant resides or cause of action wholly or in part arises. Money suits are the best example to understand the position easily. 'A' borrowed Rs. 20,000/- from 'B'. 'A' resides at Guntur and 'B' resides at Mangalagiri. Pronote was executed at Mangalagiri. 'B' can file a suit against 'A' for recovery of amount either at Mangalagiri or at Guntur. If the amount borrowed is above rupees one lakh, the suit should be filed only at sub-court, Guntur.. There is one more thing to be kept in mind which is very important. The word 'where defendant resides' means, where he actually resides at the time of filing of the suit. For example, 'A' and 'B' are residents of Guntur. 'A' borrowed some amount from 'B' at Guntur. Subsequently, 'A' shifted his family to Nellore. 'B' shifted his family to Hyderabad. 'B' can institute a suit against 'A' at Guntur or at Nellore. Section 20 of Civil Procedure Code is as under:

**Other suits to be instituted where the defendant resides or cause of action arises:-** Subject to the limitations aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction-

- (a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or
- (b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business or personally works for gain, provided that in such case either the leave of the court is given, or the defendants who do not reside, or carry on business, or personally works for gain, as aforesaid, acquiesce in such institution; or
- (c) the cause of action, wholly or in part, arises.

**Explanation:-** A Corporation shall be deemed to carry on business at its sole or principal office in India or in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

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To put it differently, this section corresponds to suits for damages or compensation in relation to persons or movable property. Suits involving tortious liability are covered by this section. We are aware that Tort is a civil wrong for which the relief lies by way of claiming unliquidated damages. Nuisance, negligence, defamation, accident, trespass etc. come under tortious liability. In such cases the two options where to file the suit are where the defendant resides or carries on business or work for gain or where the tortious act takes place. It is for the plaintiff to choose either of those places. Of course, this section is also subjected to pecuniary jurisdiction.

5. Filing of suits in other cases:- As far as other suits not covered under Sections 16, 17 and 19 of Civil Procedure Code, the suits have to be filed where the defendant resides or cause of action wholly or in part arises. Money suits are the best example to understand the position easily. 'A' borrowed Rs. 20,000/- from 'B'. 'A' resides at Guntur and 'B' resides at Mangalagiri. Pronote was executed at Mangalagiri. 'B' can file a suit against 'A' for recovery of amount either at Mangalagiri or at Guntur. If the amount borrowed is above rupees one lakh, the suit should be filed only at sub-court, Guntur.. There is one more thing to be kept in mind which is very important. The word 'where defendant resides' means, where he actually resides at the time of filing of the suit. For example, 'A' and 'B' are residents of Guntur. 'A' borrowed some amount from 'B' at Guntur. Subsequently, 'A' shifted his family to Nellore. 'B' shifted his family to Hyderabad. 'B' can institute a suit against 'A' at Guntur or at Nellore. Section 20 of Civil Procedure Code is as under:

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(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business or personally works for gain, provided that in such case either the leave of the court is given, or the defendants who do not reside, or carry on business, or personally works for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

Explanation:- A Corporation shall be deemed to carry on business at its sole or principal office in India or in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

A reading of Clause (a) and (b) requires some careful examination.

Where there is only one defendant, there is no problem. But where there are more defendants than one, where to file the suit? In such a case, different suits have to be filed where each of the defendant resides. Such a thing is not advisable because it is a very costly affair that leads to conflicting judgments. The only alternative is to file a suit where cause of action for the suit arises. This is the best suitable method. Even if there are ten defendants and are residing at 10 different places, a single suit can be filed against all of them where the cause of action arises.

But in some cases, the place where cause of action arises may be far away from where the plaintiff resides. One of the defendants may be residing very close to the plaintiff. In such a case, what is the option for the plaintiff? Clause (b) of Section 20 gives the answer. In such a case, the plaintiff can file a single suit where anyone of the defendants resides. But either the other defendants should not oppose the same or the court must give permission to the plaintiff for so instituting the suit.

Finally a few words about cause of action. Cause of action is not an isolated one, nor a single instance. A number of circumstances and instances constitute cause of action. That means cause of action may arise at more than one place. That is to say arise wholly or in part. It is clear from Clause (c) of Section 20, that suits covered under Section 20 can be filed where cause of action arises wholly or in part. Promissory note transferred for valid consideration is best example.

So far we have discussed in detail various aspects regarding place of suing.

**The whole discussion may be summarized as under:**

- 1) Regarding suits relating to immovable property, place of cause of action is immaterial. Place of residence of defendants and plaintiff is immaterial. Where the property is situated, there the suit should be filed. This is the most fundamental principle.
- 2) Where the immovable property is situated at different places and within the territorial jurisdiction of different Courts, there also place of cause of action is immaterial. Place of residence of plaintiff or defendant is also immaterial. Suit can be filed where any portion of the immovable property is situated.
- 3) As far as suits regarding compensation for wrong to immovable property held by defendant, the place of residence of plaintiff is immaterial. Suits can be filed where the defendant resides, or wrong was done in relation to immovable property.
- 4) In case of suits involving tortious liability claiming compensation for wrongs to person or movables, the place of residence of plaintiff is immaterial. The suit can be filed where the defendant resides or where

the wrong was done to the person or movable property (cause of action).

5) Regarding other suits, the place of residence of plaintiff is immaterial. Suits can be filed where the defendant resides or cause of action arose wholly or in part. Where there are more than one defendant, and are residing at different places, different suits have to be filed at different places where defendants reside. As it is very costly and not convenient, suit can be filed where anyone of the defendants resides, with the leave of the court or if the other defendants do not object.

**6) All the above suits are subjected to pecuniary jurisdiction of the Court.**

If we carefully observe, in all cases, the place of residence or where the plaintiff is residing is immaterial. No suit can be filed exclusively on the basis of place of residence of plaintiff. The reason is obvious. Plaintiff is the person who files the suit and drags the defendant to court. If he is allowed to file the suit as he pleases, he may take advantage of it and may harass the defendant by simply filing suits within the local jurisdiction of court where he resides.