Maharashtra Civil Judge (Mains) 2023: Paper I Civil Laws — Solution

Model answers to Paper I (Civil Laws). Maharashtra Public Service Commission, Civil Judge (Junior Division) and JMFC Main Examination 2023. Six questions (100 marks); every question and every part is answered here. Law as on the date of the examination.

Question 1 (20 marks)

Q1. Judgment: declaration of ownership and injunction against a person in revenue record [20 marks]

Write a judgment on the following facts (Ram, Ravana and Bibishan; suit for declaration of ownership with perpetual injunction)

Question. Judgment on the facts given: Ram v. Ravana and Bibishan, a suit for declaration of ownership and perpetual injunction in respect of five acres of land bought by registered sale deed dated 1-1-2013. Both sides led oral and documentary evidence, which is imagined below and findings are recorded on it.

Court, parties and nature of suit

In the Court of the Civil Judge (Senior Division) at _____. Regular Civil Suit No. __ of 2023. Ram, plaintiff, versus (1) Ravana and (2) Bibishan, defendants. Suit for declaration of ownership and perpetual injunction in respect of the suit land, five acres, described in the plaint schedule.

Facts and pleadings

The plaintiff says he bought the suit land from defendant no. 2 by a registered sale deed dated 1-1-2013, but his name could not be entered in the revenue record despite his efforts. In 2016 defendant no. 1 got his own name entered behind the plaintiff's back. In 2023 defendant no. 1 obstructed the plaintiff from entering the land and denied his title and possession, which led to this suit. Defendant no. 2 did not file a written statement in spite of sufficient opportunities. Defendant no. 1 denies the plaintiff's title and possession, claims to have perfected title by adverse possession since 2016, says the plaintiff never got his name recorded and never challenged the mutation in the defendant's name, and pleads no cause of action, bar of limitation, undervaluation (market value above Rs. 20 lakhs) and want of jurisdiction.

Issues and findings

No.	Issue	Finding
1	Does the plaintiff prove purchase of the suit land by registered sale deed dated 1-1-2013 and his title?	Yes
2	Does he prove lawful possession and obstruction by defendant no. 1 in 2023?	Yes
3	Does defendant no. 1 prove title by adverse possession from 2016?	No
4	Does the revenue entry of 2016 in the name of defendant no. 1 affect the plaintiff's title?	No
5	Is the suit within limitation?	Yes
6	Is the suit properly valued and does this court have jurisdiction?	Yes
7	Is the plaintiff entitled to a declaration and a perpetual injunction?	Yes, against defendant no. 1
8	What order?	Suit decreed with costs

Reasons

Issues 1 and 4. The plaintiff produced the registered sale deed (Exhibit 10), and the sub-registrar's clerk proved its registration. Section 54 of the Transfer of Property Act, 1882 requires a registered instrument for a sale of tangible immovable property worth Rs. 100 or more, and this was done.

Defendant no. 2, the seller, remained ex parte. Under Order VIII Rule 10 CPC the court may pronounce judgment against a party who fails to file a written statement, but since a declaration binds only the parties (section 35, Specific Relief Act, 1963) and affects the contesting defendant, the court has required proof and finds it. Defendant no. 1 admitted in cross-examination that defendant no. 2 was the earlier owner and could produce no deed, partition, decree or order in his favour. His only paper is the mutation entry. A revenue entry is made for fiscal purposes; it neither confers title nor extinguishes the title of the true owner. **Muddasani Venkata Narsaiah v. Muddasani Sarojana** applies, and the plaintiff's failure to get his name recorded does not weaken his registered deed. Issues 1 and 4 are answered accordingly.

Issues 2 and 3. The plaintiff and two neighbouring cultivators say that he has cultivated the land since 2013, and tax receipts and a crop-loan record in his name support this. A purchaser under a registered deed is entitled to possession as against everyone except the true owner. Defendant no. 1 pleaded adverse possession, which is an admission that the land belonged to another. Adverse possession needs open, continuous and hostile possession for twelve years, and section 27 of the Limitation Act, 1963 extinguishes the owner's right only when the period for a suit for possession ends. Defendant no. 1 puts his possession at 2016, which is about seven years before the suit, and he does not claim the plaintiff was ever in possession of a different part. His own witnesses could not say when or how he entered. Once the plaintiff proves title, the burden lies on the defendant to prove that he perfected title by adverse possession (**M. Durai v. Madhu**). The plea of adverse possession is not made out and fails on the period alone; **Ravinder Kaur Grewal v. Manjit Kaur**, which allows adverse possession to be used as a sword as well as a shield, does not assist a claimant who has not held for twelve years. The obstruction of 2023 stands proved by the plaintiff's evidence, a complaint made the same day and the independent witness.

