

E-LEARNING MODULES
 TOPIC : CODE OF CIVIL PROCEDURE
 CLASS: LLB third year and BALLB fifth year
MODULE 6 Suits in particular cases

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1	<p>SUIT BY OR AGAINST GOVERNMENT OR PUBLIC OFFICER [Section 79 to 82, Order 27]</p> <p>In a suit by or against the Government, the authority to be named as plaintiff or defendant, as the case may be, shall be:</p> <ol style="list-style-type: none"> a. In the case of a suit by or against the Central Government, the ‘Union of India’, and b. In the case of a suit by or against a State ‘Government, the State’.¹ 	
1.1	<p>Notice</p> <p>Under section 80 of the Code, two month notice is mandatory before institution of suit against Government. Notice is given in the office of -</p> <ol style="list-style-type: none"> (a) In the case of a suit against the Central Government, except where it relates to a railway, a Secretary to that Government; (b) In the case of a suit against the Central Government where it relates to railway, the General Manager of that railway; (bb) In the case of a suit against the Government of the State of Jammu and Kashmir the Chief Secretary to that Government or any other officer authorised by that Government in this behalf; (c) In the case of a suit against any other State Government, a Secretary to that Government or the Collector of the district; <p>and, in the case of a public officer, delivered to him or left at this office.</p> <p>Notice shall state the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.²</p>	
1.2	<p>Exemption from arrest and personal appearance:</p> <p>In a suit instituted against a public officer in respect of any act</p>	

¹ Section 79

² Section 80 (1)

	purporting to be done by him in his official capacity, he shall not be liable to arrest of his property to attachment in execution of decree.	
1.3	<p>Execution of decree:</p> <p>A decree against Government or public officer shall not be executed unless it remains unsatisfied for the period of three months from the date of such decree.</p>	
2	<p>PUBLIC NUISANCES AND OTHER WRONGFUL ACTS AFFECTING THE PUBLIC [section 91]</p> <p>in the case of a public nuisance or other wrongful act affecting, or likely to affect, the public, a suit for a declaration and injunction or for such other relief as may be appropriate in the circumstances of the case, may be instituted-</p> <ul style="list-style-type: none"> b. by the Advocate General, or c. with the leave of the Court, by two or more persons, even though no special damage has been caused to such persons by reason of such public nuisance or other wrongful act. <p>Nothing in this section shall be deemed to limit or otherwise affect any right of suit which may exist independently of its provisions.</p>	
3	<p>SUITS BY INDIGENT PERSONS [Order XXXIII]</p> <p>Generally at the time of institution of suit plaintiff has to pay requisite Court fees. If he is unable to pay he can sue as a poor person without Court fees. For this he has to make application to the Court to allow him to sue in <i>forma pauperis</i>.</p>	
3.1	<p>Who is pauper/indigent person:</p> <p>A person is an indigent person,</p> <ul style="list-style-type: none"> i. If he is not possessed of sufficient means (other than property exempt from attachment in execution of a decree and the subject-matter of the suit) to enable him to pay the fee prescribed by law for the plaint in such suit, or ii. Where no such fee is prescribed, if he is not entitled to property worth one thousand rupees other than the property exempt from attachment in execution of a decree, and the subject-matter of the suit. 	
3.2	<p>Contents of application</p> <p>Every application for permission to sue as an indigent person shall contain the particulars required in regard to plaints in suits,</p>	

	a schedule of any movable or immovable property belonging to the applicant, with the estimated value thereof.	
3.3	<p>Examination of applicant:</p> <p>Where the application is in proper form and duly presented, the Court may, if it thinks fit, examine the applicant or his agent.</p>	
3.4	<p>Rejection of application:</p> <p>The Court shall reject an application for permission to sue as an indigent person:</p> <ol style="list-style-type: none"> a. Where it is not framed and presented in the manner prescribed, or b. Where the applicant is not an indigent persons, or c. Where he has, within two months next before the presentation of the application disposed of any property fraudulently or in order to be able to apply for permission to sue as an indigent person: 	
3.5	<p>Procedure at hearing:</p> <p>On the day so fixed or as soon thereafter as may be convenient the Court shall examine the witnesses (if any) produced by either party, and may examine the applicant or his agent, and shall make a full record of their evidence.</p>	
3.6	<p>Procedure if application admitted:</p> <p>Where the application is granted, it shall be numbered and registered, and shall be deemed the plaint in the suit, and the suit proceed in all other respects as a suit instituted in the ordinary manner, except that the plaintiff shall not be liable to pay any Court-fee.</p>	
3.7	<p>Procedure where indigent person fails:</p> <p>Where the plaintiff fails in the suit or the permission granted to him to sue as an indigent person has been withdrawn, or where the suit is withdrawn or dismissed:</p> <ol style="list-style-type: none"> a. because the summons for the defendant to appear and answer has not been served upon him in consequence of the failure of the plaintiff to pay the Court-fee or postal charges (if any) chargeable for such service or to present copies of the plaint or concise statement], or b. because the plaintiff does not appear when the suit is called on for hearing, <p>the Court shall order the plaintiff, or any person added as a co-plaintiff to the suit, to pay the Court-fees which would have</p>	

	been paid by the plaintiff if he had not been permitted to sue as an indigent person.	
4	<p>INTERPLEADER [Order XXXV]</p> <p>Where two or more persons claim adversely to one another the same debts, sum of money or other property, movable or immovable, from another person, who claims no interest therein other than for charges or costs and who is ready to pay or deliver it to the rightful claimant such other person may institute a suit of interpleader against all the claimants for the purpose of obtaining a decision as to the person to whom the payment or delivery shall be made and of obtaining indemnity for himself.</p>	
4.1	<p>Conditions for interpleader suit:</p> <ol style="list-style-type: none"> i. The plaintiff has no interest in the subject matter except charges or costs; ii. The claim is made by defendants severally, iii. There is no collusion between plaintiff and any of defendants. <p>These things must be stated in the plaint.³</p>	
4.2	<p>Procedure at first hearing:</p> <p>At the first hearing the Court may:</p> <ol style="list-style-type: none"> a. Declare that the plaintiff is discharged from all liability to the defendants in respect of the thing claimed, award him his costs, and dismiss him from the suit; or b. If it thinks that justice or convenience so require, retain all parties until the final disposal of the suit. <p>Where the admissions of the parties do not enable the Court so to adjudicate, it may direct:</p> <ol style="list-style-type: none"> a. That an issue or issues between the parties be framed and tried, and b. That any claimant be made a plaintiff in lieu of or in addition to the original plaintiff, <p>and shall proceed to try the suit in the ordinary manner.</p>	

Questions for practice.

1. What are the provisions for a suit by or against Government?
2. Who can sue for public nuisance?
3. Write provisions for suit by indigent person/suit in forma pauperis.
4. What is interpleader suit.

For more information and study read Code of Civil Procedure 1908 with commentary and case laws.

³ Order XXXV Rule 1