



ပြည်ထောင်စု မြန်မာနိုင်ငံ

ဥပဒေ

အတွဲ ၁၂

THE BURMA CODE

VOLUME XII

(၁၉၇၄ ခုနှစ်အထိ ပြင်ဆင်ပြီး)

၁၉၇၉ ခုနှစ်တွင် ပြန်လည်ရိုက်နှိပ်သည်။

ပြည်ထောင်စု မြန်မာနိုင်ငံအစိုးရ အမိန့်အရ ပုံနှိပ်ဖြန့်ချိသည်။

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THE CODE OF CIVIL PROCEDURE.

[INDIA ACT V, 1908.] (1st January, 1909.)

PRELIMINARY.

1. * * *

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 section 47 or 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 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 ;
- (5) "foreign Court" means a Court situate beyond the limits of the Union of Burma which has no authority in the Union of Burma and is not established or continued by the President of the Union ;

နိဒါန်း

ဤဥပဒေအတွဲ ၁၂ တွင်၊ တရားမကျင့်ထုံးနှင့်တကွ၊ သက်သေခံဥပဒေနှင့် စပ်လျဉ်းသည့် ဥပဒေများ ပါဝင်ပါသည်။

အပိုင်း ၂၈ မှာ တရားမကျင့်ထုံးနှင့်သာ သက်ဆိုင်၍၊ အပိုင်း ၂၉ မှာ သက်သေခံဥပဒေနှင့်သက်ဆိုင် ပါသည်။

ထိုဥပဒေများကို ၁၉၅၄ ခု၊ ဒီဇင်ဘာလ ၃၁ နေ့အထိ ပြင်ဆင်သည့်အတိုင်း ပုံနှိပ်ထားပါသည်။

စံညွှန်း၊

အတွင်းရေးမှူး၊

ဥပဒေဘာသာပြန်နှင့် ဥပဒေပြင်ဆင်ရေး ကော်မတီ၊

တရားရေးဝန်ကြီးဌာန။

ရန်ကုန်မြို့၊ ၁၉၂၀ ပြည့်နှစ်၊ သီတင်းကျွတ်လဆန်း ၁၂ ရက်။

(၁၉၅၈ ခု၊ အောက်တိုဘာလ ၂၄ ရက်။)

- (6) "foreign judgment" means the judgment of a foreign Court ;
- (7) "Government Pleader" includes any officer appointed by the President of the Union 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) "moveable 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, and includes an advocate of the High Court ;
- (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 Indian Civil Service or of the Burma Civil Service (Class I) ;
 - (c) every commissioned or gazetted officer in the military, naval or air forces of [the Government]¹ ;
 - (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 authorized 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

¹ Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

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 interests 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 Government 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 ;

(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.

**Subordina-
tion of
Courts.**

3. For the purposes of this Code, the District Court is subordinate to the High Court, 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 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 or local 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 landholder 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
to 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 President of the Union may, by notification in the 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 modifications as the President of the Union may prescribe.

(2) " Revenue Court " in sub-section (1) means a Court having jurisdiction under any local law to entertain suits or other proceedings relating to the 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.

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.

Pecuniary jurisdiction.

7. The following provisions shall not extend to Courts constituted under the Burma Small Cause Courts Act or to Courts exercising the jurisdiction of a Court of Small Causes under that Act, that is to say,—

Courts under the Burma Small Cause Courts Act.

(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 immoveable property ; and

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

section 9,

sections 91 and 92,

sections 94 and 95 so far as they authorize or relate to—

- (i) orders for the attachment of immoveable property,
- (ii) injunctions,
- (iii) the appointment of a receiver of immoveable property, or
- (iv) the interlocutory orders referred to in clause (e) of section 94, and sections 96 to 112 and 115.

8. * * * *

PART I.

SUITS IN GENERAL.

JURISDICTION OF THE COURTS AND *Res judicata*.

9. The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Courts to try all civil suits unless barred.

Explanation.—A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

10. No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit is pending in the same or any other Court in the Union of Burma having jurisdiction to grant the relief claimed, or before [the Supreme Court.]¹

Stay of suit.

Explanation.—The pendency of a suit in a foreign Court does not preclude the Courts in the Union of Burma from trying a suit founded on the same cause of action.

¹ Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

Res judicata.

11. No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I.—The expression “former suit” shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

Explanation II.—For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III.—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.—Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.

Explanation VI.—Where persons litigate *bonâ fide* in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

Bar to further
suit.

12. Where a plaintiff is precluded by rules from instituting a further suit in respect of any particular cause of action, he shall not be entitled to institute a suit in respect of such cause of action in any Court to which this Code applies.

When foreign
judgment
not
conclusive.

13. A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties, or between parties under whom they or any of them claim, litigating under the same title, except—

- (a) where it has not been pronounced by a Court of competent jurisdiction ;
- (b) where it has not been given on the merits of the case ;
- (c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of the Union of Burma in cases in which such law is applicable ;
- (d) where the proceedings in which the judgment was obtained are opposed to natural justice ;