

Specific Relief Act, 1963

LECTURE – 13

Notes - Declaratory Decrees

Introduction

Section 34 (Discretion of court as to declaration of status or right) and 35 (Effect of declaration) lay down the law relating to declaratory decrees. A declaratory decree is a decree which is declaratory/ expresses the opinion of opinion of the Court on a right which is doubtful or requires to be declared. This decree creates no new right, but only declares in favor of the pursuer of rights what was his right before. The defender does not have to pay or perform anything.

Thus a decree declaratory of right which is doubtful if any person is entitled to any legal character or any right to any property is a declaratory decree.

For example, A has a property through which people pass by to reach the adjoining road, even though there is a proper path around the property and even after his assertion that there is no right of way through his property. When this practice continues for a while, and he attempts to construct a boundary on this property, local people resist and say the fact that they use this way. This may create a doubt on the right of way through his property. A can file for a declaratory suit to get his right on the property reasserted and this doubt cleared up by the court. Apart from that, decrees can be given for adoption, marriage, etc.

Earlier, declarations of rights were only done by the courts while providing reliefs. This declaratory decree is an innovation which got sanction after introduction in the Chancery Procedure Act, 1852. In India, it was earlier included in Section 15 of the CPC, 1859 and then later shifted to Specific Relief Act.

Objective

The main objective of this relief is to prevent future disputes by removing the existing controversy and to allow the peaceful enjoyment of property. It does so by providing a preventive wall against any adverse attack on the plaintiff's legal character or right in any property.

Section 34: Discretion of court as to declaration of status or right

Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation.--A trustee of property is a "person interested to deny" a title adverse to the title of someone who is not in existence, and for whom, if in existence, he would be a trustee.

Essentials/ grounds to claim declaratory decree

From a reading of Section 34, one can deduce the essentials/ grounds/ requirements to claim a declaratory decree. They are :-

1. Plaintiff at the time of the suit must be entitled to either any legal character or right to any property.
2. The defendant must have denied or is interested in denying the title or such right or legal character.
3. The threat to the plaintiff's right must be real and not imaginary.

1. Plaintiff at the time of the suit must be entitled to either any legal character or right to any property.

The plaintiff at the time of filing the suit should be entitled to a position recognised by law. Legal character is made up of the attributes which law attaches to him in his individual and personal capacity and can be called 'legal status' too. In the case of **City Municipal Council Bhalki v. Gurappa (2016)**, the court said that a person at the time should be 'entitled' to the right even though the enjoyment of it may be deferred, i.e. declaration of title may be given even though the plaintiff might not be in the direct possession of land. (right of reversioner)

Also with respect to owning property, in the case of **Deokali Koer v. Kedar Nath (1912)**, it was said that the right to any property need not be perfect or absolute. In such

cases, if the plaintiff has a superior or better title than the defendant, it is enough for the declaration.

2. The defendant must have denied or is interested in denying the title or such right or legal character.

It says that one cannot claim a declaration if there is no one doubting or denying it. The defendant in such suits must have denied or was interested in denying the title of the plaintiff. And this threat should also be communicated in some way to the plaintiff. This can arise from a dispute on the property or denial of someone's character. For example, when a woman goes under Section 34 to declare her husband's civil death, it must be because there should be someone denying it. For example, the pension office or insurance company is denying it.

The explanation to this section also includes trustees within the persons who are 'interested to deny' as they can have the ability to deny the benefits of the title to a person who will become a beneficiary of that trust in time.

3. The threat to the plaintiff's right must be real and not imaginary.

This means that the defendant must have, through a written way, or through words or through conduct, given the plaintiff a cause of action for a declaratory suit. Mere apprehension existing in the mind of the plaintiff does not give him any right to bring a suit for declaration. In the case of **Sanat Kumar Mitra v. Hemchand Dey (1960)**, the court said that a suit brought to challenge the defendants' legal character is not the same as a suit to declare the plaintiff's legal character. This forms a negative declaration and does not come under the scope of declaratory decree.

After the above grounds are met, the plaintiff need not ask for any further relief than a mere declaration which shall be granted at the discretion of the court. But the court shall not make any such declaration if the plaintiff has the ability to seek more relief than mere declaration and omits to do so.

The section shows two possibilities. The first one is where the plaintiff is entitled to declaration only and no subsequent relief, he can go for suit under Section 34.

But in the other possibility, it is not a matter of absolute right to obtain a declaratory decree. The court will refuse it if there is another remedy present apart from Section 34. When the plaintiff is able to seek further relief than a mere declaration of title, he should

do so. According to CPC Order 2 Rule 2, the plaintiff must include all reliefs in a single suit to avoid multiplicity of proceedings.

In the case of **Ram Saran v. Ganga Devi (1973)**, the plaintiff only went for a declaration of title and did not file for possession of land even though that remedy was available to him. This declaration was denied and the court said that if further relief is available claim that too. In a declaration, no new right is formed, merely existing rights are acknowledged.

Section 35: Effect of declaration

A declaration made under this Chapter is binding only on the parties to the suit, persons claiming through them respectively, and, where any of the parties are trustees, on the persons for whom, if in existence at the date of the declaration, such parties would be trustees.

Section 35 lays down that a declaration made under this chapter is binding only:

1. the parties to the suit;
2. on the persons claiming through them (revisioners, widows and sons, etc.);
3. where any of the parties are trustees or shall be trustee on the date of declaration.

These kinds of suits are limited by Section 56, 57 and 58 of the Indian Limitation Act, 1963. Since declaratory decrees are a right *in personam* it only binds the stakeholders to the decree. That is the decree made is only binding on the defendants and plaintiffs and not on anyone else.

For example, A who is the plaintiff files a suit under Section 34 against his wife B (defendant) seeking a declaration that the marriage was duly solemnised in a plaint for restitution of civil rights. He gets that an order and a declaration that 'A was duly married to B' against B. Now C, who says that he is also a husband of B, files a suit on A for the recovery of his alleged wife B. Now the declaration by the court in the previous suit against B shall not stand in the way of C's suit as it was not binding on him.



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