

**SCOPE AND AMBIT OF RELIEF OF DECLARATION
UNDER SECTION 34 OF SPECIFIC RELIEF ACT**

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The Civil Procedure Code enables the power of a civil court to try all the suits of a civil nature, excepting suits of which cognizance is barred by any enactment for the time being in force.

The current topic i.e. suit for declaration confers right and title of a party to the suit. Where the cloud is there as to the legal character or right to property of a person. the declaration as to be constitutionally of an ordinance was made on the ground that his right under Art. 19(1) (g) of the Constitution was infringed.

The suit for declaration relief is within the section 34 of the Specific Relief Act, 1963 which enables a person who have his right or legal character declared by a court of law. But this does not mean that the section sanctions every form of declaration. The provision regarding declaratory decree has been provided in sections 34 and 35 of Specific Relief Act, 1963.

Section 34 of Specific Relief Act:

The section reads as “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 on 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 existence, and for whom, if in existence, he would be a trustee”.

Thus, section 34 provides for “a suit against any person denying or interested to deny the plaintiff’s title to the legal character or right to any property”. So for a relief of declaration, the plaintiff has to prove his entitlement to the legal character or right to property which the defendant denied or interested to deny said legal character or right of the plaintiff.

In the *STATE OF MADHYAPRADESH VS. KHAN BAHADUR DHIWAN DIWALA and CO.*, AIR 1971 M.P.65. The Hon’ble court observed that in order to obtain the relief of declaration the plaintiff must establish that

- (i) The plaintiff was at the time of the suit entitled to any legal character or any right to any property.
- (ii) The defendant has denied or was interested in denying the character or the title of the plaintiff.
- (iii) The declaration asked for was a declaration that the plaintiff was entitled to a legal character or to a right to property.
- (iv) The plaintiff was not in a possession to claim a future relief than a bare declaration of his title.

Scope:

The scope of this section is to provide a perpetual relief against the adverse attacks on the title of the plaintiff, where a cloud is cast upon it and to prevent further litigation by removing existing cause of controversy.

The threat of legal character in the controversy is to be real and not imaginary. The plaintiff has to prove that the defendant has denied or is interested in denying his character or title of the property. There must be some present danger or detriment to his interest. So that a declaration is necessary to safeguard his right and clear the mist. The denial must be communicated to the plaintiff in order to give him cause of action.

Legal Character and Person entitled to a right of any property:-

A person's legal status or legal character is constituted by the law attached to the individual or personal capacity. The legal character means a position recognized by the law.

The second requirement is that the person who seeks the remedy must have a right to any property. The every interest of right which is recognized and protected by the State is a legal right. It was observed that the term right as to property showed that the plaintiff should have an existing right in any particular property. The only limitation is that nobody can approach the court for a declaration on a chance or a mere hope entertained. The courts have made a distinction between "right of property" and "a right in property" and it has been held that in order to claim a declaration the plaintiff need not show a right in property.

Relief under section 34 of Specific Relief Act:

The relief of declaration cannot be claimed as a matter of right. Under section 34 the discretion which the court as exercised is a judicial discretion. That discretion has to be exercised on well - settled principles. The court has to consider the nature of obligation in respect of which performance is sought. In cases where the necessary parties are not joined the court can reject the suit for declaration. The exercise of the discretion depends upon the changes of each case. A remote chance of succeeding an estate cannot be a right for obtaining a declaration that alienation by a limited owner.

Therefore, a person claiming declaratory relief must show that he is entitled (a) To a legal character, or (b) To a right as to property, and that (c) The defendant has denied or he is interested to deny his title to such character or right. (d) He has sought or reliefs in the suit. It was held that the court had absolute discretion to refuse relief if considered the claim to be too remote or the declaration, if given, would be ineffective.

Consequential Relief:-

There may be real dispute as to the plaintiff's legal character or right to property, and the parties to be arrayed, yet the court can refuse to make any declaration in favour of the plaintiff, where further relief than a mere declaration, he omits to do so. The object of the proviso is to avoid multiplicity of suits. What the legislature aims at is that, if the plaintiff at the date of the suit is entitled to claim, as against the defendant to cause

some relief other than and consequential upon a bare declaration of right, he must not vex the defendant twice, he is bound to have the matter settled once for all in one suit.

Thus the detailed analysis of section 34, may be said that one can claim the declaratory relief only if one can show that one's 'legal character' or 'right to any property' is affected. If the plaintiff fails to prove his case within the ambit of the section, his suit necessarily fails. The restrictive interpretation put by the court on the term 'right to any property' amounts to shutting out the remedy to a person whose right, other than proprietary right, is infringed. In India the legality of a statute or order can be ascertained through a declaratory proceeding. The former pronouncements of the courts show that the remedy of declaration can be availed only if the right to property of the plaintiff is affected.

Effect of Declaration:-

Section 35 makes it clear that the declaration made under the section does not operate a judgment in rem. Section 35 says " 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".

Thus, a declaratory decree binds

- (a) The parties to the suit,
- (b) The persons claiming through the parties.
- (c) Where any of the parties are trustees, on the persons for whom, if he in existence but the date of declaration, such parties would be trustees.

Conclusion :-

Section 34 of Specific Relief Act, 1963 is wide enough in its scope as contemplates to settle not only conflicting claims to property, but also of disputes as to legal status. However, it must always be remembered that this provision is not a panacea of all types of legal disputes. The courts must exercise their discretion while granting a declaratory decree and only in proper and fit cases. This legal remedy should be granted so as to avoid multiplicity suits and to remove clouds over legal rights of a rightful person.