

CHAPTER 10

Commissions and Letters of Request.

PART A.—GENERAL INSTRUCTIONS

1. **Reference to C.P.C.:-** The general law as to Commissions and Letters of Request is contained in Sections 75 to 78 and Order XXVI of the Code of Civil Procedure, and the Forms to be used are Nos. 7 or 8 of Appendix H of Schedule I.
2. **Fees of Commissioner:-** Applications for the issue of Commissions should be made as early as possible. Notice of any such application should be given to the other side. If the Application is granted, the Court should fix a sum for the expenses of the Commission, which should, ordinarily provide a reasonable fee to the Commissioner. If, at any time, the sum so fixed is found to be insufficient, it may, for special reasons, be increased by the Court. When the Commission is executed to the satisfaction of the Court, the full sum fixed should be paid to the Commissioner; but where the Commission is not executed at all or not fully or satisfactorily executed or the work done turns out to be less than was expected, it will be in the discretion of the Court to direct a less amount to be paid, or to make any other order in the matter which it thinks just and proper in the circumstances.
3. **Commission for local inquiry and accounts:-**
 - (i) Whenever it becomes necessary in the course of a suit to appoint a commissioner to make a local inquiry or to examine accounts (see Order XXVI), the Judicial officer who makes the order for such appointment should write the order with his own hand, and specify therein :--
 - (a) the precise matter of the inquiry;
 - (b) the reason why the evidence bearing on that matter could not reasonably have been taken in the usual way at the trial in court. A court cannot issue a Commission merely to save itself the time and trouble of examining witnesses.
 - (ii) {In suits relating to delivery of possession of property, where the possession over the property is not disputed by the parties and if the Court deems it appropriate, it may appoint a Commissioner to assess the accurate description and status of the property.}
{Rule 3(ii) inserted vide C.S. No. 84 Rules/II.D4 dated 21.11.2022}
4. **Functions of Commissioner:-** The Commissioner's duties should be strictly limited by the order to such matters as taking accounts and depositions of witnesses, inspecting the land or other subject of dispute, and reporting to the Court, either by means of a map or plan, or in writing, or both, the existing physical features of the subject inspected, its boundaries and situation relative to other objects, and so on, as the case may be. The functions of the Commissioner are thus limited to procuring evidence and information for the purpose of the trial; and this evidence, including the maps, reports, and record of evidence made by the Commissioner, must be adduced in open Court before the parties, and placed on record like all other evidence. The Court has no power to depute to the Commissioner the final determination of any issue between the parties. The Court can take into consideration the report of the Commissioner, but must itself decide the issue.
5. **Commissioner for partition of property:-** Under Order XXVI, Rules 13 and 14, a Commission for the partition of immovable property may be issued to such person or persons as the Court thinks fit. The wishes of the parties in the matter should also be taken into consideration.
6. **Execution of Commission in Madras:-** Commissions for execution in the Presidency Town of Madras should be addressed either to the Registrar, Court of Small Causes, Madras, or to the City Civil Judge, Madras.
