

Pleading, Drafting and Conveyancing.

Indian Registration Act, 1908 provides sanctity to the documents dealing with immovable property. The principle 'caveat emptor' is substantiated by Indian Registration Act, 1908. Which makes it obligatory to get following

Kinds of documents registered with a Central Agency called "Registrar". These documents are:

- (a) Instruments of gift of immovable property.
- (b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees
- (c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest, and

- (d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent.

- (e) non-testamentary instruments transferring or assigning any decree or order of a court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest whether vested or contingent, of the value of Rs. 100/- and upwards, or in immovable

property.

Once such a document is registered in terms of ~~Sec~~ Sec 17 of the Registration Act, 1908, it is presumed under law that whole world is aware of the transaction.

- Effect of Non Registration of such a document as contained in Section 49, No document required by Sec 17 or by any provision of the Transfer of Property Act, 1882 to be registered shall
- affect any immovable property comprised therein
 - confer any power to appoint, or
 - be received as evidence of any transaction affecting such property or conferring such power.

unless it has been registered.

However, it may be received as an evidence of a contract in a suit for specific performance under Chap II of Specific Relief Act, 1877 or as evidence of any collateral transaction not required to be effected by registered instrument.

General Principles of Regis Act by Supreme Court under in S. Kaladevi vs V.R. Somasundaram, Civil Appeal No. 3192 of 2010.

- A document required to be registered, if unregistered is not admissible in evidence U/S 49
- Such unregistered document can however be used as an evidence of collateral purpose as provided in the proviso

to section 49 of Registration Act.

- (c) A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.
- (d) A collateral transaction must be a transaction not itself required to be effected by a registered document, that is a transaction creating, any right, title or interest in immovable property of the value of Rs 100/- or upwards.
- (e) If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that hence a document for the purpose of proving an important clause would not be using it as a collateral purpose.
- (f) A document required to be registered, if unregistered, can be admitted in evidence as evidence of contract in a suit for specific performance.

Imp Documents to be compulsorily registered.

- (i) Mortgage Deed: In a suit for redemption based on invalid mortgage, the use of the said mortgage deed is not for any ~~an~~ any collateral purpose, but for the purpose of proving the mortgage. Which Registration Act forbids, however it can be used by the plaintiff in a suit for possession to prove the nature of possession, if the defendant denies the claim of the plaintiff on the ground of adverse possession.

(ii) Partition Deed: Partition in Mitakshara sense means that what was once was a joint title has become a divided title though there has been no division of properties by metes and bounds. Partition may also mean what ordinarily is understood by partition amongst coparceners who may not be members of Hindu coparceners. For partition in the ~~let~~ former sense, it is not necessary that members of the joint family should agree, because it is matter of individual volition. For partition in the latter sense of allotting specific properties or parcels to individual coparceners, agreement amongst all the coparceners is absolutely necessary. Such a partition may be effected orally, but if the parties reduce the transaction to a formal agreement which is intended to be the evidence of the partition it has the effect of declaring the exclusive title of the coparcener to whom a particular property is allotted by partition and is thus within the mischief of Sec. (11)(b).

(iii) Family Arrangement: ~~A~~ A family arrangement presumes an admission of a previously existing title. A binding family arrangement of this type may be by a word of mouth [No question of property or transfer of ownership]. If reduced to writing, it must be registered.

(iv) Arbitration:

Private award → creates rights, declaratory, compulsory registration.

Award made in reference in pending Court proceedings → Does not create, declare any rights to immovable property
↓
Arbitration → No compulsory registration.

(V) Lease Deed. See 107 TPA year to year
→ Yes Registration.

(VI) Adoption Deed → If the deed also refers to creation of an immediate right in the adopted son and the divesting of the right of the adoptive mother/father in the property, it falls within the ambit of Sec 17(1)(b).

(VII) Effect of Unregistered Private Arbitration Award: Unregistered per se is not inadmissible in evidence. Creates rights and obligations. Can be set up as a defense. If it contains a mere declaration of a pre-existing right, it is not creating a right, title and interest and not compulsorily registrable.

(VIII) Deed of Dissolution Reflecting Partnership Property → No.

