

## CHAPTER 9

### Utilisation of the Services of the Special Kanungo or Patwari Muharrir

**1. Procedure for obtaining excerpts**—For the purpose of making the information contained in the revenue records accessible to the litigating public and to the Courts, a Special Kanungo or Patwari Muharrir has been appointed in all the districts of the Punjab, except Simla. The procedure to be followed in such cases is that the Court in which the suit is pending issues a summons to the Special Kanungo or Patwari Muharrir, who, after preparing his excerpt, goes to the Court on the date fixed, taking with him the revenue records from which the excerpt has been compiled. He is then placed in the witness box. Counsel thus have the opportunity of comparing the excerpt with the originals, and of examining him on any points they choose.

**2. Particulars to be supplied to Kanungo or Patwari Muharrir**—Parties who desire to summon the Special Kanungo or Patwari Muharrir as a witness with his records must be required to state succinctly and in writing the point on which information is required, and the application must be sent along with the summons to the Special Kanungo or Patwari Muharrir. The Courts must see that the application is in a readily intelligible form before they issue it, and the practice where it occurs, of sending for the Special Kanungo, or Patwari Muharrir to tell him what is required must be discontinued though Courts may also issue written instructions, or supplement or correct the application.

**3. Kanungo or Patwari Muharrir should be utilised for special purposes and only at earlier stages**—Courts must be on their guard against using the Kanungo or Patwari Muharrir for purposes for which he is not to be used as a local Commissioner, or to be asked to provide instances in support of or to refute an alleged custom. Courts must also see that, if the Special Kanungo or Patwari Muharrir is required, he is summoned for the first hearing after issues are framed, and not, as sometimes happens at present, at the end of the case. They must also never fail to ask him on oath whether the excerpt is in accordance with the revenue records.

**4. Excerpt to be proved utilising of Kanungo or Patwari Muharrir by outlying Courts**—The excerpt prepared by the Special Kanungo or Patwari Muharrir is not evidence unless proved and cannot be used as such. He cannot be allowed to go to outlying Courts because he cannot take the revenue records with him, and without them there would be no check over his excerpt. It is, however, very desirable that outlying Courts should be able to utilize the Special Kanungo or the Patwari Muharrir, and, as the best practicable method of securing that object, Presiding Officers of outlying Courts may issue either interrogatories for the Special Kanungo or Patwari Muharrir or an open Commission to a senior official at headquarters ordinarily and, unless there is some special reason to the contrary, the Senior Subordinate Judge. This official, who will have other duties and is described in the instructions appended as the officer-in-charge will then comply with the directions given, summon the Special Kanungo or Patwari Muharrir, record his

statement on oath and make the return to the Court. In this connection attention is drawn to Order XXVI, Rule 18 (1), of the Code of Civil Procedure. The issue of a Commission should not become a source of unnecessary delay, and the officer-in-charge should in the absence of very strong reasons proceed in the absence of parties if they do not appear. Parties should be informed that their appearance at headquarters is optional if interrogatories are issued.

5. The following instructions have been issued for the guidance of the Courts and of the Special Kanungo or Patwari Muharrir and it will be the immediate duty of the officer-in-charge to see that these instructions are followed:—

**Instructions Regarding the Utilisation of the Services of the Special Kanungo or Patwari Muharrir**

(i) *Application should be made to Court*—Applications for the service of the Special Kanungo or Patwari Muharrir must be made to the Court and may not be made direct to the Special Kanungo or Patwari Muharrir.

(ii) *It should specify the points of information*—Such applications must state clearly the point on which information is required, and if this condition is not fulfilled they will be liable to be returned for amendment. They may, however, be supplemented or corrected by the Court.

(iii) *Fees*—Whenever an application is sent to the Special Kanungo or Patwari Muharrir he must, at the same time be summoned, as a witness, and the applicant must at once deposit into Court the fee for evidence which is Rs. 3/- and excerpt, fee of Rs.6/-.

*Note*—If the Kanungo or Patwari Muharrir is only required to produce a revenue record or if he is only summoned with the original revenue record in order to verify whether a copy is correct, an evidence fee of Rs. 3 only will suffice.

This deposit shall be credited at once into the treasury under the head “XXI—Administration of Justice—General Fees, Fines and Forfeitures—Other General Fees, Fines and Forfeitures” and particulars of the credit noted on the application and the summons issued to the Special Kanungo or Patwari Muharrir. No summons shall be issued until this amount is paid by the party concerned and credited into the treasury.