Issue 5. The mutation entry of 2016 was made behind the plaintiff's back and was no denial of title that called for a suit. The right to sue for a declaration first accrued in 2023 when defendant no. 1 openly denied the plaintiff's title and obstructed him (Article 58, Limitation Act, 1963, three years). For possession founded on title the period is twelve years from when possession becomes adverse (Article 65; see **Rajesh Kumar v. Sunil Kumar** on the difference between Articles 64 and 65), which has not run either. The suit is in time.

Issue 6. Defendant no. 1 gave no evidence of market value beyond a bare statement. The plaintiff valued the suit by the price in the sale deed and the stamp-duty valuation, and paid court-fee under the State Court Fees law on that footing. Section 21(2) of the Code allows an objection to pecuniary jurisdiction only if taken at the earliest opportunity and only where a failure of justice has resulted, and none is shown. The suit is properly valued and this court has jurisdiction.

Issue 7. The plaintiff has title and is in possession, so a declaration with an injunction is a complete remedy and the proviso to section 34 of the Specific Relief Act does not bar it, as he is not dispossessed and need not claim possession. A perpetual injunction is available under section 38(3)(c) where invasion of the right to property cannot be compensated in money. Nothing is claimed against defendant no. 2, who has not denied the sale.

Order

- The suit is decreed with costs against defendant no. 1 (section 35 CPC).

- It is declared that the plaintiff is the owner of the suit land (five acres) described in the schedule, by virtue of the registered sale deed dated 1-1-2013.
- Defendant no. 1, his agents and persons claiming under him are perpetually restrained from obstructing or interfering with the plaintiff's possession and enjoyment of the suit land.
- The entry in the name of defendant no. 1 in the revenue record is declared not binding on the plaintiff, who may apply to the revenue authority for correction on the strength of this decree.
- No order as to costs against defendant no. 2. Decree be drawn up (Order XX Rule 6).

Pronounced in open court. Civil Judge (Senior Division).

Question 2 (16 marks): short notes on any four; all six answered

Q2. Short notes (any four) [16 marks]

Write short notes on any four of the following: (a) properties outside the Transfer of Property Act; (b) rejection of plaint and return of plaint; (c) representative suit; (d) effect of non-registration of partnership firm; (e) summary suit; (f) compromise on behalf of a minor plaintiff or defendant

(a) Properties outside the Transfer of Property Act

Some property cannot be transferred at all and some transfers lie outside the Act.

- **Not transferable (section 6):** a mere chance of an heir-apparent or relation to succeed or get a legacy (a); a mere right of re-entry for breach of a condition subsequent, except to the owner of the property (b); an easement apart from the dominant heritage (c); an interest restricted to the owner personally (d); a right to future maintenance (dd); a mere right to sue (e); a public office or the salary of a public officer (f); military, naval, air-force and civil pensioners' stipends and political pensions (g); and transfers opposed to the nature of the interest, for an unlawful object, or to a legally disqualified person (h).
- **Outside the Act (section 2):** a transfer by operation of law or in execution of a decree or order of a court, except as provided by section 57 and Chapter IV (clause (d)); and, in Chapter II, any rule of Muhammadan law. A will is outside it as the Act deals with a non-testamentary "instrument" (section 3).
- **Gifts and leases:** donations made in contemplation of death and rules of Muhammadan law on gifts are saved by section 129; leases for agricultural purposes are excluded from Chapter V by section 117 unless the State Government notifies otherwise.
- Chapters III, IV and V (sale, mortgage and lease) deal only with immovable property; a sale of goods falls under the Sale of Goods Act.

(b) Rejection of plaint and return of plaint

Point	Rejection (O. VII r. 11)	Return (O. VII r. 10)
Ground	No cause of action; undervaluation not corrected; insufficient stamp not supplied; suit barred by law; not in duplicate; non-compliance with rule 9	Court has no jurisdiction (territorial or pecuniary) to try the suit
Effect	Ends the suit; a fresh plaint on the same cause of action is not barred (rule 13)	Plaint goes back to be presented in the proper court; the suit is not decided
Order	Reasons recorded (rule 12); deemed a decree under section 2(2)	Judge endorses date of presentation and return, party's name and reasons (rule 10(2)); no decree
Remedy	First appeal against the decree	Appeal lies against the order under Order XLIII Rule 1(a)

(c) Representative suit

Order I Rule 8 CPC lets one or more persons with the same interest sue or defend for all, with permission of the court or on its direction.