(IX) Sale Deed → Yes.

(X) Agreement to sell → If transferee has taken possession within the ambit of 553A

① IPA → Compulsory U/S 17(A) and
is created on or after 2001 -

XV) Gift Deed — < ₹100/- Yes.

General Rules Civil, 1957 (for Civil Courts)
Made by High Court of Judicature at Allahabad
in exercise of powers conferred by Article 227 of
C.O.F. and Sec 122 of CPC, 1908.

Rule 2 → 1 Jan 1958, applies to all suits,
appeals, proceedings and matters in Civil Courts
Subordinate to High Court.

Rule 8 → Office hours of work in Civil Courts
shall ordinarily be from 10 a.m. to 5 p.m.
Recess from 1:30 p.m. to 2 p.m.
for staff attached to the Court and also those
working in the offices.

Proviso → Presiding officer at a Court
may fix different hours to avoid dislocations
of work.

Rule 9 → Clerks shall not take meals to
their houses and shall finish their work within
office hours in Court building.

Rule 10 → Daily sitting of judges →
Daily sittings of Civil Courts for judicial work
shall extend from 10:30 a.m. to 4:00 p.m.
with a recess from 1:30 p.m. to 2:00 p.m. This
sitting may be prolonged for the purposes of bringing
to a conclusion the examination of witnesses, hearing
of argument or any proceeding which in the
opinion of Judge, should not be or cannot be
conveniently interrupted.

A District Judge shall be in the
Court building by 10:30 a.m. and shall sit

in court by 11:30 a.m. for judicial work.

Rule 12 → Absence from court → Whenever a District Judge, a ADJ (Civil or Criminal) if without leave previously obtained absents himself from his court, such absence and the cause thereof shall be reported to High Court by the next day. Absence should not be ~~for~~ more than 2 working days in any one month, and shall be treated as casual leave.

Rule 13 → Work is allowed on a gazetted holiday on grounds of urgency.

Rule 15 → Court Language → Hindi written in the Devnagri Script shall be the language of civil courts in UP. Use

Proviso → Use of any other language is allowed with the executive instructions issued by State Govt. from time to time.

Rule 25 → Paper for pleading and petition — All pleadings, applications, and petitions of whatsoever nature, and also powers of attorney and certificates of pleaders, filed in the course of civil judicial proceedings, shall be written in a legible hand or typewritten on Govt Water marked paper.

Provided also that when Govt water marked paper is not available, courts may accept pleadings or petition on stout double paper.

2016 →

Only one sided the paper shall be used and a quarter margin together with at least, 2 and a half cm. of space at the top and bottom of each sheet, shall be allowed.

Rule 26 → Headings of pleadings and applications
→ In every pleading or petition the names of parties shall bear consecutive numbers, and a separate line shall be allotted to the ~~same~~ name and description of each person.

Rule 27 → Every application or petition shall at the time of presentation bear the name and also full signature or thumb mark of the person actually ~~present~~ presenting the same together with the dated representation.

Rule 28 → Rule 29 → Except an application for a copy, no application or petition and no pleading required or authorised by law to be made by a party in court, shall be received from any person other than the party himself, his pleader or his recognised agent. Or III, Rule 1 and 2.

Rule 35 → Whenever a civil court is appointed to receive plaint and he reports the following facts:

- ✓ (a) Whether Court fees has been paid?
- ✓ (b) Provisions of PC have been complied or not.
- ✓ (c) Whether the claim is within the jurisdiction of court?
- ✓ (d) Whether a cause of action is constituted or not.

- (c) Whether the plaint has been presented within the time limit?
- (d) Notice served under V/S 80 CPC

On the back of all plaints Munseries shall be

(i) Date of presentation of the plaint

(ii) Name of presenter.

(iii) Classification of suit, and

(iv) Court fee paid.

Rule 37 An application for amendment under I, Rule 10, Order VI, Rule 17 or Order XXII of CPC shall contain a prayer for all consequential amendments.

(b) When a party dies pendente lite a note to that effect shall be added against the name of the party and necessary consequential amendment in the body of petition or pleading shall also be made.

