

# LAW SCHOOL NOTES

SUBJECT TITLE:

**COMMISSIONS ORDER XXVI**

**PROCEDURAL GUIDELINES**



Prepared by Adv. Govinda S. Zalte | For educational use only  
Contact: +91 77987 90378 | Email: govindazalte2001@gmail.com

Commissions

- Ss. 75 - 78 deal with Commissions
- deals with powers of court to issue Comm.
- It is discretionary
- Can be exercised by courts for doing full & complete justice b/w the parties.
- Can be exercised by court
  - a) on its own (suo moto)
  - b) application by party to the suit

## \* Purpose of Commission (Sec. 75)

- i) to examine witnesses
- ii) to make local investigation.
- iii) to adjust accounts.
- iv) to make partition.
- v) to hold investigation. (scientific, technical or expert).
- vi) to conduct sale
- vii) to perform ministerial act.
- ~~viii) to examine witnesses~~

0.26. (i) → Commission to examine witnesses. (Rule 1-8)

R.1 Court may issue Comm. in any suit for examination of any person resident within local limits of its jurisdiction who is exempted to attend court or unable due to sickness or infirmity  
→ Court to record reason for the same

R.2 Court can order Comm. either on its own motion or on app<sup>n</sup> of party with affidavit.

R.3 Witnesses reside within local limits of jurisdiction, then Comm. may be issued to any person

R.4. Person for whose examination comm. may be issued

- a) beyond local limits of jurisdiction
- b) any person who is to leave such local limits on date of examina<sup>n</sup>
- c) person in service of govt.

→ Such comm. may be issued to

- a) to any court
- b) to any pleader
- c) to any other person whom court may appoint.

→ Court shall direct where it will be returned.

R.5 Comm. or request to examine witness not within India

→ Court to be satisfied that evidence of such person is necc.

R.6 Court receiving Comm. shall examine him or cause to be examined

R.7 Return of Comm. with deposition of witness

→ On execution Comm. shall be returned with evidence to the Court directed it or any court mentioned by Issuing Court.

→ Comm. + Return + Evidence shall form part of record.

R.8 When such deposition can be read into evidence

→ shall not be read as evidence without consent of opp. party.

except.

- a) ground of R.4.

- b). Discretion of court or court authorized.

(ii) to make local investigations [Rule 9].  
When it can be issued?

- a) Elucidating in any matter in dispute
- b) ascertaining the market value of any prop.
- c) amount of mesne profit / damages / annual net profit

\* IF STATE Govt. has made rules regarding this Court & bound by them.

\* Object of local Investigation

→ To obtain evidence which from its very peculiar nature can be had only on the spot.

\* Procedure [Rule 10]

Comm. to take evidence & reduce it to writing

Comm. to return such evidence, with his report in writing signed by him.

(Evi. + Report) → shall be evidence in suit & form part of record

Any of the party can examine Comm. in open court

- for a) any matter mentioned in his report
- b) to Report
- c) manner of investigation

(iii)

### To adjust accounts [Rule 11 & 12]

Rule 11 - Court may issue comm. to such person as it thinks fit for examination & adjustment.

Rule 12 - Court to furnish Commissioner with such part of proceeding.

It shall state

1) To make hold inquiry or

2) To report his own opinion on point.

12(2) :- Proceedings & report to be evidence.

also further inquiry can be directed.

(iv)

### To make partition

R. 13 - A decree for partition has been passed.

Court may issue comm. for separate & partition on basis of that decree.

R. 14 - Procedure

1) Make Inquiry.

2) Divide prop into as many share directed by decree.

3) Allot such share to parties.

4) Award sum to be paid for purpose of equalizing value of shares.

5) Comm. to prepare and sign report appointing share of each party & distinguishing share.

6) Such report to be transmitted to court.

7) After hearing parties court may either confirm or set aside the same.

(v)

### To hold investigation [R. 10A]

- Any question involving scientific question which cannot be conveniently conducted before court → Court can issue comm.

→ Report can be perused.

Rama Aratar Soni v. Laxmidhar Des (2019) SCC

## General Provisions of Commission. [Rule 15-18 B]

R.15

Court may order such sum as it thinks reasonable for expenses of comm. at instance of that party for whose benefit it is issued.

R.16

### Power of Commissioner:

- Examination of parties / witness / any other person
- Call for & examine documents & other things
- Enter upon or into any land or building.
- proceed ex-parte if the parties do not appear before him inspite of the order of court.

R.17

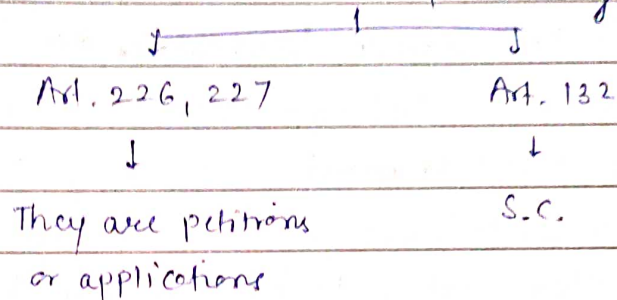
### Examination & Attendance of witnesses before Comm.

- Provision of summoning, attendance, examination of witness, remuneration, penalties upon, witness shall apply persons required to give evidence or to produce document under this code order
- for this purpose of this Comm. shall be deemed to be Civil Court.
- Comm. cannot impose penalties
- but on application of Comm. such to Court penalties can be imposed

Whenever Comm. for movable prop. is appointed then no notice is to be given to other side.

- Secretary of Union of India
- Secretary of State of \_\_\_\_\_

→ S. 80 deals only with suit → no other proceedings



- Order 2 Rule 2 - No multiple proceeding [in initial stage, on technicality]
- Res judicata - No multiple suit after final adjudication

Order XXVII - Suit by or against military or Naval men or Airmen.

- No need of GPA
- Authority letter endorsed by superior officer then it is considered as enough Under order 28.

Such authorised agent can himself engage in suit or engage an advocate.

Order XXIX

Suit by or against Corporation

- Body made by law falls under the category of Corporation
- Creation of statutes,