



# FACULTY OF JURIDICAL SCIENCES

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# Lecture-2



## Plaint

Order VII of the Code of Civil Procedure deals with plaint. Plaint is basically the pleading of the petitioner in a civil suit. There are certain general principles that are applicable to pleadings and therefore implicitly to plaint also. They are:

- **Only facts** have to be stated and not law;
- The facts stated should be **material facts**;
- **No evidence** should be stated;
- The facts should be stated in a **concise**, brief and clear manner.

However, there are certain exceptions to the general principles, like the foreign law if used in the case has to be stated, also if there is any condition precedent for filing the suit or any mixed question of law and fact (e.g. *Res Judicata*) or any custom or usages etc., have to be stated.

## Meaning

The expression ‘plaint’ has not been defined in CPC. However, it can be said to be a statement of claim, a document, by presentation of which a suit is instituted. Its object is to state the grounds upon which the assistance of the court is sought by the plaintiff. It is a pleading of the plaintiff.

## Particulars of a Plaint [O. VII, R. 1- R. 8]

Every plaint should contain the following particulars:

- The name of the court in which the suit is brought;
- The name, description and place of residence of the plaintiff;
- The name, description and place of residence of the defendant;
- Where the plaintiff or defendant is minor or a person of unsound mind, a statement to that effect;
- The facts constituting the cause of action and when it arose;
- The facts showing that the court has jurisdiction;

- A statement of the value of the subject matter of the suit for the purpose of jurisdiction and court fees;
- The reliefs claimed by the plaintiff, simply or in the alternative;
- Where the plaintiff files a suit in the representative capacity, the facts showing that the plaintiff has an actual existing interest in the subject-matter and that he has taken steps that maybe necessary to enable him to file such a suit;
- Where the plaintiff has allowed a set off or relinquished a portion of his claim, the amount so allowed or relinquished;
- Where the suit is for recovery of money, the precise amount claimed;
- Where the suits is for accounts or *mesne profits* or for movables in the possession of the defendant or for debts which cannot be determined, the approximate amount or value thereof;
- Where the subject-matter of the suit is immovable property a description of the property sufficient to identify it, e.g. boundaries, survey numbers, etc.
- The interest and liability of the defendants in the subject-matter of the suit;
- Where the suit is time-barred, the ground upon which the exemption from the law of limitation is claimed.

We can divide the above-mentioned particulars in **three** essential parts:

- Part I – The Heading and Title
- Part II – The Body of the Plaint
- Part III – The Relief Claimed

### **Heading and Title:**

### **Parties to the Suit**

There must be two parties in every suit, namely, the plaintiff and the defendant. There may, however, be more than one plaintiff or more than one defendant. It is essential to state in the plaint:

1. The name, description and place of residence of each plaintiff; and

2. The name, description and place of residence of each defendant, so far as they may be ascertained.

The word ‘description’ includes the name of the father, age and other particulars necessary to identify a person. If a defendant is not properly named or described, but the real person intended has been properly served with the summons and he does not appear to defend the suit, a judgment passed against him will be as effective as if his true name and description has been given in the plaint, and the correct name and address can be substituted at any subsequent time when they are discovered, because the whole purpose of the description of parties is to properly identify the person who is a party to the suit.

When there are several plaintiffs or several defendants, each should be described properly and serial number should be given to each of them so that they can be easily referred to in the pleadings. It is convenient to mention them in the order in which they play their part in the story told in the plaint.

A **minor** or **insane** person cannot sue or be sued except through a next friend (in the case of a plaintiff) or guardian ad litem (in the case of a defendant). Where any of the parties is a minor or a person of unsound mind, he should be so described in the **cause title**, and the name and description of the person through whom he sues or is being sued should also be stated. For example:

AB, s/o ....., r/o....., a Minor, by CD, s/o ....., r/o..... his next friend

– Plaintiff

Versus

EF, s/o ....., r/o..... a Minor, through his guardian GH, s/o ....., r/o.....

– Defendant

Though there is no provision in the Code to require that when a party sues or is being sued in his representative character, he should indicate that fact in the cause title of the plaint also, in addition to making a statement to that effect in the body of the plaint, yet it is convenient to state the matter in the title also. Such description should be in the following form:

AB, s/o ....., r/o ....., suing on behalf of himself and of all the Hindu residents of ..... Village....

