

HIMACHAL PRADESH (COURTS) ORDER, 1948

CONTENTS

CHAPTER 1 :- PRELIMINARY

1. Short title, extent and commencement
2. Definitions

CHAPTER 2 :- COURT OF THE JUDICIAL COMMISSIONER

3. Establishment of the Court of the Judicial Commissioner
4. Appointment of Judicial Commissioner and Additional Judicial Commissioner
5. Casual vacancy in the office of the Judicial Commissioner
6. Rank, precedence and responsibility of Judicial Commissioner
7. Exercise of jurisdiction by Judicial Commissioner and Additional Judicial Commissioner
8. Civil and criminal jurisdiction of the Court of the Judicial Commissioner
9. Registrar and Ministerial Officers
10. Superintendence and control of Subordinate Courts
11. Registers, books and accounts and statements to be kept by Judicial Commissioner
12. Procedure of the Court of Judicial Commissioner
13. Admission and removal of Advocates, Vakils and Pleaders
14. Seat of the Court of Judicial Commissioner

CHAPTER 3 :- SUBORDINATE COURTS

15. Classes of Courts
16. Civil Districts and District Judges
17. Additional District Judges
18. Subordinate Judges
19. The District Court to be principal Civil Court of original jurisdiction
20. Original jurisdiction of Civil Courts
21. Original limits of Subordinate Judges
22. Local limits of jurisdiction of Subordinate Judges
23. Honorary Subordinate Judges
24. Small Cause jurisdiction of Subordinate Judges
25. Exercise by Subordinate Judges of jurisdiction of District Court in certain proceedings
26. Place of sitting of Courts
27. Control of Courts by District Judge
28. District Judges power to distribute business

29. Ministerial officers of Courts
30. Delegation of powers to District Judge and District Court

CHAPTER 4 :-APPELLATE AND REVISIONAL JURISDICTION IN CIVIL CASES

31. Appeals from original decrees
32. Appeals from appellate decrees
33. Finality of appellate decrees of District Court
34. Period of limitation
35. Revisional powers of Court of Judicial Commissioner
36. Court-fees payable on revision

CHAPTER 5 :- SUPPLEMENTAL PROVISIONS

37. Seal
38. Temporary vacancies of office of District Judge
39. Delegation of powers of District Judge
40. Temporary vacancy of office of Subordinate Judge
41. Continuance of powers of officers
42. Power to make rules
43. Vacations
44. .
45. Repeal

HIMACHAL PRADESH (COURTS) ORDER, 1948

¹1. Paragraph 44 omitted by No 278 - 1-B, dated 24th August, 1948, p 1087 WHEREAS the Central Government has full and exclusive authority, jurisdiction and powers for and in relation to the governance of Himachal Pradesh; AND WHEREAS it is exercise of the powers conferred by Sec. 3 and 4 of the Extra-Provincial Jurisdiction Act, 19472 (47 of 1947), and of all other powers enabling it in this behalf, the Central Government is pleased to make the following Orders :-

CHAPTER 1 PRELIMINARY

1. . Short title, extent and commencement :-

- (1) This order may be called the Himachal Pradesh (Courts) Order, 1948.
- (2) It extends to the whole of Himachal Pradesh.
- (3) It shall come into force on the 15th day of August, 1948.

2. Definitions :-

In this Order, unless there is anything repugnant in the subject or

context,-

(i) "Chief Commissioner" means the Chief Commissioner of Himachal Pradesh ;

(ii) "District Court" means the Court of the District Judge and includes the Court of the Additional Judge;

(iii) "Himachal Pradesh" means the area comprised within the territories of the States specified in the Schedule of the Himachal Pradesh (Administration) Order, 1948, as amended from time ;

(iv) "Land suit" means a suit relating to land as defined in Cl. 1 of Sec. 4 of the Punjab Tenancy Act, 1887 (16 of 1887), or to any right or interest in such land:

(v) "Small cause suit" means a suit of the nature cognizable by a Court of Small causes under the Provincial Small Cause Courts Act, 1887 (9 of 1887);

(vi) "unclassified suit" means a suit which is neither a land suit nor a small cause suit; and

(vii) "value" in relation to a suit means the amount or value of the subject matter of the suit.