(c) ~~if~~ Heir of a deceased one to be substituted for him

→ Deceased part 3 Heir will be 3/1, 3/2, 3/3.

if 3/1 dies then 3/1/1, 3/1/2.

Rule 36 → Written acknowledgment by opposite party in following documents.

(i) WS

(ii) Objection under Sec 47 or Order XXI, Rule 58,

(iii) Amendment of pleading

(iv) Application for appointment of Receiver or Commissioner.

- (v) Application for amendment of decree.
- (vi) Setting aside an award.
- (vii) Application for Temporary injunction.

Law of Affidavit →

① ~~The~~ 1) Meaning of Affidavit → As a statement or declaration in writing on oath or affirmation before a person having authority to administer oath or affirmation.

② Defined U/S 3 (3) of General Clauses Act.

3) Deponent is the person who signs an affidavit.

4) Indian Oath Act, 1873 is the person who signs an affidavit.

3) U/S 4 of the Act Indian Oath Act, 1873

i) All courts and persons having by law or consent of parties authority to receive evidence.

(ii) Commanding Officer of military, naval or air force or ship occupied by troops in service of President.

4) Two or more persons can depose separately to those facts which are within his own knowledge, and such facts shall be stated in separate paragraphs.

5) Affidavit differs from an ordinary declaration or statement so far as the veracity of certain avowment is concerned. The affidavit can be relied upon to a greater degree than an ordinary statement or declaration. Moreover for tendering a statement to be utilised by a court of law as evidence, one has to be present in the court or a commission has to be appointed to record statement concerning certain facts.

In case of affidavits deponent need not

be present in each case.

6) All ~~no~~ relevant material facts must be included and no ~~no~~ unverifiable facts should be included.

7) Parts of an affidavit

(a) Introductory para. →

(b) Declaration of facts.

(c) Closing para. → Contains Verification.

8) Deponent verifies the affidavit.

9) Affidavit declared defective is not admitted as an evidence by the court.

10) By Virtue of Sec 1 d I.E.A. Therefore affidavits cannot be used as evidence under any of the provisions of the said Act.

11) Used as evidence U/A XIX of Sec 295, 296.

12) Even though Evidence Act has not allowed affidavit, it can still be used as an evidence → U/s 31 of Divorce Act, 1869 and Sec 30(c) of CPC.

13) Contempt proceedings are mostly decided on basis of affidavits and it is not illegal to bind a person guilty on the basis of affidavits.

14) Under high court Rules each application presented before it must be supported by an affidavit. But in a Writ petition or a simple application, + adjournment.

15) Verification of facts may be done by simply referring to the relevant paras.

16) ~~for~~ Court Fee for Affidavit before court
→ Rs. 2/-

Any other → Rs. 5/-

17) Purposes for which affidavit can be used?

- (a) Declaration that a person is dead or alive.
- (b) Declares the family status.
- (c) " Legality of one's marriage.
- (d) " Employment status.
- (e) " one's assets/income etc.
- (f) " as to handwriting.
- (g) " verifying account.
- (h) " a thing or document in possession.
- (i) Execution of a deed.
- (j) For declaration as to loss of deeds destroyed by fire.
- (k) For statutory declaration as to factuelum in register of births or deaths.
- (l) Declaration by owner that his property is free from encumbrance.
- (m) For a joint declaration by the widow and other legal heirs of deceased to withdraw the balance of amount lying in the deceased's savings bank account.
- (n) Proof of debt.

(o) Verifying a petition filed in court.

18) Affidavits filed before court do not require any stamp duty.

19) All other affidavits fall under Art 4 of Schedule I of India Stamp Act, 1899 and must be stamped.

20) Sec 139 of CPC deals with CPC.

- 21)
- (i) Any Court or Magistrate or
 - (ii) Any notary appointed under the Notaries Act, 1952.
 - (iii) Any officer or other person whom a High Court may appoint for this purpose.

(iv) Any officer appointed by any other court which the State Govt has generally a specially empowered for this purpose.

