BLOGS

Decree under the Code of Civil Procedure, 1908

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A **decree under the Code of Civil Procedure, 1908 (CPC)** is an important judicial determination that establishes the rights of parties in a civil suit. Section 2(2) CPC defines a decree and explains its legal nature, including preliminary and final decrees.

Understanding the meaning of a decree in law, its essential elements, different types, and the distinction between a decree, judgment and order is important for law students, legal practitioners and litigants.

1. What is a Decree under Civil Procedure Code?

Quick Definition: A decree under the Code of Civil Procedure, 1908 (CPC) is a court's formal expression of an adjudication that conclusively determines the rights of parties concerning all or some disputed matters in a civil suit. It may be preliminary, final or partly both. Certain decisions are treated as decrees by law.

Definition of Decree under Civil Procedure Code : Section 2(2)

Section 2(2) of the Code of Civil Procedure, 1908 defines a decree as follows:

> *“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. It shall be deemed to include the rejection of a plaint and the determination of any question within section 144, but shall not include -(a) any adjudication from which an appeal lies as an appeal from an order, or(b) any order of dismissal for default.Explanation: A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final.*

In simple words, a decree is the formal expression of a civil court's conclusive determination of the rights of the parties regarding matters in dispute.

A decree may be preliminary, final, or partly preliminary and partly final. The CPC also recognises certain decisions as deemed decrees.

A decree should not be confused with a judgment. A judgment contains the reasons given by the judge, whereas a decree formally records the adjudicated rights and relief.

2. Essentials of a Decree under Civil Procedure Code

For a judicial decision to qualify as a decree under Section 2(2) CPC, five essential elements ordinarily must be satisfied.

2.1 Adjudication

Adjudication means judicial determination of a disputed matter by a competent court.

A decree must result from a judicial decision rather than a merely administrative or procedural act.

Example: A civil court determines that a plaintiff is entitled to recover ₹1,00,000 from the defendant.

2.2 Adjudication in a Suit

Ordinarily, the adjudication must arise from a civil suit. A suit is generally instituted by presenting a plaint before the competent civil court.

However, certain determinations are expressly treated as decrees under the statutory deeming provision.

Example: A plaintiff institutes a civil suit for recovery of money, and the court finally determines the claim.

For further understanding, read Institution of a Suit under CPC.

2.3 Determination of Rights of the Parties

A decree must determine the rights of parties concerning all or any matters in controversy in the suit.

It must relate to disputed rights, rather than merely prescribing procedural steps.

Example: In a partition suit, the court determines the respective ownership shares of the parties.

The court must also possess the appropriate jurisdiction. Read Types of Jurisdiction under CPC.

2.4 Conclusive Determination

The adjudication must conclusively determine the rights of the parties regarding the matters decided, so far as the court expressing it is concerned.

This does not mean that every decree must completely dispose of the suit.

A preliminary decree can conclusively determine certain rights while leaving further proceedings necessary.

Example: A preliminary decree declares that two co-owners are entitled to equal shares in a property, even though the physical division remains pending.

2.5 Formal Expression

The adjudication must be formally expressed as a decree.

A judgment provides the reasons supporting the decision, while a decree records its operative result.

Example: After delivering a judgment in a money-recovery suit, the court draws up a decree specifying the amount payable.

Therefore, the five essentials of a decree are adjudication, a suit, determination of rights, conclusiveness and formal expression.

3. Types of Decrees under CPC

The Code of Civil Procedure recognises different forms of decrees depending on their nature, finality and legal treatment.

Type	Meaning	Example	Provision
Preliminary decree	Determines rights but further proceedings remain necessary	Declaration of shares in a partition suit	Section 2(2); Order XX

Final decree	Completely disposes of the suit	Final allotment of divided property	Section 2(2) Explanation
Partly preliminary and partly final decree	Finally decides one relief while leaving another for inquiry	Possession granted; inquiry into mesne profits	Order XX Rule 12
Deemed decree	A decision expressly treated as a decree by statute	Rejection of plaint; Section 144 determination	Section 2(2)
Ex parte decree	Passed in the defendant's absence in legally permitted circumstances	Defendant fails to appear despite proper service	Order IX Rule 6

3.1 Preliminary Decree

A preliminary decree determines the rights of parties but does not completely dispose of the suit.

Further proceedings are necessary before a final decree can be passed.

Example: In a partition suit, the court declares that the plaintiff is entitled to a one-third share in ancestral property. Actual division remains to be completed.

Suits Where a Preliminary Decree May Be Passed

- Suits involving rent or mesne profits - Order XX Rule 12.
- Administration suits - Order XX Rule 13.
- Partition suits - Order XX Rule 18.
- Mortgage suits - Order XXXIV.

Whether a preliminary decree is required depends on the circumstances and the applicable provisions.

