

**PART M**  
**SPECIAL FEATURES OF CERTAIN CLASSES OF CASES**  
 (a) **Cases under Punjab Customary law.**

1. **Punjab Laws Act:-** Custom forms a dominant feature of the Civil litigation in the Punjab. Section 5 of the Punjab Laws Act, 1872, lays down that in all questions regarding successions, special property of females, betrothal, marriage, divorce, dower, adoption, guardianship, minority, bastardy, family relations, wills, legacies, gifts, partitions, or any religious usage or institution, the rule of decision shall be custom, when there is any custom applicable to the parties, provided the custom is not contrary to justice, equity, or good conscience and has not been altered or abolished by any statute or declared void by any competent authority. In other cases, Muhammadan Law in the case of Muhammadans and Hindu Law in the case of Hindus, is to be applied.
  
2. (a) **Proof of Custom:-** The vast majority of the rural population in the Punjab follow custom. It is the exception rather than the 'rule for the Hindu and Muhammadan Law to be applied in their entirety. The ascertainment of custom, when it is disputed is often a matter of difficulty. The records of tribal custom (*Riwaj-i-am*) prepared by Government officers for the various Districts are helpful and are accepted *prima facie*, as good evidence of the customs stated therein (See 45)P. R. 1917-P. C.). Judicial decisions have also to a large extent defined customs in respect of various tribes and the rules deduced therefrom will be found summarised in a convenient form in Rattigan's "Digest of Customary Law."
 

**Rights of Females:-** The value of entries in *Riwaj-i-am* may, however, be small if these affect adversely the rights of females or any other class of persons who had no opportunity of appearing before the revenue authorities. A few instances may in such cases suffice to rebut the presumption of correctness attaching to such records. (Vide, I.L.R. 1941 Lah. 154 (P.C.) Subhani's case and (1955) I Supreme Court Reports 1191.)
  
- (b) **Migrants and Displaced persons:-** In view of the wholesale migrations of population after the partition of Punjab, the question may often arise whether a person is governed by the Customary Law of home of origin or of the land where he has settled down. The consensus of authority is that persons or tribes may be presumed to be governed by the customs of their original home and not by the customs of the land where they settled down unless it is shown that in any matters they have adopted the customs of their new habitation. The presumption is however rebuttable on proof of special circumstances. See Rattigan's "Digest of Customary Law" and Mulla's "Hindu Law."
  
3. **Personal Law:-** When in any particular instance, no rule of custom can be found, the Court must fall back upon the personal law of the parties (See 110 P. R. 1906-F. B.)
  
4. **Limitation in certain custom suits:-** The provisions of Punjab Act I of 1920 which prescribes the limitation for suits relating to alienations of ancestral immoveable property and appointments of heirs by persons who follow custom, and Punjab Act II of 1920 which restricts the power of descendants or collaterals to contest such alienations or appointments should also be studied.
  
5. **Law applicable to Muslims.** Attention is drawn to Act XXVI of 1937 which lays down that notwithstanding any custom or usage to the contrary, in all questions (save those relating to agricultural land) the rule of decision in case where the parties are Muslim shall be the Muslim Personal Law. In order to obtain the benefit of this Act, a declaration has to be obtained.

**(b) Money Suits**

1. **Typical money suits:-** (i) Some features of money suits deserve attention.  
(ii) The typical money suit in the Mufassil is one between a creditor and an illiterate debtor. The suit is generally based on a running account consisting of petty items in the account book of the former with balances struck from time to time, or an agreement recorded in it with regard to larger loans borrowed on occasions of marriage, etc., and occasionally on a bond. Allegations of fraud want of consideration, etc., are frequently made in defence and owing to the ignorance of the debtor, on the one hand and the frequent absence of regular accounts on the other, the cases require careful sifting. The examination of the parties themselves under Order X, Rule 2, Civil Procedure Code, before framing the issues is generally very useful (See Part F of this Chapter.) When fraud misrepresentation, undue influence, etc., are pleaded, the particulars thereof should be carefully elicited.
2. (a) **False entry:-** Where the creditor or some one at his instance has shown a higher amount in such documents than the amount actually advanced, the court shall disallow the whole claim with costs unless the creditor can satisfy the court that the mistake was accidental or bona fide (please see section 37 of Punjab Relief of Indebtedness Act, as amended by Punjab Act XII of 1940).  
  