Q2) Punishment for false entry sec 191, Sec 193 IPC
→ upto 7 years + fine → judicial proceedings
upto 3 years → other

Powers of Attorney

- (i) A "Power of Attorney" is a document whereby one or more persons give an authority to one or more persons in his own or their place and. It is a document made to appoint an agent.
- (ii) The law of agency in India is contained in Chapter X Sec 182 to 238 of Contract Act, 1872.
- (iii) Sec 182 ICA → agent is a person employed to do any act for another or to represent another in dealing with a third person.
- (iv) U/S 2(21) → Indian Stamp Act → Include any instrument empowering a specified person to act for and in the name of the person executing it.
- (v) Power of attorney can be given to a person to appear in any court, tribunal or authority.
- (vi) Agent / Servant / contractor →
Agent / Principal → What to do?
Master / Servant → What to do + How to do?
Contractor is not the representative of the principal. Not subject to direct control or supervision of the principal.
- (vii) Power of Attorney Act, 1882 → 5 sections.
Sec 1 A → "Power of Attorney" includes any instrument empowering a specified person to act for and in the name of the person executing it.
 - (a) The first object of P A Act, 1882 → Render it legal for donee to execute in and with their own names and seals.
 - (b) Any person making or doing any payment or act in good faith, in pursuance of a power of attorney shall not be liable in respect of the payment or act by reason that, before the

Payment or act, the donor the power had died or become of unsound mind, or insolvent or had revoked the power, is the fact of death, unsound mind, insolvency or revocation was not, at the time of the payment or act, known to the person making or taking the same.

↓
Not applicable in court cases

(viii) Authority given to an agent may be express or implied.

(ix) U/S 188 of Contract Act an agent's authority extends to do every lawful thing which is necessary in order to do an act which he is authorised to do. An agent having authority to carry on business has authority to do everything lawfully necessary for the purpose or usually done in the course of business. Therefore, when an agent or attorney is given power to purchase or sell any property, he is impliedly authorised to negotiate or purchase or sale, enter into an agreement for sale and complete the sale in all respects subject to any restrictions upon such power.

(x) Kinds of Power of Attorney

- (a) General
- (b) Special
- (c) Particular

(a) General: General Power permits the agent to do all acts for the principal and generally to act in the business of the agency.

(b) Special: Special power enables an agent to enter

a single transaction consisting probably of several incidental acts, eg: selling a house or borrowing on a mortgage etc

(i) Particular Power. A particular power is conferred only to a single act eg. presenting a document before a Registering Officer for registration.

(xi) An agent or attorney cannot delegate his power unless he is expressly or impliedly authorised to do so. But if he appoints a delegate ~~and~~ under an express authority that delegate is not a sub agent but he is the agent or attorney of the principal himself. In other words, by delegation the original attorney is substituted by another attorney. But a delegate cannot be given greater powers than the original agent or attorney has.

A delegate is different from a sub agent. A sub agent is responsible for acts to the agent and not to the principal and the agent is responsible to the principal for the acts of the sub agent. A delegate is a direct agent of the principal in respect of powers or matters entrusted to him by the attorney. General rule is that an agent or attorney cannot delegate his powers.

Exceptions (a) Skill

(b) Natural Employment

(c) Usage in a trade.

(xii) ~~Power~~ The very definition occurring in the Stamp Act, excludes the documents which are powers of attorney, but are chargeable with fees under the Land Fees Act and consequently such documents will not be treated as powers

attornies, but are chargeable under Co Fee Act. The Court Fees Act does not contain a direct reference to documents called power of attorney, but Article 10 of Schedule II of the Court Fees Act refers to Vakalatnam or Mukhtarnama and this can be treated as power of attorney and not chargeable to stamp duty.

Art 10 (Ft Act clauses (b), (c) refers to Vakalatnama or mukhtarnama presented before Commissioners of Revenue circuit, or Customs or to any officer charged with executive administration and not being Chief Revenue or Chief Controlling Revenue and High Court.

Authorities not mentioned in Art 10 then other bodies → Stamp Act is attracted



eg: Municipal or other local bodies
development boards

Banks and co-operative institutions
Commissioners of Claims under Railway
or Motor Vehicles.

(XIII) Rules of Construction of Power of Attorney

(a) The operative part of the deed is controlled by recitals.