CHAPTER 2

COURT OF THE JUDICIAL COMMISSIONER

3. Establishment of the Court of the Judicial Commissioner

:-

On and from the commencement of this Order, there shall be established for Himachal Pradesh a Court to be known as the Court of the Judicial Commissioner and the Additional Judicial Commissioner, if any.

4. Appointment of Judicial Commissioner and Additional Judicial Commissioner :-

(1) The Judicial Commissioner and the Additional Judicial Commissioner, if any, shall be appointed by the Central Government and shall hold office at the pleasure of the Central Government.

(2) No person shall be appointed as the Judicial Commissioner or the Additional judicial Commissioner who is not qualified to be appointed as a Judge of a High Court under sub-section (3) of Sec. 220 of the Government of India Act, 1935, or who is not,

immediately before the commencement of this Order, the Chief Judge of a State comprising Himachal Pradesh.

5. Casual vacancy in the office of the Judicial Commissioner

:-

On the occurrence of a vacancy in the office of the Judicial Commissioner, the Additional Judicial Commissioner, if any, shall pending the appointment of the Judicial Commissioner act as the Judicial Commissioner.

6. Rank, precedence and responsibility of Judicial Commissioner :-

The Judicial Commissioner shall have rank and precedence before the Additional Judicial Commissioner and shall be responsible for the administration of and generally for the distribution of business, of the Court of the Judicial Commissioner.

7. Exercise of jurisdiction by Judicial Commissioner and Additional Judicial Commissioner :-

Subject to such orders as the Judicial Commissioner may make as regards the distribution of business between himself and the Additional Judicial Commissioner, the jurisdiction of the Court of the Judicial Commissioner may be exercised by the Judicial Commissioner or by the Additional Judicial Commissioner.

8. Civil and criminal jurisdiction of the Court of the Judicial Commissioner :-

Save as otherwise provided by this Order or any other law for the time being in force, the Court of the Judicial Commissioner shall be the highest civil and criminal court of appeal and revision for Himachal Pradesh.

9. Registrar and Ministerial Officers :-

(1) The Chief Commissioner may appoint a Registrar and the Judicial Commissioner may, with the concurrence of the Chief Commissioner appoint such other ministerial officers as may be necessary for the administration of justice by the Court of the Judicial Commissioner and for the exercise and performance of the powers and duties conferred or imposed on it by this Order or any other law for the time being in force.

(2) The Judicial Commissioner may make rules for delegating to the Registrar such powers and such duties of a judicial, quasi-judicial or non-judicial nature as he deems fit. The ministerial officers shall

exercise such powers and perform such duties of a quasi-judicial or non-judicial nature as the Judicial Commissioner may direct.

10. Superintendence and control of Subordinate Courts :-

(1) The general superintendence and control over all Courts in Himachal Pradesh shall vest in, and all such Courts shall be subordinate to, the Court of the Judicial Commissioner.

(2) In exercise of the power of superintendence and control vested in it, but without prejudice to the generality of such power, the Court of the Judicial Commissioner may do any of the following things, that is to say,-

(a) call for returns :

(b) direct the transfer of any suit or appeal from any Subordinate Court to any other Court of equal or superior jurisdiction:

(c) make rules and issue general directions and prescribe forms for regulating the practice and procedure of Subordinate Courts;

(d) prescribe forms in which books, entries and accounts shall be kept by the officers of any such Court.

11. Registers, books and accounts and statements to be kept by Judicial Commissioner :-

(1) The Court of the Judicial Commissioner shall keep such registers, books and accounts.

(2) The Court of the Judicial Commissioner shall also comply with such requisitions as may be made by the Central Government or the Chief Commissioner for certified copies of, or extracts from, the records of the Court of the Judicial Commissioner or any Court subordinate thereto.

12. Procedure of the Court of Judicial Commissioner :-

Notwithstanding anything contained in the Code of Civil Procedure, 1908, or the Code of Criminal Procedure, 1898, the Court of the Judicial Commissioner shall record evidence and judgments in such manner and prescribe such manner and prescribe such forms to be used in proceedings before it as it may direct by rules made by it with the sanction of the Chief Commissioner.