### **Title of the Suit**

The title of the suit shall mention the reason for approaching the court and the provision under which the jurisdiction of the court is being evoked. For example:

“Petition for Permanent Injunction restraining the Defendant .... from illegally dispossessing the property of the Plaintiff...”

“Rent Petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 for the purpose of eviction of the Respondent tenant from the tenancy premises (H. No. ...., Sector ....., Chandigarh) on the ground of non-payment of rent and creating nuisance”

### **Body of the Plaint:**

The second part of the plaint is its body, which is the plaintiff’s statement of his claim and of other matters which he is legally required to state. It is drawn up in the form of a narrative in the third person, and is divided into short paragraphs, each containing ordinarily one fact. It is composed of two portions- the formal portion and the substantial portion.

## Formal Portion

The formal portion consists of the following particulars:

1. A statement as to when the cause of action arose;
  2. Facts showing that the court has jurisdiction;
  3. A statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of court-fees;
  4. When any party is a minor or a person of unsound mind, a statement to that effect;
  5. When the plaintiff sues in a representative character, a statement to that effect, coupled with the statement that he has taken the steps (if any) necessary to enable him to institute the suit;
  6. When the suit is instituted after the period of limitation, a statement showing the ground on which the exemption is being claimed.
- **Date of Cause of Action:**

The date of the cause of action should as far as possible be precisely given. O.VII, R. 1(e) requires that the plaint should contain “the facts constituting the cause of action and *when it arose*.” For instance, the cause of action for suit for damages for breach of contract would be the contract, its breach and the resulting damages. The date of accrual of cause of action is the date on which the breach of contract took place.

The object of this rule is to determine whether the suit is within the period of limitation. Sec. 3 of the Limitation Act, 1963 lays down that every suit instituted, appeal preferred and application made after the prescribed period, shall be dismissed although limitation has not been set out as a defence. It is therefore the duty of the court to find out whether the plaint is in time.

- **Jurisdiction of Court:**

The plaint must state all the facts showing how the court has **pecuniary** and **territorial** jurisdiction over the subject matter of the suit. If the plaintiff relies on the defendant’s residence or place of business as giving jurisdiction, the facts showing this must be stated in the body of the plaint. The statement of these facts in the title of the suit is not sufficient as the title to the suit is not covered by the verification clause.

- **Valuation of Suit:**

The plaintiff must distinctly and separately give in his plaint the valuation of his claim for the purposes of court fee and of jurisdiction. Sometimes, the valuation of the subject-matter for both the purposes may be the same, for example, in a suit for recovery of money. But sometimes, the two valuations may differ, for example, in a suit for declaration or in a suit for injunction or for possession of immovable property. In such a case, the plaintiff should distinctly state the valuation of the suit for the purpose of the jurisdiction of the court and for the purpose of court fees.

**1. For Court fee** – The valuation for the purpose of the court fee is required in those cases only in which the court fee is charged, under the Court Fee Act, on the valuation, e.g. in suits for recovery of money, property, etc. In such cases the object of the rule is to enable the court to check, with reference to the valuation given in the plaint, whether the court fee paid is sufficient or not.

In suits for which a fixed court-fee is payable, e.g. in suits for declaration without a consequential relief, no value for the purposes of court-fee need to be given, but it may be alleged that a fixed fee has been paid on the plaint.

**2. For Jurisdiction** – Valuation of a claim for the purpose of jurisdiction is required in order to determine whether the suit is within the pecuniary jurisdiction of the court, and also further for determining the forum of appeal. In some cases this required also for determining the amount of process-fee required to be paid, as per the rules framed by some of the High Courts.

- **Minority or Insanity of a party:**

However, there is no case law on whether the description of the plaintiff or defendant being a minor or of unsound mind in the title of the case is sufficient compliance with the rule, it is better that such statement should be contained in the body of the plaint also.

- **Plaintiff's Representative Character:**

If the plaintiff sues in the representative character, that fact should also be stated in the opening paragraph of the plaint. Example-



“The plaintiffs are Hindu residents of Village ..... and as the number of Hindu residents of the said village, who are interested in the subject-matter of the suit to the same extent as the plaintiffs, is large, plaintiffs bring this suit on behalf and for the benefit, of all Hindu residents of the said Village .....

