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Code of Civil Procedure



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Decree, Judgment and Order under Code of Civil Procedure, 1908

Decree

A decree as defined under Section 2(2) of Civil Procedure Code, is a formal expression which determines the interest of both the parties in a conclusive manner, with regards to any disputed matter in a civil suit. Significantly, a decree is a formal expression of adjudication by which the court determines the rights of parties regarding the matter in a controversy or a dispute. A set-off or a counterclaim can be obtained on the decree.

A decree shall be deemed to include-

- Rejection of a plaint

- Determination of any question under Section 144 of the Act.

The decree might not include -

- Any adjudication from which an appeal lies as an appeal from an order
- Any order of dismissal for default

Illustration: In a suit between A and B wherein A claims that a particular property 'P' belongs to him while B claims that the said property belongs to him. After hearing all the arguments, the court will rule in the favor of either A or B. The final decision of the court regarding the above claim i.e. whether the property belongs to A or B is a decree.

Essential elements of a Decree

Following are the mandatory elements to be fulfilled for the adjudication to be termed as a decree.

1. **Formal expression:** There must be a formal expression of adjudication. In simple terms to be a decree, the court must formally express its decision in the manner provided by law. A mere comment of the judge cannot be a decree. The decree follows the judgment and must be drawn up separately. If a decree has not been drawn up, then there is absolutely no scope of an appeal from the judgment i.e. No appeal lies against the judgment, if the decree is not formally drawn upon the judgment.

2. **Adjudication:** It means judicial determination of the matter in dispute. Hence, if the decision is of administrative in nature, then it cannot be considered as a decree. The adjudication must be about any or all of the matters in controversy in the suit. The court should resolve the matter of controversy through its own, by applying the facts and circumstances of the case therein.

The Supreme Court in **Madan Naik v. Hansubala Devi**, held that if the matter is not judicially determined then, it is not a decree. Also, in **Deep Chand v. Land Acquisition Officer**, the apex court held that the adjudication should be made by the officer of the Court, in absence of which it is ought not to be recognized as a decree.

3. Suit: The Adjudication must have been given in a suit, which is commenced by filing a plaint in a civil court. Without a civil suit there lies no decree. However, there are several specific provisions which enable certain applications to be treated as suits such as proceedings under the Hindu Marriage Act, the Indian Succession Act, the Land Acquisition Act, etc. They are regarded as statutory suits and the decision given there under are decrees.

In **Hansraj Gupta v. Official Liquidators** of The Dehra Dun-Missoorie Electric Tramway Co. Ltd., their Lordship of the Privy Council stated that the word 'suit' ordinary means, a civil proceeding instituted by the presentation of a plaint."

4. Rights of the parties: 'Right' means substantive rights and not merely procedural rights. Similarly, the parties to the rights in controversy should be the plaintiffs and defendants and, if an order is passed upon the application made by a third party who is a stranger to suit then it is not a decree. It must have determined the rights of the parties with regard to all or any of the matters in controversy in the suit.

An order rejecting the application of a poor plaintiff to waive the court costs is not a decree because it does not determine the right of the party in regards to the matters alleged in the suit. Dismissing a suit for default in appearance of the plaintiff is not a decree. However, dismissing a suit on merits of the case would be a decree.

The disputed matter should be the subject matter of the suit, regarding which the relief is sought. Any question regarding the status and characters of party suing, the jurisdiction of the court, maintainability of suit or any other preliminary matter is covered under this subject.

5. Conclusive Determination: The decision must be one which is complete and final as regards the court which passed it. This means that the court will not entertain any argument to change the decision i.e. as far as the court is concerned; the matter in issue stands resolved. For example, an order striking out defense of a tenant under a relevant Rent Act, or an order refusing an adjournment is not a decree as they do not determine the right of a party conclusively. An interlocutory order which does not finally determine the rights of parties is not considered as a decree. On the other hand, out of several properties in issue in a suit, the court may make a conclusive determination about the ownership of a particular property. Such a

conclusive determination would be a decree even though it does not dispose off the suit completely.