(b) Punjab Regulation of Accounts Act:- Special attention is drawn to the provision of the Punjab Regulation of Accounts Act 1 of 1930. This Act applies generally to all loans advanced after the commencement of the Act which came into force on 1st July, 1931.
3. **Suits on bahi account. Copy of the account:-** When a suit is based on a bahi account, the account must be produced with the plaint. To avoid inconvenience to the plaintiff, he is allowed to file a copy, but the copy must be supported by an affidavit by the party producing it to the effect that it is a true copy or by a certificate on the copy that it is a full and true translation or transliteration of the original entry. No examination or comparison by any ministerial officer shall be required except by the special order of the Court. It should be noted, however that although a copy is allowed to be filed, the original account must be produced (except when it is permissible to produce a certified copy e. g., under the Banker's Books Evidence Act, 1891), later in the course of the trial when evidence is led in order to prove it.
4. **Presumption as to entries in account books:-** Entries in books of account are relevant under section 34 of the Indian Evidence Act, if the books are shown to be regularly kept. Such entries are however not by themselves sufficient to charge any person with any liability and must be supported by other evidence. There may be cases where the plaintiff's statement alone may be considered sufficient corroboration of these entries.
5. **Bonds and agreements:-** An agreement for the payment of a debt if attested by a witness would be liable to be stamped as a 'bond'. For definition of bond please see section 2 (5) of the Indian Stamp Act. A document insufficiently stamped may be taken in evidence on payment of the deficiency in stamp and penalty as provided in section 135 (*ibide*). For further instructions please see Chapter 4 of Volume IV.
6. **Registration of bonds:-** Registration is not obligatory in the case of simple bonds creating no charge on any immovable property. As regards bonds creating such a charge section 17 of the Indian Registration Act should be consulted.
7. **Thumb-mark and signatures:-** When the thumb-mark or signature on a document is denied, it must be proved in the proper manner. As regards thumb-marks the most convenient method is to obtain thumb-marks of

the person concerned in Court, if possible, and send the same together with the disputed thumb-mark for comparison by an expert to the Finger Print Bureau at Phillaur. The report of the expert must be supported by his testimony on oath or solemn affirmation. Such testimony can be conveniently obtained by issuing a commission for the purpose to the Sub Judge at Phillaur. (For further instructions on the subject, see Volume IV Chapter 9). As regards proof of signatures, Sections 45-47 of the Indian Evidence Act may be consulted, also Chapter I-G of this Volume.

8. **Proof of consideration:-** When the execution of document is admitted or proved the onus will be shifted to the executant to prove absence of consideration, if he relies on any such plea. Section 12 of the Punjab Debtor's Protection Act, (Act No. II of 1936), however, provides an exception to this rule and should be carefully studied.
9. **Costs and interest:-** The instructions contained in Chapter 11-C about the "Award of costs" and in Chapter 11-D about the "Award of interest" should be noted carefully.
10. **Payment by debtors:-** Section 31 of Punjab Relief Indebtedness Act enables any person who owes money to deposit the same in court in full or part payment to his creditor. It is not necessary that the creditor should have filed a suit or taken any other steps to recover the debt. Interest ceases to run from the date of the deposit. A notice about the deposit should always be sent to the creditor. For form of notice see form No. 218, Vol. VI-A, Part A-II.
11. **Rules as to deposits:-** The State Government has made the following rules \*under section 32 of the Punjab Relief of Indebtedness Act:—

***Punjab Relief of Indebtness (Deposit in Court) Rules, 1935***  
**\*Notification No. 2461-J-36/16796, dated the 26th May,1936.**

- (1) These rules may be called the Punjab Relief of Indebtedness (Deposit in Court) Rules, 1935, and shall apply to all deposits to be made under section 31 of the Act.
- (2) In these rules "the Act" means the Punjab Relief of Indebtedness Act, 1934.
- (3) Sums less than Rs. 1,000 may be deposited in any stipendiary Civil Court having jurisdiction within the district in which the debtor resides.

Provided that where there is more than one such Court in the same town the deposit shall be made in the Court exercising the highest pecuniary jurisdiction.