(b) Where authority is given to do particular acts followed by general words, the general words are restricted to what is necessary for the proper performance of the particular acts.

(c) General words do not confer general powers but are limited to the purpose for which the authority is given and are

continued as enlarging the special power when necessary for the purpose.

d) Deed must be construed so as to include all medium powers necessary for its effective execution.

(xiv) Execution of Power of Attorney → Executed by signing it in the presence of and seal it authenticated by a Notary Public or any Court, Judge, Judicial Magistrate, Metropolitan Magistrate, Indian Consul or Vice Consul or Representative of Central Govt as required by Sec 85 of ICA.

(xv) Power of Attorney can be rescinded as U/S 202 of Contract Act, 1872.

(xvi) PoA can be cancelled through a court of law U/S 31 if it is void/voidable. Power of Attorney is granted as part of an agreement for sale or development of property and the agreement is lawfully cancelled.

(xvii) PoA need not be registered U/ Registration Act.

(xviii) Termination of PoA

(a) Expiry of time.

(b) Performance becomes illegal / impossible.

(c) Death / Mental incapacity or bankruptcy of donor.

(ix) As 48 of Indian Stamp Act → PoA → Stamp Act →

Art 48 (a) → When executed for the sole purpose of procuring the registration of one or more documents in relation to a single transaction or for admitting execution of one or more such documents → Ten rupees.

(b) Authorises one person or more to act → 20 Rs.
in a single transaction,
other than (a)

(c) When authorising not more than five persons to act jointly and severally in more than one transaction or generally → Rs. 54

(d) When authorising more than five, but not more than 10 persons to act jointly and severally in more than one transaction → Rs. 100/-

(e) At times to sell any immovable property → Rs. 60/-

(f) Irrevocable authority to sell immovable property → Rs. 60/-

(g) When authorising more than 10 persons to act jointly or severally in more than one transaction or generally → Ten rupees each.

Interim relief:

- (a) Issuance of commission and appointment of Commissioner Or XXVI, CPC, 1908.
- (b) Arrest before judgment Or XXXVIII, 1908.
- (c) Arrest after judgment Or XXXVIII, 1908
- (d) Or XXXIX
- (e) Appointment of receiver, Or 40

These reliefs are discretionary and based on principle of equity.

Issuance of commission and appointment of Commissioner ~~§~~ Ss 75, 76, 78, Order 18 Rule 4, Or 26 Rule 1 to 8.

Sec 75 CPC Commission can be issued for the following purposes

- (a) Examine any person
- (b) Make a local investigation
- (c) Commission for settlement of accounts.
- (d) Make a partition
- (e) Technical & expert investigation.
- (f) Sell immovable property.
- (g) Perform any ministerial act. ✓
- (h) General order.

(a) Examine any person (Ss 75, 76, 78, Order 18 Rule 4, Or 26 1 to 8).

When person not able to give evidence in court (reasons)

CPC amendment 2002 → Or XVIII
Rule 4 → Ex in chief & cross of witness can be done either by court or through Commissioner.

eg: order category A)

1) For examining interpellations on XXVI Rule 1
Person living in local limits of jurisdiction
but who cannot attend court on account of
Valid reason. (Or 26, Rule 1).

2) Or 26 Rule 4(a) → Examine a person
residing beyond the local limits of
jurisdiction of the Court when the case is
pending.

3) To examine a person who is about to leave
the territorial jurisdiction of Court.

4) To a person in Govt service unable
to attend the Court due to his public
service.

~~(5)~~ 5) Commission cannot be issued
unless order with reasoning is passed.

6) Or 26 Rule 4(3) + Rule 7, Commission
should be returned together with evidence
taken under it to Court with report of fulfillment
of terms of order.

(b) Local investigation: Or 26 Rule 9 to 26

(1) Clarification and explanation of
any matter in dispute.

(2) Ascertain market value in property.