The Calcutta High Court in **Narayan Chandra v. Pratirodh Sahini**, held that the determination should be final and conclusive regarding the court which passes it.

Types of Decree

The Civil procedure code recognises three kinds of decrees

- a) Preliminary decree
- b) Final decree
- c) Partially preliminary and partially final decree

A. Preliminary Decree

A decree is identified as a preliminary decree when an adjudication decides the rights of parties regarding all or any of the matter in dispute but it does not dispose of the suit completely. In simple terms, the preliminary decree is passed when the court is compelled to adjudicate upon a certain matter before proceeding to adjudicate upon the complete dispute. It is considered to be only a former stage. As held in the case of **Mool Chand v. Director**, Consolidation, a preliminary decree is only a stage to work out the rights of parties until the matter is finally decided by the Court and adjudicated by a final decree.

A preliminary decree can be passed by the court in the following suits as provided by the Code of Civil Procedure, 1908

Order 20 Rule 12: Suit for possession and Mesne profit

Order 20 Rule 13: Administration Suits

Order 20 Rule 14: Suits of pre-emption

Order 20 Rule 15: Suit filed for dissolution of a partnership

Order 20 Rule 16: Suits related to accounts between the principal and agent

Order 20 Rule 18: Suit for partition and separate possession

Order 34 Rule 2: Suits related to the foreclosure of a mortgage

Order 34 Rule 4: Suits related to the sale of the mortgaged property

Order 34 Rule 7: Suits for the redemption of a mortgage

However, in **Narayanan v. Laxmi Narayan AIR 1953**, it was held that the list given in code is not exhaustive and a court has the right to pass a preliminary decree in cases not expressly provided for, within the code.

Illustration: A files a partition suit against B. During the proceedings, the Court passes a preliminary decree on the share of A and B. Subsequently, after hearing both the parties and the arguments contended by both, the court passes a final decree adjudicating upon the said partition.

B. Final Decree

A decree is recognised as 'final' when it disposes of the suit completely, so far as the court passing it is concerned. A final decree settles all the issues and controversies between the parties to the suit by the court of law. Consideration of final decree depends on the facts the following facts

No appeal was filed against the said decree within the prescribed time period.

The disputed matter in the decree has been decided by the highest court.

When it completely disposes off the suit.

Primarily, a civil suit contains only one preliminary and one final decrees. However, in **Gulusam Bivi v. Ahamadasa Rowther**, the Madras High Court in the light of Order 20 Rule 12 and 18 stated that the code nowhere contemplates more than one preliminary or final decree. Reinforcing this observation, the Supreme Court in **Shankar v. Chandrakant**, finally settled the conflict of opinion and stated that more than one final decree can be passed in a single suit.

C. Partly preliminary and partly final decree

A decree shall be held as partly preliminary and partly final, when it determines certain disputes but leaves the rest open for further decision. What is executable is a final decree and the one which is not executable is a preliminary decree, unless it merges with the final one.

Illustration: 'A' filed a suit for the recovery of possession of a property from B. The court passed a partly preliminary and partly final decree. So far as final decree is concerned if the court granted possession of the suit property to A; and it was preliminary as even though mesne profits were awarded. In this case, only the granting of possession of property to A will be executable; however, preliminary decree will be executable only after the amount due is determined.

Amendment of Decree

On an application by the Plaintiff or the Respondent, under Section 152 of the Civil Procedure Code, any clerical errors in the decrees can be changed or corrected by the courts themselves. However, the entitled corrections shall be only be related to the accidental omission or clerical errors and not any other errors, which may result in gross negligence. Before the execution of such correction by the courts, it must be satisfied and validly proven that the error was nothing more than a clerical one or an arithmetical one.

Decree Holder

Under Section 2(3) of the Civil Procedure Code, any person in whose favour a decree or an order capable of execution has been passed, he/she is referred to as the Decree Holder. Accordingly, any decree passed in favour of a person who is not even a party to the suit shall also be considered as the Decree holder under the code.