- (4) Sums of Rs. 1,000 or over shall be deposited only in the Court of the Senior Sub Judge of the district in which the debtor resides.
- (5) Deposits may be made either by postal money order or by the debtor in person.
- (6) All sums deposited shall be accounted for and dealt with according to the ordinary rules for the time being in force in the Courts into which they are paid.
- (7) Notices under sub-section (2) of section 31 of the Act shall be served upon the creditor by registered letter acknowledgment due at the expense of the debtor.

12. **Punjab Registration of Money Lender's Act:-** Attention is drawn to the Punjab Registration of Money Lenders' Act, 1938 (Punjab Act III of 1938) according to which suits and applications for execution by moneylenders are barred unless the money lender is registered and licensed. (section 3).

**(c) Pre-emption Suits**

1. **Prevailing law:-** The law of pre-emption in the Punjab is now governed by the Punjab Pre-emption Act, 1913, and custom plays a comparatively minor part in it.
2. **Deposit of security for costs:-** In every pre-emption suit, the Court is bound to require the plaintiff before the settlement of issues to deposit a sum not exceeding one-fifth of the probable value of the property which is the subject matter of the suit or give security to that extent, within a specified time. If the plaintiff fails to comply with the order within the specified time, or such further time as the Court may allow, his plaint must be rejected. (Section 22 Punjab Pre-emption Act).
3. **Court to enquire suo motu certain matters:-** Order XX Rule 14 of the Code directs that a pre-emption decree shall specify a day on or before which the purchase money with costs if any shall be paid into court. The courts should not fix a period of time for the deposit of the money but should mention a definite date. Care should further be taken to see that the specified date is not a day on which the Courts may be expected to be closed.

**(d) Suits by and against minors and persons of unsound mind.**

1. **General:-** The Procedure to be followed in the case of suits by or against minors is laid down in the rules in Order XXXII of the Code of Civil Procedure. Attention is invited to the additions and alterations made in these rules by the High Court (vide Chapter 21 of this Volume).
2. **Next friend and guardian ad litem defined:-** A minor being legally incapable of acting for himself, the law requires that every suit by or against such a person should be conducted on his behalf by a person who has attained majority and is of sound mind. A person conducting a suit on behalf of a minor plaintiff is called his "next friend", while a person defending it on his behalf is called a guardian *ad litem* for the purpose of the litigation.
3. **(a) Permission to sue:-** Any person as described above may institute a suit on behalf of a minor and no permission of the Court is necessary for the purpose. An exception to this general rule has however been made by sub-rule (2) of Rule 4 of Order XXXII. If the minor plaintiff has a guardian appointed or declared by competent authority, no person other than such guardian shall act as the next friend of the minor, unless the Court considers, for reasons to be recorded, that it is for the minors' welfare that another person be permitted to act.
 

(b) The next friend of a minor plaintiff can be ordered to pay any costs in the suit as if he were the plaintiff.
4. **Minor may not be proceeded against exparte:-** A "guardian ad litem" for a minor must be appointed by the Court and the trial of the suit cannot proceed until such an appointment is made. The Court cannot proceed, or pass an order or decree, *ex-parte* against a minor.

An application for the appointment of a guardian ad litem of a minor and the affidavit filed therewith shall state:—

- (a) Whether or not the minor has a guardian appointed under the Guardians and Wards Act, 1890, and if so, his name and address;
- (b) the name and address of the father or other natural guardian of the minor;
- (c) the name and address of the person in whose care the minor is living;
- (d) a list of relatives or other persons who prima facie are most likely to be capable of acting as guardians for the minor;
- (e) how the person sought to be appointed guardian or next friend is related to the minor;
- (f) that the person sought to be appointed guardian or next friend has no interest in the matters in controversy in the case adverse

to that of the minor and that he is a fit person to be so appointed;

(g) whether the minor is less than fifteen years of age.

**5. Notice to minors, & relatives, etc.:-** No order should be made appointing a guardian ad litem unless notice is issued to the guardian of the minor appointed or declared by a Court (if any), or where there is no such guardian, to the father or other natural guardian, or where there is no father or natural guardian, to the person in whose care the minor is, and the objections of such persons (if any) are heard. A notice to the minor is not essential under the rules (as amended) but should ordinarily issue when the minor is shown to be over fifteen years of age as he may in that case be able to take an intelligent interest in the selection of his guardian and the conduct of the proceedings.

