

A PAPER PRESENTATION ON
“SCOPE AND AMBIT OF RELIEF OF DECLARATION
UNDER SECTION 34 OF SPECIFIC RELIEF ACT”

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INTRODUCTION:

The General power vested in the courts in India under the Civil Procedure Code is to entertain all the suits of a civil nature, excepting suits of which cognizance is barred by any enactment for the time being in force. However, courts do not have the general power of making declarations except in so far as such power is expressly conferred by statute. The utility and importance of the remedy of declaratory suits are manifest, for its object is to prevent future litigation by removing existing cause of controversy. It is certainly in the interest of the state that this jurisdiction of court should be maintained, and the causes of apprehended litigation respecting immovable property should be removed. However, a declaratory decree confers no new right, it only clears up the mist that has been gathering round the plaintiff's status or title.

Chapter VI of the Specific Relief Act 1963 provides for Declaratory Decrees under Section 34 of the Act and is the present law which governs declaratory reliefs in India. It reads:

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.*

In a welfare state, there is a possibility of casting a cloud upon the legal character or right of the citizens by the actions of administration. In such cases, the Section enables a person to have his right or legal character declared by a Court of law and thus get rid of the cloud from the legal character or right. It has been held that it was merely to perpetuate and strengthen testimony regarding the title of the plaintiff so that adverse attacks might not weaken it. But, this does not mean that the Section sanctions every form of declaration, but only a declaration that the plaintiff is entitled to any legal character or to any right as to any property.

It is in the interest of the individual and also for the development of economy that there should be smooth transactions with regard to property. However, there is always a possibility of casting a cloud upon the legal character or right to property of the citizens. It is manifestly for the interest of community that conflicting claims to the property should be settled. In such cases the Section 34 of the Specific Relief Act, 1963 enables a person to have his right or legal character declared by a Court of law and thus get rid of the cloud from his legal character or right.

The declaratory relief under Section 34 of the Specific Relief Act, 1963 is in the nature of equitable relief for granting of an already

existing right which has been denied by the other party. It does not seek anything to be paid or performed additionally by the defendant. In simpler terms, this section does not warrant every declaration but that the plaintiff is entitled to such legal character or right and only under special circumstances.

REQUISITES, SCOPE AND AMBIT OF RELIEF OF DECLARATION :

Section 34 of the Specific Relief Act, 1963 contemplates certain conditions which are to be fulfilled by plaintiff. 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 had 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 position to claim a further relief than a bare declaration of his title.

It is to be submitted that the fourth requisite is not correct as the section only says that if any further relief could be claimed it should have been prayed for. Since declaration is an equitable remedy and the Court still has a discretion to grant or refuse the relief depending on the circumstances of each case.

Thus a person claiming declaratory relief must show that he is entitled

1. to a legal character, or

2. to a right as to property, and that
3. The defendant has denied or is interested to deny his title to such character or right and
4. He has sought all reliefs in the suit.

The object of this Section is obviously to provide a perpetual bulwark against 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 to his legal character has to be real and not imaginary. The Section does not lay down any rule, that one who claims any interest in the property, present or future, may ask the Court to give an opinion on his title. It does not warrant any kind of declaration that the plaintiff is entitled to a legal character or to any right as to any property, and it warrants this kind of remedy only in special circumstances. The plaintiff has to prove that the defendant has denied or is interested in denying to the character or title of the plaintiff. 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:

A man's status or legal status or 'legal character' is constituted by attributes, which the law attaches to him in his individual or personal capacity, the distinctive mark or dress as it were, with which the law clothes him. Legal character means a position recognized by law. According to Holland the chief variety of status among natural persons may be referred to the following causes: sex, minority, mental defect, rank, caste, official position, civil death, illegitimacy, profession, etc. Any

person who has been denied of the legal character and not necessarily the legal right may sue against the person denying. A legal character constitutes of the attributes that the law attaches to him in his personal capacity such as marriage, adoption, divorce, legitimacy etc. Thus, the character or status should have been conferred by law on persons i.e. created by birth and not by contract.