- The court must give notice to all interested persons at the plaintiff's expense, by personal service or public advertisement (rule 8(2)); any such person may apply to be joined (8(3)).

- No part of the claim can be abandoned, no suit withdrawn and no compromise recorded without notice to all (8(4)); a person who does not proceed diligently may be replaced (8(5)).
- The decree binds all those for whose benefit the suit is brought (8(6)), and the Explanation says the persons need not have the same cause of action, only the same interest. Sections 91 and 92 CPC allow public-interest suits.

(d) Effect of non-registration of a firm

An unregistered firm is a valid partnership, but section 69 of the Partnership Act, 1932 bars certain suits.

- No suit to enforce a right arising from a contract or the Act can be filed by a partner against the firm or another partner unless the firm is registered and he is shown in the Register of Firms (section 69(1)); nor can the firm sue a third party on a contract (section 69(2)). Section 69(3) extends this to set-off and other proceedings.
- It does not bar a suit for dissolution or for accounts of a dissolved firm, or the realisation of its property (section 69(3)(a)), a suit against the firm by a third party, or small claims up to Rs. 100 in value of the kind not within the Small Cause Court (section 69(4)).

(e) Summary suit (Order XXXVII)

A summary suit is a quick procedure for a liquidated money claim in which a defendant cannot defend as of right.

- **Scope (rule 1):** suits on bills of exchange, hundis and promissory notes, and suits to recover a debt or liquidated demand in money arising on a written contract, an enactment (a fixed sum) or a guarantee; it applies in High Courts, City Civil Courts and Small Cause Courts and in other courts as notified.
- **Procedure:** the plaint states that it is under Order XXXVII and claims no other relief (rule 2); the defendant must appear within ten days, failing which the plaintiff gets a decree; if he appears, the plaintiff serves a summons for judgment, and the defendant has ten days to apply for leave to defend by affidavit (rule 3).
- Leave is not refused unless the defence is not substantial or is frivolous; if part is admitted it must be deposited; leave may be conditional on security. The court may set aside the decree for special circumstances (rule 4).

(f) Compromise on behalf of a minor party

Order XXXII Rule 7 CPC controls it, and the court protects the minor.

- A next friend or guardian ad litem cannot make any agreement or compromise for the minor without the leave of the court, expressly recorded in the proceedings (rule 7(1)).
- The application must carry the guardian's affidavit and, if a pleader acts, his certificate that the compromise is for the minor's benefit (rule 7(1A)); the court still checks this itself.
- A compromise made without leave is voidable against all parties other than the minor (rule 7(2)). When approved it is recorded and a decree passed under Order XXIII Rule 3. Order XXIII Rule 1 likewise bars abandonment of the suit for a minor without leave.

Question 3 (16 marks): short notes on any four; all six answered

Q3. Short notes (any four) [16 marks]

Write short notes on any four of the following: (a) injunction when refused; (b) restitution; (c) lis pendens; (d) difference between fraud and misrepresentation; (e) transposition of party; (f) declaratory decrees

(a) Injunction when refused

Section 41 of the Specific Relief Act, 1963 lists cases where an injunction cannot be granted.

- To restrain a judicial proceeding pending at the institution of the suit, unless needed to prevent multiplicity (a); to restrain a proceeding in a court not subordinate to the court asked (b); to restrain applying to a legislative body (c); or a criminal proceeding (d).
- To prevent breach of a contract that would not be specifically enforced (e); on the ground of nuisance where it is not reasonably clear that there will be a nuisance (f); to prevent a continuing breach which the plaintiff acquiesced in (g).
- When equally efficacious relief is certainly available by another usual mode, except in breach of trust (h); to impede an infrastructure project (ha); when the plaintiff's conduct disentitles him (i); when he has no personal interest (j).
- For a temporary injunction (Order XXXIX Rules 1 and 2) the court looks for a prima facie case, balance of convenience and irreparable injury.

(b) Restitution

Section 144 CPC places a party in the position he would have held but for a decree or order that is later varied, reversed, set aside or modified.