**6. Choice of guardian, appointment of court officers or pleader, fund for defence and accounts to be kept:- Duties of guardian:** In appointing a guardian ad litem, the following order of preference shall be observed:-

(i) If there is a guardian appointed or declared by a Court, he must be appointed unless the Court considers that it is for the welfare of the minor that some other person should be appointed. If any other person is appointed, the Court must record its reasons;

(ii) in the absence of a guardian appointed or declared by a Court, a relative of the minor best suited for the appointment should be selected;

(iii) in the absence of any such relative, one of the defendants should be appointed, if possible;

(iv) and failing such a defendant, a Court official or a pleader may be appointed.

It should be remembered that no person can be appointed to act as a guardian *ad litem* without his consent. Consent may, however, be presumed unless it is expressly refused.

When a Court official or a pleader is appointed to act as a guardian the Court has power to direct the plaintiff or any other party to the suit to advance the necessary funds for the purposes of defence. The Court official or a pleader should be required to maintain and produce accounts of the funds so provided and these should ultimately be recovered from such party as the Court may think it just to direct after the result of the suit.

The court official or pleader appointed by the Court as the guardian-ad-litem of a minor defendant, should to the best of his ability communicate with the minor and his relatives in order to ascertain what defence can properly be taken in the case and further try to substantiate that defence by adducing proper evidence.

**7. Rejection of plaint where minor is not represented:-** The plaint may be "taken off the file" and all orders made may be set aside, if a minor is not properly represented and the person filing the plaint or obtaining the orders whether a legal practitioner or not, may be liable to pay costs.

**8. Appointment of guardian ensures for appeal and execution:-** When a guardian ad litem is appointed by a Court the appointment ensures for the whole of the litigation including appeals and execution proceedings arising out of the suit.

**9. Compromise and agreement:-** A next friend or guardian-ad-litem cannot enter into any compromise or agreement with reference to the suit without the leave of the Court expressly recorded in the proceedings. The court should be satisfied after applying its mind to all the circumstances of the case that the compromise is really for the benefit of the minor and should record its opinion to that effect. A failure to observe these directions may result in the compromise or agreement being avoided at the instance of the minor.

10. Rules relating to suits by or against minors apply mutatis mutandis to suits by or against persons of unsound mind.

**(e) Suits by Paupers.**

1. **General:-** Attention is called to Order XXXIII of the Code on the subject of suits by paupers and the steps which should be taken to protect the interests of Government in such cases.
2. **Examination of plaintiff, and evidence for admission - Notice to Government:-** Before a pauper suit is admitted, the petitioner or his authorised agent, when the applicant is exempted from appearance in Courts should be examined regarding the merits of the claim and the property of the applicant. If it appears to the Court that the suit is not framed and presented in the manner prescribed by Rules 2 and 3 of Order XXXIII, or that the applicant is not a pauper, or that he has fraudulently made away with any property within the two months preceding the presentation of the plaint, or that his allegations do not show a cause of action, or that he has entered into any agreement with reference to the subject-matter of the proposed suit under which any other person has obtained an interest in such subject-matter the application must be rejected. If the Court sees no reason to refuse the application, it must fix a day (of which at least ten days' previous notice must be given to the opposite party and to the Government Pleader \*on behalf of Government) for receiving such evidence as the applicant may adduce in proof of his pauperism, and for hearing any evidence which may be adduced in disproof thereof, and can only pass final orders on the application after hearing the evidence and arguments brought forward on the day so fixed.

**\*NOTE.**—The Deputy Commissioner of each district in the Punjab has been declared to be the "Government Pleader" for his district for purposes of Order XXXIII Rule 6, Civil Procedure Code (Punjab Notification No. I.C., dated 1st January, 1909)

3. **Dispaupering:-** Under the provisions of Order XXXIII, Rule 9, of the Code of Civil Procedure, the Court may, under certain circumstances order a plaintiff to be dispaupered.
4. **Copy of decree to be sent to collector:-** Order XXXIII, Rule 14, directs that where an order is made under Rule 10, 11, or 12, the Court shall forthwith forward a copy of the decree to the Collector.