~~(3)~~ Or XXVI (Rule 10-26) → Procedure
↓

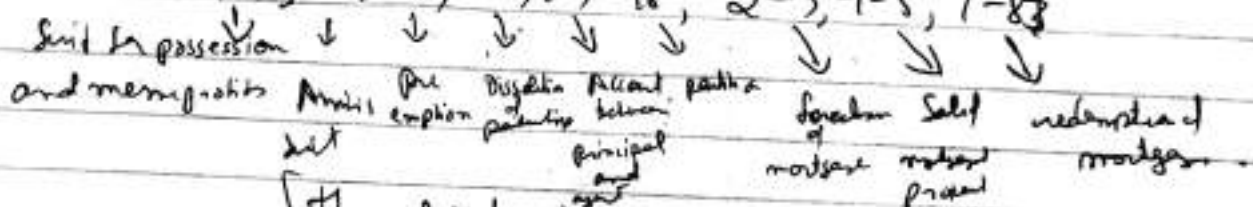
(3) Local inspection to be done as per the
direction of Court.

(4) Evidence reduced in writing to be
Verified.

- (4) Local inspection to be done as per the directions of Court.
- (5) Evidence along with report signed by Commissioner to be submitted to Court.
- (6) ~~Rules made by State Court~~ Evidence and report shall form part of record of the Court.
- (7) Proceedings of Commissioner may be accepted or any further enquiry may be made as it shall deem fit by the Court.
- (8) Object of local investigation should not be to collect evidence but to clarify the situation and obtain evidence on situation which can be clarified by only going to the spot.

(C) Commission for settlement of accounts: Or XXVI

Rule 42 → After preliminary decree [Or XX Rule 12, 13, 14, 15, 16, 18, 2-3, 4-5, 7-8]



The list given under Or 20 is not exhaustive and passing of preliminary decree in such cases is a precondition for suit can be made final decree.

After preliminary decree in any suit in which a commission or adjustment of account is necessary then under Rule 11 the Court can issue commission to a fit person. Commissioner has to work as per instructions.

(d) ~~Or~~ Partition → Or 26 Rule 13, 14 →

In a suit of partition relating to immovable property Preliminary decree is passed U/On XX Rule 12 when rights and shares of the parties are decided.

For final adjudication the declared share and rights are to be divided by metes and bounds and for that purpose investigation on site as well as various aspects are to be done. Commissioner prepares a report and renders his/her signature.



Court can give opportunity to parties to submit their objections and after hearing report can be finalized, confirmed or set aside → On XXVI, Rule 14(2). Where the Court confirms or varies the report it shall pass a decree in accordance with the same. However, if the report is set aside, either new commission or any other proper order required under the circumstances can be passed.

(e) Technical or expert investigation → On XXVI Rule 10A →

(f) Sale of immovable property → On 26 Rule 10C →

(g) Ministerial Act → On 26 Rule 10B → Accounting, calculation.

(h) General guidelines for purpose of appointment of Commissioner → Powers of Commissioner on XXVI Rule 15

22

- (1) Recording evidence of any person as party or witness.
- (2) Calling for a production of documents relevant to the enquiry.
- (3) enter upon land or building relating to the subject matter of enquiry.
- (4) On XXVI Rule 27 → Deemed to be a court.

Commissions
GRC ~~Sec~~ Para 65 Commissions to be issued to whom:
For examination of any person including
one for the administration of a special oath
→ legal practitioners

Commission for making a local investigation
for taking of evidence → legal practitioners

Special technical knowledge → Person possessing
the necessary technical and special knowledge.

If the case local investigation not
necessitating evidence → Amin.

Commission to examine accounts →
competent accountant.

Commission for preparation of a map
or to make partition shall be issued to a
→ Civil Court Amin

Commission for conducting sale of property
subject to speedy and natural decay →
Civil Court Amin and exceptional
circumstances → Advocate Commissioners.

Ministerial Act → Advocate Commissioners

Rule 66 → High Commissioners → Maintained
by District Judge and sub divided into
(a) ~~A~~ for accounts
(B) Survey
(c) simple measurement when no survey is necessary

Ruled Law
Rule by Law
Rule by Gun → sends mob.
↓

- (d) for service of injunction orders, stay orders or other notices
- (e) Recordings of evidence and all other purposes.

For (c), (d) → names of junior lawyers
For (e) lawyer → minimum standing of two years

If a senior lawyer is appointed → reason has to be recorded.