PERSON ENTITLED TO A RIGHT TO ANY PROPERTY:

The second requirement is that the person who seeks the remedy must have a right to any property. A right in Holland's proposition is a man's capacity of influencing the acts of another, by means, not of his own strength, but of the opinion or the force of society. The Bombay High Court has observed that every interest of right which is recognised and protected by the State is a legal right. The Courts have made a distinction between "right to 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.

CLOUD UPON TITLE:

A dispute between the parties may relate either to a person's legal character or rights or interest in the property. A cloud upon the title is something which is apparently valid, but which is in fact invalid. It is the semblance of the title, either legal or equitable, or a claim of an interest in property, appearing in some legal form, but which is in fact unfounded, or which it would be inequitable to enforce.

CONSEQUENTIAL RELIEF:

There may be real dispute as to the plaintiffs legal character or right to property, and the parties to be arrayed, yet the Court will refuse

to make any declaration in favour of the plaintiff, where able to seek 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 the 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 and for all in one suit.

IT IS A DISCRETIONARY RELIEF:

Even though if the essential elements are established, yet it is a discretion of the Court to grant the relief. The relief of declaration cannot be claimed as a matter of right. In cases where the necessary parties are not joined the Court can reject the suit for declaration. Under Section 34 of the Act, the discretion which the Court has to exercise 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. No hard and fast rule can be laid down for determining whether this discretionary relief should be granted or refused. The exercise of the discretion depends upon the chances of each case. A remote chance of succeeding an estate cannot give a right for obtaining a declaration that alienation by a limited owner is void.

NEGATIVE DECLARATIONS:

A suit for a negative declaration may be maintained in a proper case, e.g., where it relates to a relationship. Thus, a suit for a declaration that a person was not, or is not, the plaintiff's wife, and the

defendant not her son through him, may be maintainable. Similarly, a suit lies for obtaining a negative declaration that there is no relationship of landlord and tenant between the plaintiff and defendant. But where the rights of the plaintiff are not affected or likely to be affected, suit simpliciter for a negative declaration is not maintainable. Such a suit would be regarding the status of the defendant which, in no way, affects the civil rights of the plaintiff.

WHEN A SUIT FOR INJUNCTION AND DECLARATION WOULD LIE?

Any person who has any legal character or any legal rights as to any property by virtue of title deeds or otherwise may file a suit for declaration of those rights and for injunction against any person denying or interested to deny his title to such character or right.

*The Hon'ble Supreme Court has in the matter of **Anathula Sudhakar vs. P Buchi Reddy & Ors [AIR 2008 SC 2033]**, clarified the general principles as to when a mere suit for permanent injunction will lie and when it is necessary to file a suit for declaration and or possession with injunction as consequential relief, which is reproduced as under:*

Para 11.1- When a Plaintiff is in lawful or peaceful possession of a property and such possession is disturbed or threatened by the defendant, a suit for injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.

Para 11.2- Where the title of the Plaintiff is not disputed, but he is not in possession his remedy is to file a suit for possession and seek in addition, if necessary an injunction. A person out of his possession cannot seek the relief of injunction simpliciter, without claiming the relief for possession.

Para 11.3- Where the plaintiff is in possession but his title to the property is dispute, or under a cloud, or where the defendant asserts title thereto and there is also threat of dispossession from the defendant, the plaintiff will have to sue for declaration of title and consequential relief of injunction. Where the title of the Plaintiffs is under cloud or in dispute and

he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction.

In view of the above judgment, any person can file a suit for declaration and injunction with regard to any legal character or rights as to any property against any person who is denying or interested to deny his title or such character. In a suit for declaration with regard to a right or title in respect of property along with consequential injunction the Plaintiff will have to pray for a declaration as contemplated under Section 34 of the Specific Relief Act, 1963, an interim injunction during the pendency of the suit under Order 39 of the Civil Procedure Code 1908 and a mandatory injunction under Section 38 of the Specific Relief Act, 1963.