13. Admission and removal of Advocates, Vakils and Pleaders :-

(1) The Court of the Judicial Commissioner may, subject to such rules as it may with the sanction of the Chief Commissioner make, admit proper persons to be advocates, vakils and pleaders in any Court in Himachal Pradesh, and may remove or suspend from practice on reasonable cause any person so admitted, and may authorise such advocates, vakils or pleaders to plead and to act or to plead and act for suitors and accused persons.

(2) No person other than an advocate, vakil or pleader shall be allowed to plead or to act or to plead and act for suitors and accused persons, except that any suitor may appear, plead or act on his own behalf or on behalf of a co-suitor.

14. Seat of the Court of Judicial Commissioner :-

The Court of the Judicial Commissioner shall be a Court of record and shall sit at Simla or at such other place or places if any as the Judicial Commissioner may, with the approval of the Chief Commissioner, from time, appoint.

CHAPTER 3

SUBORDINATE COURTS

15. Classes of Courts :-

In addition to the Court of the Judicial Commissioner and the courts of Small Causes established under the Provincial Small Cause Courts Act, 1887 (9 of 1887), and the courts established under any other law for the time being in force, there shall be the following classes of Civil Courts, namely :-

(i) The Court of the District Judge :

(ii) The Court of a Subordinate Judge.

16. Civil Districts and District Judges :-

(1) For the purposes of this Chapter, the Chief Commissioner may, by notification in the Official Gazette, divide Himachal Pradesh into civil districts and may alter the limits or the number of these districts and may determine the headquarters of each such district.

(2) The Chief Commissioner shall, after consultation with the Judicial Commissioner, appoint as many persons as he thinks necessary to be District Judges and shall post one such person to each district as District Judge of that district:

Provided that the same person may, if the Chief Commissioner thinks fit, be appointed to be the District Judge of two or more

districts.

17. Additional District Judges :-

(1) When the business pending before the Court of a District Judge requires the aid of an Additional Judge or Judges for its speedy disposal, the Chief Commissioner may after consultation with the Judicial Commissioner, appoint such Additional District Judges as may be necessary.

(2) An Additional District Judge so appointed shall discharge any of the functions of a District Judges.

18. Subordinate Judges :-

(1) The Chief Commissioner may, after consultation with the Judicial Commissioner, fix the number, may, subject to the rules, if any, made under sub- paragraph (2), appoint such person as is nominated by the Judicial Commissioner to the vacancy.

(2) The Chief Commissioner may, after consultation with the Judicial Commissioner, make rules as to the qualifications of persons to be appointed Subordinate Judges.

(3) A Subordinate Judge may be suspended from office by the Judicial Commissioner subject to the confirmation of the Chief Commissioner and may be removed from office by the Chief Commissioner on the report of the Judicial Commissioner.

19. The District Court to be principal Civil Court of original jurisdiction :-

The Court of the District Judge shall be the principal Civil Court of original jurisdiction in the district.

20. Original jurisdiction of Civil Courts :-

Save as otherwise provided by any other law for the time being in force, the Court of the District Judge shall have original jurisdiction in civil suits without limit as regards the value.

21. Original limits of Subordinate Judges :-

The jurisdiction to be exercised in original civil suits as regards the value by any person appointed to be a Subordinate Judge shall be determined by the Chief Commissioner, after consultation with the Judicial Commissioner, in such manner as he thinks fit.

22. Local limits of jurisdiction of Subordinate Judges :-

(1) The local limits of the jurisdiction of a Subordinate Judge shall be such as the Chief Commissioner may, by notification in the Official Gazette, define.

(2) When the Chief Commissioner posts a Subordinate Judge to a district, the local limits of the district shall, in the absence of any directions to the contrary, be the local limits of his jurisdiction.

23. Honorary Subordinate Judges :-

(1) The Chief Commissioner may after consultation with the Judicial Commissioner, appoint any person to be an Honorary Subordinate Judge and may confer on such judge all or any of the powers conferrable under this Order on a Subordinate Judge with respect to any class of suits or with respect to suits generally in any local area and may withdraw or suspend the exercise of any powers so conferred.

(2) Any person on whom powers are conferred under sub-paragraph (1) shall be deemed for the purposes for the purposes of this Order to be a Subordinate Judge.