List to be revised once a year.

Collector or any officer Collector not to be in Commission unless previous consent has been obtained. Munshis, Nazims, Copyists, Ahlmeds, Pleaders, clerks, Petition Writers shall not be employed as Commissioners.

Fees → Practitioner examines witness
→ Rs 30 for first witness
Rs 20 for subsequent witness.

Para 68 → If Commissioner for making a local investigation under Or XXVI, Rule 9 ff → court shall define the points on which the Commissioner has to report.

Para 69 → Time for executing commissions
→ Reasonable time shall be fixed for execution of every commission and the court shall see that it is executed within such time

Para 71 → Commissioner's Responsibilities →
Commis shall give reason or data on which he bases his opinion.

Para 72 Where a Presiding officer makes local inspection at the request of a party or parties he shall be entitled to receive TA @

is less than .

Placed inspection ~~7~~ 8 Km from HQ

→ Rs 2.00 for 1st Km.

→ Rs 1.00 for each succeeding Km.

Placed inspection beyond 8 Km he shall be entitled to receive Travelling allowance @ Rs 2 for 1st Km.

@ Rs 1.00 for each succeeding Km.

Supreme Court Rules, 2013
Allahabad High Court Rules, 1952

Supreme Court Rules, 2013 → Order
XXVIII → Applications for Enforcement
of Fundamental Rights (Ar 32)

Order XXVIII → Rule 1 Every Petition under Ar 32
shall be in Writing and if it contains a
substantial question of law as to the interpretation
of the Constitution may shall be heard by
a Division Court of not less than 5 judges.

A petition that does not raise a substantial
question of law → Division Court of less
than five judges and during Vacation Judge
sitting singly.

4. (2) All interlocutory and miscellaneous
applications connected with a petition under Ar 32
of the Constitution may be heard by a Division
of less than 5 judges and during vacation by
a Vacation Judge, sitting singly.

2. No Court fee is payable on writ of habeas
corpus or the petition under Ar 32 arising
out of criminal proceedings.

Order XXVIII Rule 3 → Habeas Corpus
→ A petition for a Writ of Habeas
corpus shall be accompanied by an affidavit
by the person restrained stating that the
petition is made at his instance and
stating the circumstances of the restraint.
When the person is unable to do so

The petition shall be accompanied by an affidavit by a person acquainted with the facts which shall state the reason why the person restrained is unable to make the affidavit. Petitioner shall state whether he/she has moved the High Court and what the consequence.

On XXXVIII Rule 4 → Petition shall be posted ~~to~~ before the Court for preliminary hearing and if a prima facie case is made then it shall call upon a person against whom the order is sought, to appear on a day to be named to show cause why such order should not be made and ~~for~~ produce in Court the person allegedly to be illegally or improperly detained.

On XXXVIII Rule 5 → If no cause is shown or if cause is shown and disallowed, the Court shall pass an order that the person or persons improperly detained shall be set at liberty. If cause is shown and allowed, the rule shall be discharged. The order release can be executed for any gaoler, public official or other person for the release of the person under restraint.

On XXXVIII Rule 8 → Other writs → Name and description of the petitioner, the nature ~~and~~ of the fundamental right infringed, relief sought and 'Grounds' on which it is sought and shall be accompanied by an affidavit verifying the facts relied on and at least 3 copies of the petition

and affidavit to be lodged in Registry. Whether petitioners has moved High Court concerned for similar relief with what result.

On Rule 9 → If the court issues show cause notice then the respondent shall file his objection within 30 days from the dated receipt or not later than 2 weeks before the date appointed for hearing whichever is earlier.

On XXXVIII Rule 10 → interim relief may be granted.

On XXXVIII Rule 11 → (1) Copies of the petition and of affidavit shall be served on the respondent not less than 21 days before the returnable date.
(2) Affidavits in opposition shall be filed in Registry not later than 4 days before the returnable date and affidavits in reply shall be filed within 2 days of the service of the affidavit in opposition.