- **Preliminary Steps:**

If under any law, a plaintiff has to take any preliminary steps before being entitled to bring a suit in a representative capacity, he must also state that he has taken those steps. For instance, a suit to establish right to the estate of a person dying intestate to whom the Indian Succession Act applies cannot be instituted unless letters of administration have been obtained.

- **Limitation:**

If a claim is *prima facie* barred by limitation, and the plaintiff claims it to be within time by reasons of any of the exceptions to the general rule of limitation, the ground upon which the exemption is claimed shall be known in the plaint. If the claim is barred by limitation and the ground of exemption is not alleged, the plaint is liable to be rejected under O. VII, R. 11 (d).

### **Substantial Portion**

The other portion of the body of the plaint, which must be called its substantial portion, should contain a statement of all the facts constituting the cause of action, with such particulars of those facts as are necessary. And where the plaintiff seeks relief in respect of several distinct claims or causes of action founded upon separate and distinct grounds, they shall be stated as far as possible separately and distinctly. The plaint shall further show, either specifically or by implication from other facts, that the defendant is, or claims to be, interested in the subject-matter and that he is liable to be called upon to answer to the plaintiff's demand. Where there are more than one defendant and they are not jointly interested in the claim, it should be shown what the liability of each is and why each has been impleaded in the suit. Similarly, if more plaintiffs than one brings a joint suit and their interest in the subject-matter is not joint; their causes of action would be separately shown.

1. **Cause of action:**

Every suit presupposes the existence of a cause of action against the defendant because if there is no cause of action, the plaint will be rejected. Even though the expression 'cause of action' has not been defined in the Code, it may be described as "a bundle of essential facts, which it is necessary for the plaintiff to prove before he can succeed", or "which gives the plaintiff right to relief against the defendant". Thus, cause of action means every fact, which is necessary to establish to support a right or obtain a judgment.

The classic definition of the said expression is found in the case of *Cooke v. Gill* wherein Lord Brett observed, "Cause of action means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his rights to the judgment of the court."

It is necessary for the plaintiff to state specifically when such cause of action arose. This will enable the defendant as well as the court to ascertain from the plaint whether the cause of action as alleged by the plaintiff did arise or not. In *Kuldip Singh v. Ganpat Lal*, the Supreme Court stated, "The object underlying O. VII, R. 1 (e), which requires that the plaint shall contain the particulars about the facts constituting the cause of action and when it arose, is to enable the court to find out whether the plaint discloses the cause of action because the plaint is liable to be rejected under O. VII, R. 11 if it does not disclose the cause of action."

Thus, in a suit for possession against the tenant on the ground of non-payment of rent, the period for which the tenant has been in default must be stated. Where the plaintiff seeks relief in respect of several distinct claims or causes of action founded upon separate and distinct grounds, he should state them as far as possible separately and distinctly. Those facts which are material, essential or integral form the cause of action. This is decided by the court.

### **Relief:**

The third and the last part of the plaint is the relief sought by the suit. The relief sought should be accurately worded and it is risky to use loose language. Every plaint must state **specifically** the relief which the plaintiff claims whether it be damages or specific performance or an injunction or a declaration or possession of land or relief of any other kind. A plaintiff might claim any one or more of such reliefs, either **simply** or in the **alternative**. These reliefs have to be specifically claimed because reliefs claimed in the plaint cannot be supplemented by an oral prayer.

- **Specific Ground**

Where a relief is claimed upon a specific ground, the court may grant it upon a ground different from that on which it is claimed in the plaint if the ground is disclosed by the allegation in the plaint and the evidence in the case. The power of the court to grant just and proper relief to a party without asking is also recognized by the provisions of O. VII. Similarly, a court may grant future *mesne profits* in a suit for possession and *mesne profits* even though they are not specifically prayed for.

- **Excess Relief Claimed**

When the plaintiff asks for more than what he is entitled to, the suit should not be dismissed but a decree given for what he is entitled to. Thus, in a suit for ejection, the court can grant decree for joint possession or partition. However, when a plaintiff asks for less than what he is entitled to, no decree can be given in excess of what is claimed unless the plaint is amended.