24. Small Cause jurisdiction of Subordinate Judges :-

The Chief Commissioner may, by notification in the Official Gazette, confer within such local limits as he thinks fit on a Subordinate Judge the jurisdiction of a Judge of the Court of the Small Cause Courts Act, 1887 (9 of 1887), for the trial of small cause suits up to such value not exceeding rupees five hundred as he thinks fit, and may withdraw any jurisdiction so conferred.

25. Exercise by Subordinate Judges of jurisdiction of District Court in certain proceedings :-

(1) The Judicial Commissioner may, by general or special order, authorise any Subordinate Judge to take cognizance of, and any District Judge to transfer to a Subordinate Judge under his control, any proceedings or any class of proceedings, specified in such order, under-

(a) the Indian Succession Act, 1925 (39 of 1925) if the proceedings cannot be disposed of by the District Judge;

(b) the Guardians and Wards Act, 1890 (8 of 1890); or

(c) the Provincial Insolvency Act, 1920 (5 of 1920).

(2) The District Judge may withdraw any such proceedings taken

cognizance of by, or transferred to, a Subordinate Judge under his control, and may either himself dispose of them or transfer them to a court under his control competent to dispose of them.

(3) Proceedings taken cognizance of by or transferred to a Subordinate Judge under this paragraph shall be disposed of by him, subject to the rules applicable to like proceedings in the Court of the District Judge.

26. Place of sitting of Courts :-

(1) The Chief Commissioner may fix the place or places at which any Court constituted under this Chapter is to be held.

(2) The place or places so fixed may be beyond the local limits of the jurisdiction of the Court.

(3) Save as otherwise provided by an order under this paragraph, a Court constituted under this Order may be held at any place within the local limits of its jurisdiction.

27. Control of Courts by District Judge :-

Subject to the general superintendence and control of the Judicial Commissioner, the District Judge shall have control over all the Civil Courts within the local limits of his jurisdiction.

28. District Judges power to distribute business :-

Notwithstanding anything contained in the Code of Civil Procedure, 1908 (Act 5 of 1908), a District Judge may by written order, direct that any civil business cognizable by his Court and the Courts under his control shall be distributed among such Courts in such manner as he thinks fit:

Provided that no direction issued under this paragraph shall empower any Court to exercise any powers or deal with any business beyond the limits of its proper jurisdiction.

29. Ministerial officers of Courts :-

(1) The ministerial officers of the District Court shall be appointed by the District Judge.

(2) The ministerial officers of Civil Courts, under the control of the District Judge, shall be appointed by the District Judge.

(3) Every appointment under this paragraph shall be subject to such rules as the Judicial Commissioner with the approval of the

Chief Commissioner may make in this behalf.

(4) Any order passed by a District Judge under this paragraph shall be liable to be reversed or modified by the Judicial Commissioner.

30. Delegation of powers to District Judge and District Court :-

A District Judge may, with the previous sanction of the Judicial Commissioner, delegate to the Judge of any Court under his control all or any powers conferred on a District Judge by Sec. 27 and 28 of this Order and on a District Court by Sec. 24 of the Code of Civil Procedure, 1908 (Act 5 of 1908), to be exercised by such Judge in any specified portion of the districts, subject to the control of the District Judge.

CHAPTER 4

APPELLATE AND REVISIONAL JURISDICTION IN CIVIL CASES

31. Appeals from original decrees :-

Save as otherwise provided by any law for the time being in force, appeals from decrees of Courts exercising original jurisdiction shall lie as follows:-

(a) from a decree of a Subordinate Judge in a suit of value not exceeding five thousand rupees, to the Court of the District Judge; and

(b) in all other cases, to the Court of the Judicial Commissioner :

Provided that the Judicial Commissioner, with the previous sanction of the Chief Commissioner, may by notification in the Official Gazette direct that appeals lying to the Court of the District Judge from all or any of the decrees passed by a Subordinate Judge in a small cause suit of value not exceeding five hundred rupees or in any unclassified suit [or in any land suit] of value not exceeding one hundred rupees shall be preferred to such other Subordinate Judge as may be mentioned in the notification, and the appeals shall thereupon be preferred accordingly, and the Court of such other Subordinate Judge shall be deemed to be the Court of a District Judge for the purposes of all appeals so preferred.