**(f) Suits for Redemption and Foreclosure of Mortgages.**

1. **Notice to mortgagor, conditional sale in case of land not permitted:-** The law regulating the procedure in cases where the mortgagee whose mortgage-deed also contains a provision for conditional sale, desires to foreclose the mortgage is often misunderstood. Regulation XVII of 1806 is still the law on the subject. It will be seen that, whatever the terms of conditional sale the mortgagee cannot enforce them till he has, by summary petition to the Court, caused notice to be served on the mortgagor to the effect that, if the latter does not pay the sum secured within one year, the mortgage will be held foreclosed. After the lapse of this year, and not till then, the mortgagee can sue for possession, as owner, or, if in possession, to be declared owner in accordance with the terms of the mortgage.
2. **Court competent to hear:-** Only a District or Additional Judge can deal with applications under Sections 7 and 8 of Regulation XVII of 1806. The procedure prescribed in the Regulation should be very strictly observed as otherwise the notice may have no legal effect.
3. **Dismissal for default:-** According to Order IX, Rule 9, of the Civil Procedure Code (as amended by the High Court), when a suit for redemption is dismissed in default under Order IX, Rule 8, the plaintiff is not precluded from bringing another suit for redemption of the mortgage.
4. **Summary procedure for redemption:-** The Redemption of Mortgages

(Punjab) Act, 1913, provides a summary procedure for redemption of land through the Collector in the State. But any party aggrieved by the decision of the Collector, can under certain circumstances institute a suit in a Civil Court to establish his right (see Section 12 of that Act).

**(g) Suits for Declaratory Decrees.**

1. **Issue as to possession:-** The proviso to section 42 of the Specific Relief Act lays down that a declaratory decree cannot be passed in a case in which other relief than a mere declaration can be sought. Hence in a suit for a declaration of title to immoveable property, where the defendant denies that the plaintiff was in possession of the property on the date of the suit, the Court should first of all decide this point. If it is found that the plaintiff was not in possession of the property on the date of the institution of the suit, his suit must fail unless the court, having regard to all the circumstances allows the plaint to be amended.
2. **All issues to be framed:-** These instructions are not to be taken to imply that the whole of the pleadings should not be exhausted and issues drawn on all points of conflict between the parties at the first hearing, but that at the trial of the issues, the issue as to possession should be first tried and disposed of where this can be conveniently done.

**(h) Suits for Accounts.**

1. **Account may be preferably taken after disposal of other points:-** Order XX, Rule 16, of the Code directs that in all suits where it is necessary in order to ascertain the amount of money due to or from any party, that an account should be taken, the court shall before passing its final decree pass a preliminary decree directing such accounts to be taken as it thinks fit. This is the general rule though where the matter appears to be simple the Court may pass a final decree straightaway.
2. **Filing of accounts and evidence:-** At the time of passing the preliminary decree, directing the rendition of accounts, the Court should decide the rights of the parties and as to who the accounting parties are and for what period the accounts are to be taken. In case of partners, their respective shares in the profits and loss of the joint business should be stated. Under Order XX Rule 17, the Court can also give directions, in the preliminary decree or by any subsequent order, as to the mode in which the accounts have to be taken or vouched and may in particular direct what books of account shall be taken as *prima facie* evidence of the truth of the matters therein contained; with liberty to the interested parties to object to any portion of this account. In partnership cases books of account should be treated as *prima facie* evidence of the truth of the matters stated therein under the general law and a special direction in this regard is not necessary.
3. **Commission:-** After the preliminary decree the Court may go into the accounts itself but in cases where the accounts are lengthy or complicated it may be helpful to issue a commission for the purpose. Rules 11 and 12 of Order XXVI indicate that the commission may be for examination and adjustment of accounts only or the commissioner may also be asked to report his opinions on the points referred for his examination. When the Court decides to issue a commission, his duties shall be stated with precision and particularity. The Commissioner is neither an arbitrator nor the Judge and the determination of any issue in the case cannot be delegated to him. The Commissioner is to place himself as an assistant to the Court so as to explain the accounts and give to the Court all the information which the accounts give in order to enable the Court to decide; unless he is also ordered to report under Order XXVI, Rule 12 (1) his own opinion on the points referred to for his examination.
4. **(1) Directions of Commissioner:-** If in any suit or matter it is necessary to take an account the order or preliminary decree of the Court shall contain the following direction as far as in the opinion of the Court issuing

the commission they are adopted to the requirements of the case:

- (a) The nature of the account to be taken.
- (b) The date from which and the date to which the account is to be taken.
- (c) The name of the party by whom a statement of account is to be filed.
- (d) The periods within which the statement of account, objection and surcharge are to be filed.
- (e) The date on which the Commissioner is to submit his report.
- (f) Any other matter on which the Court may think it necessary to give, or the Commissioner may desire to obtain, its instructions.

(2) The statement of account shall be in the form of a debtor and creditor account and shall be verified by the accounting party or his agent. The items on each side of the account shall be numbered consecutively and a balance shall be shown.

(3) The statement of an objection to an account, or to the report of a commissioner, shall specify the items to which objection is taken by reference to their number in the account or report, or the date of the item and page of a particular book of account.

(4) The statement of surcharge shall specify the amount with respect of which it is sought to charge the accounting party, the date when, the person from whom, and the particular account on which, the same was received by him.

(5) The statement of objection or surcharge shall also state (a) the grounds of each objection and surcharge and (b) the balance, if any, admitted or claimed to be due; and it shall be verified by the affidavit of the party concerned or his agent.

(6) If any party fails to file his statement of account or objection and surcharge, within the period allowed, the Commissioner shall report the fact to the Court, and on the application of defaulting party, the Court may extend the period or direct the commissioner to proceed ex parte as regards such party or direct any other party to file a statement of account, or the Court may proceed to decide the suit forthwith on the evidence before it. Evidence shall not be admitted with respect to an objection or surcharge not included in a statement of objection or surcharge.

(7) If the Commissioner is unable to submit his report within the time fixed by the Court he shall apply to the Court for an extension of the time giving reasons thereof and the Court may extend the time or cancel the Commission and appoint a new Commissioner.'

(8) When the case before him is ready for hearing, the Commissioner shall, after reading the statements filed before him and after examining the parties, if necessary, ascertain the points on which the parties are at issue and require them to produce their documentary or oral evidence on such points.

(9) After the evidence has been duly taken and the parties have been heard, the Commissioner shall submit his report together with a statement in the form of a diary of the proceedings heard before him each day. If he is empowered under Order XXVI, Rule 12 (1) to state his opinion on the matter referred to him he shall append to his report schedules setting out (a) the contested items allowed or disallowed, (b) the reasons for allowing or disallowing them, (c) the amount found due, (d) the name of the party to whom it is due and (e) the name of the party by whom it is due.



**(i) Procedure in "Hadd Shikni" cases.**

1. **Local inquiry:-**In "Hadd-Shikni" suits and other suits of boundary disputes of land falling within the jurisdiction of a Civil Court it is generally desirable that enquiry be made on the spot. This can usually be done in the following ways:
  - (a) by suggesting that one party or the other should apply to the Revenue Officer to fix the limits, under section 101 (1) of the Punjab Land Revenue Act. Time for such purpose should be granted under Order XVII, Rule 3, of the Code of Civil Procedure;
  - (b) by appointing a local Commissioner, and
  - (c) by the Court itself making a local enquiry.
2. **Enquiry by Revenue Officer:-** An order of the Revenue Officer made under Section 101 of the Land Revenue Act is not conclusive; but when his proceedings have been held in the presence of, or after notice to, the parties of the suit, and contain details of enquiry and of the method adopted in arriving at the result, it would be a valuable piece of evidence. It may be noted that an Assistant Collector of the second grade can deal with cases in regard to boundaries which do not coincide with the limits of an estate.
3. **Appointment of Commissioner:-** Similarly the report of the local Commissioner should contain full details so that the Court may satisfactorily deal with the objections made against it.  
 No person other than a Revenue Officer (or retired Revenue Officer) not below the rank of a Field Kanungo should usually be appointed a local Commissioner. The appointment of retired Revenue Officers is to be preferred as these Officers have the spare time and the inclination for completing the work with expedition. A commission issued to a Revenue Officers in service necessitates the obtaining of permission of the higher authorities and this along with the fact that such Revenue Officers are usually busy often results in delay in the disposal of the case. The wishes of the parties in regard to the appointment of a particular individual as commissioner for local investigations should be taken into consideration while making such appointments.
4. **Instructions for the guidance of Commissioners:-**
  - (1) On the motion of the Judges, the Financial Commissioners have issued the following detailed instructions for the guidance of Revenue Officials or Field Kanungos appointed as Local Commissioners in Civil suits of this nature.