Judgment

Judgment

Under **Section 2(9)** of the Code, Judgment is defined as the statement given by the Judge on the grounds of a decree or an order. It refers to what the judge observes regarding all the issues in matter and the decision on each of the issues. Hence, every judgment consists of facts, evidence, findings etc. and the conclusion made by the court. In simple terms, a judgment is the reasoning given by the judge as to why the 'decree' was given which explains the legal reasoning that formed the basis for the decree, along with the citation of the relevant case laws, arguments by the counsels, and the conclusions reached by the Court. It forms the concluding part of a civil suit and it determines the rights and liabilities of the parties to the suit.

"Judgment" – A Judicial determination putting an end to the action by any award or redress to one party or discharge of the other as the case may be."

Rule 3 of Order 20 of the code states that the judgment should be signed and dated by the judge while declaring it in the open court. It further gives provisions that once signed by the Judge, the Judgment cannot be amended or altered afterwards, except to correct the clerical or arithmetical errors caused due to accidental slips or omissions, as mentioned in section 152 of the Code or further during the review.

Essential elements of Judgment:-

A judgment should possess the essentials of a case, reasoning and basic contention on which it is delivered or the grounds of the decision.

Judgment of the courts other than that of the Small Causes Court – Rule 4 (2) of Order 20

- a) A concise statement of the case
- b) The points of determination
- c) The decision of the court and
- d) The reason for such decision by the court

Judgment of the Small Causes Court

- a) The points for determination and
- b) The decision thereon

Duration in which the judgment has to be pronounced

The court has to pronounce the judgment in an open court after completion of final arguments, either on the same day or some other day, after giving due notice to parties or their counsel.

Prior to the Amendment of 1976, no such time limit was specified between hearing of arguments and delivery of judgment. However, because of persistent demands and as per the suggestion of joint committee, it was laid that a judgment should be delivered within 30 days of the conclusion of the proceedings. Unlike in the case of *Anil Rai v. State of Bihar* in which the judgment was pronounced by the High Court after 2 years of the final arguments. The Supreme Court had strongly deprecated the delay and set the provisions of duration in which the judgment had to be pronounced. Per contra, there is an exception to this rule in certain extraordinary circumstances, which may extend the judgment to furthermore 60 days.

Copy of judgment

Copies of judgment shall be made available to the parties immediately after the pronouncement of the judgment for preferring an appeal on payment of such charges as may be specified by the High Court.

Review of judgment

Review means 'to examine or to study again'. Thus, the review of judgment is to examine or study again the facts and judgment of the case. It is the substantive power of review by the court, as specified under Section 114 of the Code. However, the limitations and conditions for review are provided in Order 47 (Rule 1-9) of the Code. The power to review is conferred by law, however, the inherent power to review vests alone with the court.

Order 47 of Civil Procedure Code deals with the application for review of the judgment which consists of following rules: –

Rule 1 – Application for review of judgment

Rule 2 – To whom the application for review has to be made

Rule 3 – Application form for review

Rule 4 – Applications where rejected

Rule 5 – Application for review in the court with more than one judge

Rule 6 – Application where rejected under Rule 5

Rule 7 – Order of rejection not appealable, Objections to order granting application

Rule 8 – Registry of application granted, and order for re-hearing

Rule 9 – Bar of certain application

Grounds for review of Judgment

An application for review can be made on various grounds.

When the applicant discovers any new or important evidence which was not known to him/her or due to negligence not able to provide the evidence while the decree was being passed.

When there is an error apparent on the face of the record which is decided judicially on the facts of each case. However, an application for review cannot be made on the grounds stating an erroneous decision.

When any other sufficient grounds have been found which is analogous to those specified in the rules mentioned in the Code.

When a sufficient ground has been established stating the misconception of the court.

Time limit for filing the Review application of Judgment?

As per the Supreme Court Rules, 1966, the Review application shall be filed within the 30 days from the day the judgment or order passed.

And for appeal against any sentence or judgment in High court, shall be filed within 60 days from the day of judgment. For the appeal against the death sentence or capital punishment, the limitation period is 30 days from the passing of order.