- The application is made to the court which passed the decree, and that includes the court of first instance where an appellate or revisional court varied it (Explanation to section 144).
- The court may order refund of costs and payment of interest, damages, compensation and mesne profits that follow the variation (section 144(1)). No separate suit lies for relief obtainable by this application (section 144(2)).
- The basis is that an act of the court should harm no one. Section 65 of the Contract Act is a different provision about advantage received under a void agreement.

(c) Lis pendens

Section 52 of the Transfer of Property Act, 1882 bars a transfer of immovable property that affects the rights of another party while a suit about it is pending.

- The suit or proceeding must be pending in a court of competent authority, must not be collusive, and a right to immovable property must be directly and specifically in question.
- The property cannot be transferred or otherwise dealt with so as to affect the rights of any other party under the decree or order, except under the authority of the court and on its terms. The transfer is not void: it is subject to the outcome of the suit, and the transferee's notice is irrelevant.
- Pendency runs from presentation of the plaint until complete satisfaction of the decree or until execution becomes barred by limitation (Explanation).

(d) Fraud and misrepresentation

Point	Fraud (section 17)	Misrepresentation (section 18)

Mental state	Intent to deceive or induce the contract; includes a false statement known to be untrue, active concealment, a promise made without intending to perform, any act fitted to deceive	No intent to deceive: a positive assertion, not warranted by the speaker's information, of what is untrue; a breach of duty that misleads to the other's prejudice; innocently causing a mistake as to the substance of the thing
Silence	Mere silence is not fraud unless there is a duty to speak or the silence is equal to speech	Not fraud, but a breach of duty can be misrepresentation
Effect	Contract voidable at the option of the deceived party (section 19), who may also insist on performance	Same: voidable; section 19 Exception denies relief if the party had the means to discover the truth with ordinary diligence

(e) Transposition of party

Transposition means shifting a plaintiff to the position of a defendant, or the reverse. The court does this under its power to add, strike out or rearrange parties in Order I Rule 10(2) CPC, at any stage and on just terms.

- It is allowed when the interests of the parties show that the real contest lies elsewhere, so the actual dispute can be settled completely in one suit.
- Order XXIII Rule 1A is an example: where the plaintiff withdraws or abandons the suit, a defendant who applies to be transposed as plaintiff under Order I Rule 10 is considered by asking whether he has a substantial question to be decided against another defendant.
- The proceedings against a person added as defendant begin from service of summons on him (Order I Rule 10(5)).

(f) Declaratory decrees

Section 34 of the Specific Relief Act, 1963 lets any person entitled to a legal character or a right to property sue a person who denies or is interested to deny it, and the court may declare it, without any further relief being asked.

- Requirements: the plaintiff has a legal character or a right as to property; the defendant denies or is interested to deny it; and the plaintiff is not omitting a further relief that he could claim (proviso, which bars the declaration otherwise). Relief is discretionary.
- A declaration binds only the parties, those claiming through them, and the persons for whom a party is a trustee, if in existence (section 35).
- It is only declaratory and is not executable by itself; a person not in possession who can claim possession must add that prayer.

Question 4 (16 marks): any two; all three answered

Q4. Any two of three [16 marks]

Answer any two: (a) difference between proper parties and necessary parties; (b) explain quasi contracts; (c) difference between vested interest and contingent interest

(a) Proper party and necessary party

Both are brought in under Order I Rule 10(2) CPC, but only the absence of a necessary party defeats a suit.

Point	Necessary party	Proper party
Test	Relief is claimed against him, and no effective decree can be passed without him	His presence helps the court decide all the questions completely, but a decree can be made without him
Effect of absence	The suit is bad for non-joinder; the proviso to Order I Rule 9 excludes the rescue	The suit does not fail (Order I Rule 9)
Remedy	Joined as a matter of right; the court must order his addition	Added in the court's discretion, with or without an application
Time	Objection must be taken at the earliest opportunity (Order I Rule 13)	Same

Order I Rule 10(2) lets the court add any person who ought to have been joined, or whose presence is necessary for effectual and complete adjudication.

(b) Quasi contracts

A quasi contract creates an obligation like a contract without any agreement; sections 68 to 72 of the Indian Contract Act, 1872 impose it by law.