32. Appeals from appellate decrees :-

(1) A second appeal shall lie to the Court of the Judicial Commissioner in any of the following cases from an appellate decree of a District Court on any ground which would be a good

ground of appeal if the decree had been passed in an original suit, namely :-

(a) in a small cause suit or unclassified suit,

(i) if the value of the suit is one thousand rupees or upwards, or the decree involves directly some claim to, or question respecting, property of like value, and the decree of the District Court varies or reverses, otherwise than as to costs the decree of the Court below, or

(ii) if the value of the suit is two thousand five hundred rupees or upwards, or the decree of the District Court involves directly some claim to, or question respecting, property of like value;

(b) in a land suit,

(i) if the value of the suit is two hundred and fifty rupees or upwards, or the decree involves directly some claim to, or question respecting, property of like value, and the decree of the District Court varies or reverses otherwise than as to costs the decree of the Court below, or

(ii) if the value of the suit is one thousand rupees or upwards, or the decree of the District Court involves directly some claim to, or question respecting, property of like value.

(2) The provisions of Order XLI of the Code of Civil Procedure, 1908 (Act 5 of 1908), other than rule 35 of the said Order, shall apply, as far as may be, to a second appeal under this paragraph and to the execution of a decree passed on any such appeal.

33. Finality of appellate decrees of District Court :-

Subject to the provisions of paragraphs 32 and 35 of this Order, an appellate decree of a District Court shall be final.

34. Period of limitation :-

(1) The period of limitation for a second appeal under paragraphs 32 shall be ninety days from the date of the decree appealed against.

(2) In computing this period and in all other respects not herein specified, the period of limitation of the appeal shall be governed by the provisions of the Indian Limitation Act, 1908(9 of 1908).

35. Revisional powers of Court of Judicial Commissioner :-

(1) The Court of the Judicial Commissioner may call for the record of any case which has been decided by a Civil Court subordinate to it and in which no appeal lies to it, and

(a) if the Civil Court by which the case was decided appears to have exercised a jurisdiction not vested in it by law, or to have failed to exercise a jurisdiction so vested, or to have acted in the exercise of its jurisdiction with material irregularity, or

(b) if on an application made to it the Court of the Judicial Commissioner is of opinion that there is an important question of law or custom involved and that such question requires further consideration, the Court of the Judicial Commissioner is of opinion that there is an important question of law or custom involved and that such question requires further consideration, the Court of the Judicial Commissioner may make such question further consideration, the Court of the Judicial Commissioner may make such order in the case as it thinks fit:

Provided that-

(i) no application under sub-paragraph (b) shall be admitted after the expiration of ninety days from the date of the Order in respect of which the application is made, unless the applicant satisfies the Court of the Judicial Commissioner that he had sufficient cause for not making the application within that period;

(ii) no such application shall be admitted in a small cause suit under the value of one thousand rupees or in an unclassified suit under the value of two hundred rupees;

(iii) on any such application the Court of the Judicial Commissioner shall not revise the decision of the Court below except in so far as such decision involves the question of law or custom in respect of which the application has been admitted; and

(iv) when any such application has been admitted, the Court of the Judicial Commissioner shall, subject to proviso (iii) treat the matter of the application as if it were an appeal.

Explanation.- A question of procedure is not a question of law or custom within the meaning of sub-paragraph (b).

(2) In computing the period of limitation mentioned in proviso (i) of sub-paragraph (1), and in all other respects not herein specified, the period of limitation of the application shall be governed by the

provisions of the Indian Limitation Act, 1908 (9 of 1908).

(3), Section 115 of the Code of Civil Procedure, 1908 (Act 5 of 1908), shall not apply to Himachal Pradesh.

36. Court-fees payable on revision :-

(1) The Court-fees payable on applications to the Court of the Judicial Commissioner for the exercise of its jurisdiction under paragraph 35 shall be the same as those for the time being payable on like applications to the High Court of Judicature for the East Punjab.

(2) If the Court of the Judicial Commissioner, on an application in respect of which the fee payable under sub-paragraph (1) has been paid, sets aside or modifies a decree or order of the Court below or remands the case for a fresh decision, the Court of the Judicial Commissioner may grant to the applicant a certificate authorising him to receive back from the Deputy Commissioner of the District in which the Court is situated the full amount of such fee or such part thereof as the Court, having regard to the circumstances of the case, may think fit.