(iv) *Application should be made in time*—Courts to which applications are made must see that they are made promptly (within a short time to be fixed by the Court after the date on which issues are framed) so that the Special Kanungo or Patwari Muharrir may be ready with this excerpt and give evidence on the next date fixed.

(v) *Excerpt should be a true copy and should be proved*—Courts must remember that unless proved the excerpt of the Special Kanungo or Patwari Muharrir is not evidence and must not be treated as such. The Special Kanungo or Patwari Muharrir must, when he goes to Court always bring with him the original records from which his excerpt has been compiled, so that they may be available for comparison. He must always be put on oath, and be asked to say whether the excerpt is a true copy of a portion of the original records. The excerpt must be a correct copy of such portions of the revenue records as are relevant and not merely a summary or paraphrase.

(vi) *Comparison with original*—The Court should, as a rule, compare with the original records some of the entries in the abstract and initial and date those thus compared.

(vii) *Fees*—The fee for the preparations of the excerpt will be a consolidated one of Rs. 3 which will cover the cost of search and preparation of the excerpt. Any extra fee fixed should be recovered at the hearing.

(viii) *Register kept by Kanungo or Patwari Muharrir*—A register in form “A” annexed is prescribed or the Special Kanungo or Patwari Muharrir.

(ix) *Register kept by Court*—A very simple form of register in form “B” is prescribed for Courts using the Special Kanungo or Patwari Muharrir. The main objects of it are to facilitate inspection and to provide, if necessary means of checking that of the Special Kanungo or Patwari Muharrir and to verify the amounts credited into the Treasury.

Each entry in the Register shall be attested by the Presiding Officer of the Court, in the column provided for the purpose, in token that the amount has been credited to Government as required by rule (iii).

(x) *Procedure of outlying Courts*—If the application is made to a Court, which is not situated at the district headquarters, the Court will forward the application to the officer-in-charge, together with a certificate that the fee of Rs. 6 has been recovered and credited to Government as in rule (iii), and will either issue an open Commission to him or will send interrogatories.

(xi) *Procedure of officer-in-charge when excerpt required by outlying Court*—The officer-in-charge will then transmit application to the Special Kanungo or Patwari Muharrir together with the interrogatories, if any, and will call upon him to prepare the excerpt required and to attend to give evidence. When he attends his evidence, whether in the form of answers to interrogatories or otherwise, must be recorded on oath. The officer-in-charge must see that the Special Kanungo or Patwari complies with Rule (v) above, and his attention is particularly drawn to the provisions of Order XXVI, Rule 18. The examination of the Special Kanungo or Patwari Muharrir must not be postponed for the absence of parties. The outlying Court must inform parties that their presence at Sadar is unnecessary if interrogatories have been issued.

(xii) *Procedure of Officer-in-charge when excerpt required by outlying Court*—When the evidence has been recorded, the officer-in-charge will fix the excerpt fee and the application will be returned with the evidence and the report, if any, together with an intimation of the amount of the excerpt fee to the Court of issue. Any additional excerpt fee payable will be recovered from the party concerned at the next hearing before the Special Kanungo's or Patwari Muharrir's evidence is admitted to the record and will be credited to the Government in the Treasury by the Court in the manner prescribed in rule (iii) above.

(xiii) *Purpose for which Kanungo or Patwari Muharrir can be utilized*—The officer-in-charge, and the Courts must understand that the Special Kanungo or Patwari Muharrir is to be used only for the purpose of obtaining information which is not readily available. Thus he must not be asked to prepare copies of pedigree-tables or of histories of villages, which can be obtained from

the Copying Agency. Nor must he be required to search for instances in support of or against an alleged custom, or be used as a local Commissioner.

(xiv) *Kanungo or Patwari Muharrir to report when he is utilized against rules*—The Special Kanungo or “Patwari Muharrir should report at once to the officer-in-charge any case in which he considers that rule (xiii) is being infringed.

(xv) *Duty of officer-in-charge*—It is the duty of the officer-in-charge to control generally the work of the Special Kanungo or Patwari Muharrir and the use made of him by the Courts and to report any irregularities to the District Judge.

(xvi) *Inspection Book*—An inspection book in form “C” for recording notes on inspection of Courts will be maintained and kept in the office of the District Judge, but it may be used either by him or by the officer-in-charge.

(xvii) *Duty of District Judge*—The District Judge is expected to watch the system carefully and to record his inspection notes in this inspection book.