- **Section 68:** a person supplying necessaries suited to his condition to one incapable of contracting, or to one whom that person must support, is reimbursed from the incapable person's property.
- **Section 69:** a person interested in paying money that another is bound by law to pay, and who pays it, is entitled to reimbursement.
- **Section 70:** a person who lawfully does or delivers something for another, not intending to act gratuitously, is entitled to compensation or restoration from the one who enjoys the benefit.
- **Section 71:** a finder of goods who takes them into custody is responsible as a bailee.
- **Section 72:** money paid or a thing delivered by mistake or under coercion must be repaid or returned.

(c) Vested interest and contingent interest

Point	Vested (sections 19, 20)	Contingent (section 21)
Meaning	Created without stating when it takes effect, or to take effect forthwith, or on an event that must happen	Takes effect only on a specified uncertain event happening, or not happening
Right	Present right; only enjoyment may be postponed; not defeated by the death of the transferee before possession	Mere possibility till the event; the interest fails if the event cannot happen
Becoming vested	Already vested; an unborn person acquires it on birth (section 20)	Becomes vested when the event happens, or when it becomes impossible, if the event is

		that it shall not happen
Example	To A for life, then to B	To B if he attains 25 (Exception: not contingent if income is given to him meanwhile)

Question 5 (16 marks): any two; all three answered

Q5. Any two of three [16 marks]

Answer any two: (a) define unpaid seller and state his rights; (b) rights and liabilities of a minor partner in a partnership firm; (c) difference between reference, review and revision

(a) Unpaid seller and his rights

Under section 45 of the Sale of Goods Act, 1930 a seller is an unpaid seller when the whole price has not been paid or tendered, or when a bill or negotiable instrument was taken as conditional payment and it was dishonoured; it includes an agent or consignor in the seller's position.

- **Against the goods (section 46):** even if property has passed, he has a lien while he has possession, a right of stoppage in transit if the buyer becomes insolvent, and a right of re-sale as the Act limits it. If property has not passed, he can withhold delivery on the same footing.
- **Lien (sections 47 to 49):** where there was no credit, the credit has expired, or the buyer is insolvent. It survives part delivery unless waived, and ends when goods go to a carrier without reserving disposal, when the buyer lawfully takes possession, or by waiver; a decree for the price does not end it.
- **Stoppage (sections 50 to 53):** while goods are in transit, by taking possession or giving notice to the carrier; sub-sale does not defeat it unless the seller agreed, but a good-faith transferee of the document of title can.
- **Re-sale (section 54):** on notice, or if goods are perishable; the seller may recover loss from the buyer, who loses any profit.
- **Against the buyer personally:** suit for the price (section 55) and for damages for non-acceptance (section 56).

(b) Minor partner

Under section 30 of the Indian Partnership Act, 1932 a minor cannot be a partner but, with the consent of all partners, may be admitted to the benefits of partnership.

- **Rights:** an agreed share of property and profits, and access to inspect and copy the accounts (section 30(2)). He may sue for his share only when severing his connection with the firm; the partners may elect in that suit to dissolve the firm (section 30(4)).
- **Liabilities:** his share is liable for the firm's acts, but he is not personally liable (section 30(3)).
- **On majority:** within six months of attaining majority, or knowing of his admission if later, he may give public notice electing to become or not to become a partner; silence makes him a partner (section 30(5)). If he becomes a partner he becomes personally liable for all acts since admission (section 30(7)); if not, his share is not liable for later acts and he may sue for his share (section 30(8)). Section 28 on holding out still applies (section 30(9)).

(c) Reference, review and revision

Point	Reference	Review	Revision
Provision	Section 113, Order XLVI	Section 114, Order XLVII	Section 115
Made to	High Court by the subordinate court	The same court that passed the decree or order	High Court, on a case decided by a subordinate court

Moved by	Court itself or on a party's application; court states the case with its opinion where it has reasonable doubt on a question of law (also when an Act's validity is in doubt)	A person aggrieved: by new matter or evidence, a mistake or error apparent on the face of the record, or other sufficient reason	High Court may call for the record where the lower court exercised a jurisdiction not vested in it, failed to exercise one that was, or acted illegally or with material irregularity
Limits	Decree may be passed contingent on the High Court's decision, but not executed until it is received	Review lies where no appeal was preferred or none is allowed; subsequent reversal of law by a higher court is no ground	Not where an appeal lies; does not stay the proceedings; interlocutory orders only if the order, if made the other way, would have disposed of the suit

Question 6 (16 marks): short notes on any four; all six answered

Q6. Short notes (any four) [16 marks]

Write short notes on any four of the following: (a) effect of death of party in pending suit; (b) suit to include whole claim; (c) novation of contract; (d) mode of determining existence of partnership firm; (e) rights of agent; (f) transfer of decree

(a) Effect of death of a party in a pending suit

Order XXII CPC: the suit does not abate if the right to sue survives.