Grounds for rejection of application for review

An application for review can be rejected on various grounds. A court can reject the review application in the following circumstances: –

When the court is satisfied that the application of review is not based on the discovery of new facts, error apparent on the face of the record or any other sufficient grounds which is analogous to those specified in these rules.

When the review application has been filed after the expiry of the prescribed time limit for filing of the application without reasonable excuse.

When the appeal is already on the reviewed order. There will be no further review of any order or judgment passed on the review order.

When the applicant fails to appear before the court on the date fixed for the review without any sufficient reason for non-appearance.

When the review application has been made before more than one judge, the decision of majority will be considered.

Judgment Debtor

A person who is liable to pay a debt or damages to the judgment creditor in accordance with a judgment entered by a court against him, is called Judgment debtor. In simple terms, a person against whom a judgment in respect of monetary award has been obtained, is regarded as Judgment Debtor. If a court renders a judgment involving money damages, the losing party must satisfy the amount of the award, which is referred to as judgment debt. Such decision grants the judgment creditor, the right to recover the debt or award through extraordinary means with the help of the court.

Section 2 (10) of the Code defines Judgment debtor as any person against whom a decree has been passed or an order capable of execution has been made.

Order

The term Order has been defined under Section 2(14) of the Code as the formal expression of any decision of a civil court which is not a decree.

Essential elements of order are as follows:

- It should be a formal expression of any decision.
- The formal expression should not be a decree.
- The decision to be pronounced by a civil court.

Thus, an adjudication of the court which is not a decree is an order. As a general rule, an order of a court is founded on the objective considerations and as such judicial order must contain a discussion of the question at issue and the reasons which prevailed the court which led to the passing of the order.

Orders are of two kinds:

Appealable orders – Orders against which an appeal lies.

Non appealable orders – Orders against which no appeal lies.

Similarly, there are two classes of orders:

Final orders – An order that disposes of all of the claims and adjudicates the rights and liabilities of all the parties in the suit.

Interlocutory orders – Interlocutory order only settles an intervening matter relating to the cause. Such orders are made to secure some end and purpose necessary which are essential for the progress of case. In simple terms, a temporary order issued during the course of litigation is called Interlocutory order. Also known as the Interim order, is the decision of the court which does not deal with the finality of the case but rather settles a subordinate issue relating to the main subject matter.

Difference between Judgment and Decree

JUDGMENT	DECREE
1. Judgment is defined under Section 2(9) of the Civil Procedure code, 1908.	1. Decree is defined under Section 2(2) of Civil Procedure code, 1908
2. Judgment means statement given by a Judge of the grounds of decree or order.	2. Decree is an adjudication conclusively determining the rights of the parties with regards to all or any of the matter in the controversy.
3. It is not necessary that there should be a formal expression of order in the judgment	3. It is necessary that there must be formal expression of the decree
4. Judgment states precisely the relief granted.	4. Decree must determinate the rights of the parties
5. Judgment contains the grounds of decree.	5. Decree follows the judgment.
6. Judgment may be passed in civil suits as well as in criminal cases.	6. Decree is passed in a civil suit.
7. Judgment is not capable of execution.	7. Decree is capable of execution. Difference between Decree and Order

Difference between Decree and Order

DECREE	ORDER
1. Section 2(2) of the Code of Civil Procedure defines "Decree"	1. Section 2(14) of the CPC defines "Order"

2. "Decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final.	2. According to Section 2(14) of the said Code, "order" means the formal expression of any decision of a Civil Court which is not a decree.
3. Decree can only be passed in a suit which commenced by presentation of a plaint.	3. An order may originate from a suit by presentation of a plaint or may arise from a proceeding commenced by a petition or an application.
4. Decree may be preliminary or final or partly preliminary and partly final.	4. An order cannot be a preliminary order.
5. Every decree is appealable	5. Every order is not appealable

Reference -:

1. <https://bnblegal.com/article/decreed-judgment-and-order-under-code-of-civil-procedure-1908/>
3. Takawani, C.K. Civil Procedure, 8th Edition, (Reprint) 2018, Eastern Book Company.
4. The Code of Civil Procedure, 1908.