On XXXVIII Rule 11(3) → Within four weeks of the filing of the pleadings, the petitioner shall file written brief containing a short summary of the pleading ~~essential~~ Not more than 2 pages.
~~Then~~ Formulation of propositions of fact and law to be stated along with text books, statutory provisions, resolutions, Ordinances or bye laws or orders.

For decision refer official reports.

Text Books → latest edition

Statute, Resolution, rule → so much as may be necessary.

Rule 4 → Within 4 weeks of the service of petitioner's written brief → respondent shall file his written brief, the grounds on which he is opposing each of the propositions, cite such authorities in the same manner as the petitioner U/ Sub Rule 3. He may also raise objections as to the maintainability or sustainability of either the petition as a whole or any relief claimed therein in the form of Propositions, supported by authorities.

Rule 5 → Within one week of the receipt of the brief filed by respondent, the petitioner may submit his reply brief which shall be concise and to the point in respect of the points raised in respondent's brief.

Rule 6 → Copies of affidavits and briefs required to be filed under this rule shall be served on the opposite party and the affidavit shall not be accepted in Registry, unless it contains an endorsement of service signed by such parties. ~~At~~ At least 7 copies shall be lodged in Registry.

Rule 8 → ~~If~~ If Court considers any of the propositions formulated or ground taken by any of the parties in written brief to be irrelevant the Court may award costs against such party.

Rule 9 → Except with the special permission of Court, no party shall be allowed to

advance any proposition or urge any ground not taken in brief nor on authorities other than those mentioned in brief, unless such authorities or provisions have been published after the written briefs were filed into court.

Chapter ~~XXII~~ XXI of Allahabad High Court Rules, 1952.

1. Application. → Writ of Habeas Corpus →
Not a writ for private custody + Not sent by post or telegram → Division Bench

Application to be in numbered paragraphs the facts upon which the applicant relies and grounds upon which the Court is asked to issue a direction, order or writ and shall conclude with a prayer stating clearly, the nature of relief sought; it shall also state whether any previous application was moved by or on behalf of the person restrained

For private ~~body~~ custody → Single.

3. Contents of application and affidavit

→ Application shall be accompanied by an affidavit of the person restrained verifying the facts stated by reference to the numbers of the paragraphs of the application

When affidavit is made by a person other than person restrained, affidavit shall also state the reason why the person restrained is unable to swear the affidavit.

Affidavit to be restricted to facts known to the person who deposes the deponent.

8. Court finds no sufficient reasons → it may reject it. When application is not so rejected, notice is served upon the person against whom the Order is sought calling upon him to appear on a day to be named to show cause why the application should not be granted, and if Court so orders, the notice may direct such person at the same time to produce in Court the body of the person alleged to be illegally or improperly detained to be dealt according to law.

Chapter XXII → Direction, Order or Writ under Article 226 and 227 of Const. Order the Writ in ordered Habeas Corpus.

① 1. Application for a direction or order or writ under Article 226 and Article 227 of the Constitution made etc. shall be made to Division Bench appointed to receive application on any day.

Revenue matters → Single Judge.
Application in numbered paragraphs + Facts + Grounds + Prayer + Exact relief sought + Affidavit + Connections initiated by Oath Commissioners. + Affidavit + deponent's personal knowledge.

3) Objection is taken to any judgment or order of a Court or an officer thereof the application shall file accompanied by a copy of such judgment or order and when there

has been an appeal or revision from such judgment or order also by a copy of the judgment or order of the Higher Court.

The petitioner shall categorically state in the opening paragraph of their Application, Affidavit, Petition etc, that no Writ Petition, Application, including review Application or any other proceedings arising from or related to the impugned order or the relief sought before this Court has been filed or is pending to the best of his knowledge at Allotment & Lko.

Dir (H) When Govt or an officer or department of the Govt or a Court, Tribunal, Board, Commission or other body appointed by the Govt is an opposite party named in the application, the applicant shall before presenting the application served notice of motion upon the Govt Advocate, Criminal matters at Upon Standing Counsel, if he is authorized to receive notice on behalf of such opposite party, in other matters along with as many copies of the application, affidavit and other papers accompanying it as may be equal to the number of parties to be presented by Govt Advocate or the Standing Counsel.