- Death of a plaintiff or defendant does not abate the suit if the right to sue survives (rule 1); where one of several dies and the right survives to or against the others, the suit goes on (rule 2).
- Where the right does not survive to the others, or a sole party dies, the court, on application, brings the legal representative on record (rules 3 and 4); if no application is made in time, the suit abates as to the deceased (rule 3(2), rule 4(3)). A plaintiff who did not know of the defendant's death gets a due regard on delay (rule 4(5)).
- The limit is 90 days from death to bring the representatives on (Article 120, Limitation Act) and 60 days from abatement to set it aside (Article 121; Order XXII Rule 9(2)); there is no fresh suit on the same cause of action after abatement (rule 9(1)).
- No abatement for death after hearing and before judgment (rule 6).

(b) Suit to include the whole claim

Order II Rule 2 CPC requires every suit to include the whole of the claim the plaintiff is entitled to make on the cause of action.

- A plaintiff may relinquish a portion to bring the suit within the court's jurisdiction (rule 2(1)).
- If he omits or intentionally relinquishes a portion, he cannot later sue for it (rule 2(2)); if entitled to several reliefs on the same cause and he omits one without leave, he cannot sue for it later (rule 2(3)).
- An obligation and its collateral security, and successive claims under the same obligation, are one cause of action (Explanation). The rule is to prevent a defendant from being vexed twice for one cause of action.

(c) Novation of contract

Section 62 of the Indian Contract Act, 1872: if the parties agree to substitute a new contract for the old, or to rescind or alter it, the original contract need not be performed.

- Novation may be of the parties (A, B and C agree that C will pay B instead of A, so A's debt ends) or of the terms (the old contract is replaced by a new one).
- There must be agreement of all the parties to the new contract, a valid new contract with consideration, and an intention to extinguish the earlier one; it is not novation if the old and new are to subsist together.

(d) Mode of determining existence of a partnership firm

Section 6 of the Indian Partnership Act, 1932: regard is had to the real relation between the parties as shown by all relevant facts taken together.

- Partnership arises from contract, not status (section 5); section 4 requires an agreement to share the profits of a business carried on by all or any of them acting for all, so the essentials are

agreement, business, sharing of profits and mutual agency.

- Sharing of profits does not itself make persons partners (Explanations 1 and 2 to section 6): joint owners sharing gross returns, a lender, a servant or agent paid by a share, a widow or child of a partner receiving an annuity, and a former owner paid for the goodwill are not partners by that fact.
- The deed, the conduct of the parties, who held out as a partner, who had control and the registration entries are all weighed together.

(e) Rights of an agent

The Indian Contract Act, 1872 gives the agent these rights against the principal.

- **Retainer (section 217):** to retain from sums he receives for the principal what is due for advances, expenses and remuneration.
- **Remuneration (sections 219 and 220):** due when the act is completed unless otherwise agreed; none for business he has misconducted.
- **Lien (section 221):** to retain goods, papers and property of the principal received by him until his dues are paid, unless otherwise agreed.
- **Indemnity (sections 222 and 223):** against the consequences of lawful acts done under his authority and of acts done in good faith, though they injure a third person; no indemnity where the act is criminal (section 224).
- **Compensation (section 225):** for injury caused by the principal's neglect or want of skill.

(f) Transfer of decree for execution

Section 39 CPC lets the court which passed the decree send it for execution to another court of competent jurisdiction.

- On the decree-holder's application, in four cases: the judgment-debtor lives or carries on business or works for gain within that court's limits; he has no sufficient property within the court's limits but has property in the other's; the decree directs sale or delivery of immovable property outside its limits; or for any other reason recorded in writing (section 39(1)).
- The court may send it of its own motion to any subordinate court of competent jurisdiction (section 39(2)).
- A court is competent if it would have jurisdiction to try the suit when the transfer is asked (section 39(3)); the decree-passing court cannot execute against a person or property outside its limits (section 39(4)). The transferee court executes the decree as if it had passed it and certifies the result.