**(Financial Commissioner's Instructions)**

- (i) If a boundary is in dispute, the Field Kanungo should relay it from the village map prepared at the last Settlement. If there is a map which has been made on the square system he should reconstruct the squares in which the disputed land lies. He should mark on the ground on the lines of the squares the places where the map shows that the disputed boundary intersected those lines, and then to find the position of points which do not fall on the lines of the squares. He should with his scale read on the map, the position and distance of those points from a line of a square, and then with a chain and cross staff mark out the position and distance of those points. Thus he can set out all the points and boundaries which are shown in the map. But if there is not a map on the square system available, he should then find three points on different sides of the place in dispute, as near to it as he can, and, if possible, not more than 200 kadams apart which are shown in the map and which the parties admit to have been undisturbed. He will chain from one to another of these points and compare the result with the distance given by the scale applied to the map. If the distances, when thus compared, agree in all cases, he can then draw lines joining these three points in pencil on the map and draw perpendiculars with the scale from these lines to each of the points which it is required to lay out on the ground. He will then, lay

them out with the cross-staff as before and test the work by seeing whether the distance from one of his marks to another is the same as in the map. If there is only a small dispute as to the boundary between two fields the greater part of which is undisturbed then such perpendiculars as may be required to points on the boundaries of these fields as shown in the field map can be set out from their diagonals, as in the field book and in the map, and curves made as shown in the map.

- (ii) In the report to be submitted by him, the Field Kanungo must explain in detail how he made his measurements. He should submit a copy of the relevant portion of the current Settlement field map of the village showing the fields, if any, with their dimensions (*karu kan*) of which he took measurements, situated between the points mentioned in Instruction No. (i) above and the boundary in dispute. This is necessary to enable the Court to follow the method adopted and to check the Field Kanungo's proceedings.
- (iii) If a question is raised as to the position of the disputed boundary according to the field map of the Settlement preceding the current Settlement, that also should be demarcated on the ground, so far as this may be possible, and also shown in the copy of the current field map to be submitted under Instruction No. (ii).
- (iv) On the same copy should be shown also, the limits of existing actual possession.
- (v) The areas of the fields, abutting on the boundary, in dispute, as recorded at the time of the last Settlement and those arrived at as a result of the measurement on the spot should be mentioned in the Field Kanungo's report with an explanation of the cause or causes of the increase or decrease, if any, discovered.
- (vi) When taking his measurements the Field Kanungo should explain to the parties what he is doing and should enquire from them whether they wish anything further to be done to elucidate the matter in dispute. At the end, he should record the statements of all the parties to the effect that they have seen and understood the measurements that they have no objection to make to this (or if they have any objection he should record it together with his own opinion) and that they do not wish to have anything further done on the spot. It constantly happens that when the report comes before the Court, one or other party impugns the correctness of the measurements and asserts that one thing or another was left undone. This raises difficulties which the above procedure is designed to prevent.
- (vii) The above instructions should be followed by Revenue Officers or Field Kanungos whenever they are appointed by a Civil Court as Commissioners in suits involving disputed boundaries.

- (2) [Delimitation or Demarcation using Electronic Total Station Machine etc.:-** The delimitation of boundary and demarcation can also be carried out with the help of "Electronic Total Station (ETS) Machine" and by using Dual Frequency Global Navigation Satellite System (GNSS) receiver in post processing mode or by "Real Time Kinematic (RTK)" method using Continuously Operating Reference System (CORS) Network and GNSS Rover or by any other electronic method recognized by the State Government by way of notification/instruction issued from time to time.]

**{Rule 4(2) inserted vide Correction Slip No. 89 dated 31.05.2024}**

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