*The Hon'ble Supreme Court in the matter of **Dalpat Kumar Vs Prahlad Singh and Ors, [(1992) 1 SCC 719]**, has provided the manner in which a temporary injunction can be granted under Order 39 Rule 1(c) of the Civil Procedure Code, 1908 in a suit for Declaration and Injunction, which is reproduced as under:*

Para 4- Order 39, Rule 1(c) provides that temporary injunction may be granted where, in any suit it is proved by affidavit or otherwise, that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the Court otherwise may by order grant temporary injunction to restrain such act or make such other order for the purpose of staying and preventing or dispossession of the plaintiff or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as Court thinks fit until the disposal of the suit or until further orders. Rule 1 primarily concerns with the preservation of the property in dispute till legal rights are adjudicated. Injunction is a judicial process by which a party is required to do or refrain from doing any particular act. It is in the nature of preventive relief to a litigant to prevent future possible injury. It is settled law that grant of injunction is a discretionary relief. The exercise thereof is subject to the Court satisfying that,

1. There is serious disputed question to be tried in the suit and that an act, on the facts before the Court, there is probability of his being entitled to the relief asked for by the Plaintiff/ defendant;

2. The Courts interference is necessary to protect the party from the species of injury. In other words, irreparable damage or injury would ensue before the legal right would be established in trial and
3. That comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than would be likely to arise from granting it.

In a suit for declaration of rights or character and injunction the Plaintiff will have to substantiate/prove his rights as claimed thereof. Accordingly, the Court may in its discretion award the rights so prayed along with permanent injunction, if deemed fit and necessary in the facts of the case. The utility and importance of the remedy of declaratory suits are manifest, for its object is 'to prevent future litigation by removing existing cause of controversy.'

With the detailed analysis of S.34 of the Act, it 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 fit his case within the ambit of the section, his suit necessarily fails. So a declaratory decree is one which resolves the legal uncertainty of the rights and status of the parties. However, passing of a declaratory decree is a matter of discretion of Court and it cannot be claimed as a right.

In declaratory suits, plaintiff's task is not over once he proves that he is entitled to the legal character or right to property, it is for him to convince the Court that the defendant has denied or interested to deny that legal character or right of the plaintiff. Then only he can succeed in obtaining the declaration sought. The provision is a verbatim reproduction of Section 42 of the Specific Relief Act, 1877. It ensures a remedy to the aggrieved person not only against all persons who

actually claim an adverse interest to his own, but also against those who may do so.

EFFECT OF DECLARATION

The provision for the effect of declaration has been provided under section 35 of Specific Relief Act, which reads as under:

“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 declaration, such parties would be trustees.”

So, declaratory decree is “in personam” and not “in rem”. Thus a declaratory decree binds (a) the parties to the suit; (b) persons claiming through the parties; (c) 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. It is only the parties to the suit and the representatives in interest, but not the strangers who are bound by the decree. By virtue of this Section, a judgment is binding only if it is inter parties, which is not in *rem*, and does not operate as *res judicata*, may be admissible under Section 13 of the Evidence Act.

JUDICIAL PRECEDENTS AND CASE LAWS: SUPREME COURT

The concept of declaratory reliefs could be better understood by the following case laws rendered by the Hon’ble Supreme Court of India.

In one of the earliest cases of ***Supreme General Films Exchange Ltd. v. His Highness Maharaja Sir Brijnath Singhji Deo of Maihar & Ors. [(1975) 2 SCC 530]***, the scope of the provision was discussed and that whether the plaintiff has the legal character and right to claim the

declaration under the Specific Relief Act. The Court held that the provision gives a statutory recognition to such relief and subject to limitation, however, it does not deem to exhaust every kind of declaratory relief falling outside the ambit of the provision. The circumstances under this section are a matter of discretion of the Courts depending upon the facts and circumstances of the case. It is not a doubt that a stranger whose interest has not been affected cannot obtain a decree for declaration.

In another case of **Vinay Krishna v. Keshav Chandra & Anr.** [1993 Supp (3) SCC 129], the Court discussed the proviso which lays down the applicability of bar under the said provision. The Court held that once the bar under section becomes operative, no relief could be granted with reference to rejection.