- **General Relief**

The court also provides that it is not necessary to ask for any general or other relief, in addition to the main relief or reliefs which the plaintiff claims. Such general or other relief may always be given as the court may think fit, to the same extent as if it has been asked for. The practise of adding a relief in the following or similar form “Any other relief to which the plaintiff may be found to be entitled”, is, however, common.

### **Signature and Verification:**

At the end of the plaint, the plaintiff puts his signature on the plaint. If the plaintiff is absent, for any good cause, then the signature of a person duly authorized by him to sign or to sue and also the signature of his pleader, if any.

Verification of the plaint by the plaintiff himself or where he is unable to verify because of his absence or any other good cause, by some other person proved to the satisfaction of the court to be acquainted with the facts of the case. The verifier shall specify by reference to the numbered paragraphs of the pleadings, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

Signature of the verifier along with the date at which and the place where the verification is made. The verification shall be made before the court or an officer appointed to administer oath, i.e. Oath Commissioner. Where the plaintiff or the verifier of the plaint does not know the language of the plaint in which it is written, the contents thereof must be interpreted and explained to him before he puts his signature and the verification is attested by the Oath Commissioner.

### **Affidavit:**

CPC does not say how the affidavits are to be drawn up and sworn. The different High Courts have, however, framed rules by amendments to O. XIX CPC. Affidavit shall be confined to such facts as the affiant is able to his own knowledge to prove except upon interlocutory applications where statement of his belief may be admitted. The grounds of belief of the affiant are required to be stated with sufficient particularity to enable the judge to know whether it would be safe to act on the deponent's belief. The affidavit should contain only that allegation which is absolutely necessary. The affiant should be fully described in the affidavit and the affidavit should be drafted in first person. The person or place referred to in the affidavit should be correctly and fully described so that he or it can be easily identified. The declarant should state the source of the documents which are produced along with the plaint if the affidavit discloses some facts in the document. The affidavit should have an oath or affirmation written out in the end.

### **Production of Documents:**

Rule 14 – Rule 17 deal with the production of documents by the plaintiff. The object of R. 14 is to apprise the defendant regarding the foundation of the plaintiff's claim and also to exclude the production of a document of doubtful nature at a later stage.

R. 14 directs the plaintiff to file the documents which he intends to rely on and which are in his power and possession, along with the plaint. All such documents should also be entered in the list of documents and where a document entered in the list of documents is not produced at the time of the plaint, it shall not be received in evidence without the leave of the court. The purpose behind R. 14 is to provide against false documents being set up after the institution of the suit. Therefore in those cases, where there is no doubt of the existence of a document at the date of the suit, the court would as a general rule, admit the documents in

evidence even though it was not produced with the plaint or entered in the list of documents annexed to the plaint as required by R. 14. But the court may even in such cases refuse to receive it in evidence, if it is produced at a very late stage of the proceedings. The Lahore High Court refused to admit a document after the arguments were closed as no reason was shown for its non-production.

The court has wide discretion to allow or disallow production of documents at a later stage having regard to facts and circumstances of each case. The provision, however, does not apply to the following documents:

- Documents reserved for the purpose of cross-examination of the defendant's witnesses; or
- Documents handed over to a witness merely to refresh his memory.

## **MCQ**

1. Plaint deals with..... under C.P.C

- a. order VII
- b. order VI
- c. order VIII
- d. order V

2. Contents of Plaint deals with..... under C.P.C

- a. order VII R.1
- b. order VI R.1
- c. order VIII R.1
- d. order V R.1

3. Particulars to be contained in plaint.

- (a) the name of the Court in which the suit is brought;
- (b) the name, description and place of residence of the plaintiff;
- (c) the name, description and place of residence of the defendant, so far as they can be ascertained;

**(d)** All the above

4. Plaint means.....

- a.** statement of claim,
- b.** a document
- c.** document by presentation of which a suit is instituted
- d.** All the Above

5. order VII Rule 14 – Rule 17 deals with.....

**a.** production of documents by the plaintiff

**b.** Rejection of plaint

**c.** Return of plaint

**d.** amendment of plaint