CHAPTER 5

SUPPLEMENTAL PROVISIONS

37. Seal :-

Every Court constituted under this Order shall use a seal of such form and design as are prescribed by the Chief Commissioner.

38. Temporary vacancies of office of District Judge :-

In the event of the death of a District Judge or of his being prevented from performing his duties by illness or other cause or of his absence from the Civil District on leave, the Additional District Judge the first in rank of the Subordinate Judges shall assume charge of the District Court, without interruption to his ordinary jurisdiction, and while so in charge, shall perform the duties of a District Judge with respect to the filling of suits and appeals, receiving pleadings, execution of processes, return of writs and the like, and shall be designated as the Additional District Judge, or the Subordinate Judge, as the case may be, in charge of the District and shall continue in such charge until the office of the District Judge has been resumed or assumed, by an officer duly appointed thereto.

39. Delegation of powers of District Judge :-

Any District Judge leaving the headquarters and proceeding on duty to any within his District, may delegate to the Additional District Judge, if any, or where there is no such Additional District Judge, to a Subordinate Judge at the headquarters, the power of performing such duties, enumerated in paragraph 38 as may be emergent: and such officer shall be designated as the Additional District Judge or the Subordinate Judge, as the case may be, in charge of the headquarters.

40. Temporary vacancy of office of Subordinate Judge :-

In the event of the death, suspension or temporary absence of any Subordinate Judge, the District Judge may empower the Judge of any Subordinate Court of the same Civil District to perform the duties of the Judge of the vacated Subordinate Court, either at the place of such Court or of his own Court ; but in every such case the registers and records of the two Courts shall be kept distinct.

41. Continuance of powers of officers :-

Whenever any person holding an office in the service of the Government of Himachal Pradesh who had been invested with any powers under this Order throughout any local area is transferred or posted to an equal or higher office of the same nature within a like local area, he shall, unless the Chief Commissioner otherwise directs, or has otherwise directs, exercise the same powers in the local area to which he is so transferred or posted.

42. Power to make rules :-

The Court of the Judicial Commissioner may from time to time make rules consistent with this Order and any other law for the time being in force:-

(a) for the supervision of all Courts subordinate to the Court of the Judicial Commissioner and their visitation and inspection;

(b) for the translation of any papers filed in the Court of the Judicial Commissioner and the preparation of paper books for the hearing of appeals and the copying, typing or printing of any such papers or translations and the recovery from the persons at whose instance or on whose behalf papers are filed, of the expenses thereby incurred ;

(c) the fees to be charged for processes issued by the Civil Courts, or by any officer of any such Court by any party to such suit or proceeding in respect of the fees of the pleader of any other party to such suit or proceeding ;

(d) the manner in which the proceedings of Civil Court shall be kept and recorded, the manner in which paper for the hearing of appeals shall be prepared and the granting of copies.

(e) all matters relating to officers of Court;

(f) declaring what persons shall be permitted to act as petition writers in the Courts subordinate thereto ;

(g) regulating the issue of licenses to such persons, the conduct of business by them and the scale of fees to be charged by them; and

(h) determining the authority by which breaches of such rules shall be investigated and the penalties which may be imposed .

43. Vacations :-

(1) Subject to the approval of the Chief Commissioner' the Judicial Commissioner shall prepare a list of days to be observed in each year as closed holidays in the Court of the Judicial Commissioner and the Civil Courts subordinate to that Court.

(2) The list shall be published in the Official Gazette.

(3) A judicial act done by a Civil Court on a day specified in the list shall not be invalid by reason only of its having been done on that day.

44. . :-

1 [* * * * *]

1. Paragraph 44 omitted by No 278 - 1-B, dated 24th August, 1948, p 1087

45. Repeal :-

1 [* * * *]

(2) Save as otherwise provided by this Order or any other law for the time being in force, all Civil Courts other than those specified in this Order, shall on the commencement of this Order, cease to exist.

1. Sub-paragraph (1) omitted retrospectively by No 276 -IB. dated 19th August, 1948, p 1031