In **V.Hanya Naik and ors. vs. M.Krishna Reddy and ors.** [2009 (6) ALT 221], the Hon'ble High Court of A.P. held that *"assuming that the suit was not defective, either as regards the mentioning the property, or as to the presence of the parties against whom the relief is claimed, a serious legal infirmity was glaring on the face of it. The petitioners did not claim any relief ancillary or subsidiary to the one of declaration"*. It also further held that *"no court shall grant the mere relief of declaration, if the plaintiff, being in a position to claim other relief, did not pray for it"*.

In **Union of India & Ors vs. Vasavi Co-op. Housing Society,** [AIR 2014 SC 937 = (2014) 2 SCC 269], the Hon'ble Apex Court held that *"it is trite law that, in a suit for declaration of title, burden*

always lies on the plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the defendants would not be a ground to grant relief to the plaintiff."

In **Venkatarama & Ors. v. Vidyane Doureradjaperumal (2014) 14 SCC 502**, the Court has discussed the maintainability of declaratory suit without consequential relief. The Court held that the purpose of the proviso to Section 34 of the Act is to avoid the multiplicity of the proceedings. A mere declaratory decree remains as non-executable in most cases and since the plaintiff did not amend the pleadings despite the objections in the written statement; it also defeated the purpose of Order 2 Rule 2 of CPC and hence was not found maintainable.

In **Samar Kumar Roy (died) through LR (Mother) vs. Jherna Bera, [AIR 2018 SC 334]**, the Hon'ble Supreme Court held that *"the High Courts have uniformly taken the view that a suit for declaration of a legal character filed under Section 34 of the Act can be filed by a third party plaintiff, or continued at the behest of the legal representative of a dead plaintiff". It also further held that "a suit for declaration as to legal character which includes the matrimonial status of parties to a marriage when it comes to a marriage which allegedly has never taken place either de jure or de facto, it is clear that the civil court's jurisdiction to determine the aforesaid legal character is not barred either expressly or impliedly by any law".*

In **Mallikarjunaiah vs. Nanjaiah and others, [2019 (3) ALT 277 (SC)]**, the Hon'ble Supreme Court held that *"mere continuous possession howsoever long it may have been qua its true owner is not*

enough to sustain the plea of adverse possession unless it is further proved that such possession was open, hostile, exclusive and with the assertion of ownership right over the property to the knowledge of its true owner”.

In **Panakanti Muthyam Rao @ Venkata Muthyam Rao vs. State of Telangana, rep. by its Principal Secretary, Revenue Department, Hyderabad and others, [2019 (3) ALT 343 (TS)]**, the Hon’ble High Court held that *“irrespective of whether a judgment is a reasoned one or not, it has the force of law as long as it remains in operation”*. It also further held that *“a declaratory decree need not be executed and it would continue to operate with full force unless set aside”*.

In **Ravinder Kaur Grewal vs. Manjit Kaur, [2019 (5) ALT 38 (SC)]**, the Hon’ble Apex Court held that *“a person in possession cannot be ousted by another person except by due procedure of law and once 12 years’ period of adverse possession is over, even owner’s right to eject him is lost and the possessory owner acquires right, title and interest possessed by the outgoing person/owner as the case may be against whom he has prescribed. In our opinion, consequence is that once the right, title or interest is acquired it can be used as a sword by the plaintiff as well as a shield by the defendant within ken of Article 65 of the Act and any person who has perfected title by way of adverse possession, can file a suit for restoration of possession in case of dispossession. In case of dispossession by another person by taking law in his hand a possessory suit can be maintained under Article 64, even before the ripening of title by way of adverse possession. By perfection*

of title on extinguishment of the owner's title, a person cannot be remediless. In case he has been dispossessed by the owner after having lost the right by adverse possession, he can be evicted by the plaintiff by taking the plea of adverse possession. Similarly, any other person who might have dispossessed the plaintiff having perfected title by way of adverse possession can also be evicted until and unless such other person has perfected title against such a plaintiff by adverse possession. Similarly, under other Articles also in case of infringement of any of his rights, a plaintiff who has perfected the title by adverse possession, can sue and maintain a suit."

CONCLUSION:

The jurisdiction of Courts to grant a declaratory decree is salutary, and its recognition fills a real want. Section 34 of the Specific Relief Act, 1963 is wide enough in its scope as contemplated 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 of suits and to remove clouds over legal rights of a rightful person.

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