3.2 Final Decree

A final decree completely disposes of the suit.

Where a preliminary decree has been passed, the final decree ordinarily completes the relief left outstanding.

Example: After determining the shares of co-owners, the court finally allots specific portions of property to each party.

A final decree may also be passed directly where no preliminary proceedings are necessary.

3.3 Partly Preliminary and Partly Final Decree

A decree may be partly preliminary and partly final when it conclusively decides one part of the dispute while leaving another part for further inquiry.

Example: In a suit for possession and mesne profits, the court may grant possession while directing an inquiry into mesne profits.

The determination regarding possession is final, while the inquiry relating to mesne profits remains preliminary.

3.4 Deemed Decree

A deemed decree refers to a judicial determination that is expressly treated as a decree by law, even where it does not satisfy every ordinary requirement of a decree.

Section 2(2) CPC expressly includes:

1. Rejection of a plaint under Order VII Rule 11.
2. Determination of any question within Section 144 CPC relating to restitution.

Example: When a plaint is rejected under Order VII Rule 11, the rejection is treated as a decree.

Learn more about Rejection of a Plaint under Order VII Rule 11 - a Deemed Decree.

3.5 Ex Parte Decree

An ex parte decree is passed when the defendant fails to appear and the court proceeds in accordance with the applicable procedural requirements.

Order IX Rule 6 CPC deals with circumstances in which the court may proceed ex parte.

A defendant may apply to set aside an ex parte decree under Order IX Rule 13, subject to statutory requirements.

An appeal against an original ex parte decree may also lie under Section 96(2).

An ex parte decree is not a separate category based on finality; it describes the circumstances in which the decree was passed.

4. What is Not a Decree under Civil Procedure Code?

Not every decision of a civil court is a decree.

Section 2(2) specifically excludes certain decisions, including adjudications appealable as orders and orders dismissing a suit for default.

Judicial Decision	Is It a Decree?	Reason
Rejection of a plaint under Order VII Rule 11	Yes - Deemed Decree	Expressly included in Section 2(2)
Determination under Section 144 CPC	Yes - Deemed Decree	Expressly included in Section 2(2)
Dismissal for default	No	Specifically excluded under Section 2(2)
Return of plaint under Order VII Rule 10	No	Appealable order under Order XLIII Rule 1(a)
Order granting a temporary injunction	No	Interlocutory order; appeal provided for specified cases under Order XLIII Rule 1(r)
Determination under Section 47 CPC	Not merely by virtue of Section 47	Removed from the definition of decree by the 1976 amendment

Effect of the 1976 Amendment

Before the 1976 amendment, the definition of decree included determinations of questions under Section 47 CPC.

The amendment removed this inclusion.

Consequently, a determination under Section 47 is no longer treated as a decree merely because it is made under that section. Its procedural consequences and available remedies depend upon the relevant law.

To understand temporary and procedural orders, see Interlocutory Order under CPC.

5. Difference Between Decree, Judgment and Order

Although these expressions are closely connected, their legal meanings are different.

Basis	Decree	Judgment	Order
Definition	Formal expression of an adjudication conclusively determining disputed rights	Statement of the grounds of a decree or order	Formal expression of a civil court's decision that is not a decree
Provision	Section 2(2)	Section 2(9)	Section 2(14)
Arises in	A suit, including statutory deemed decrees	Suits and proceedings	Suits, applications and proceedings
Legal function	Determines rights in controversy	Provides reasons for the decision	Records judicial decisions that are not decrees
Finality	Conclusive regarding matters determined	Explains the decision	Not necessarily conclusive
Number	Preliminary and final decrees may arise at different stages	A judgment accompanies the relevant decision	Multiple orders may be passed
Appeal	Sections 96 and 100, subject to restrictions	Not ordinarily appealable separately as such	Appealable where authorised, including Section 104 and Order XLIII Rule 1

Example

Suppose A files a civil suit against B claiming ownership of land.

The court examines the evidence and gives reasons for deciding in A's favour. Those reasons form the judgment.

The formal expression declaring A's entitlement constitutes the decree.

During proceedings, the court may also pass procedural or interlocutory orders, which are not necessarily decrees.

For related reading, explore Declaratory Decrees under the Specific Relief Act, 1963.

The conclusiveness of previously decided matters may also raise questions of Res Judicata under Section 11 CPC.

6. Decree-Holder and Judgment-Debtor

Meaning of Decree-Holder under Section 2(3) CPC

Section 2(3) defines a decree-holder as a person in whose favour a decree has been passed or an order capable of execution has been made.

The decree-holder is generally the person entitled to seek enforcement of the decree.

Meaning of Judgment-Debtor under Section 2(10) CPC

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

The judgment-debtor is generally the person against whom enforcement may be pursued.

Example: If a court directs A to pay ₹2,00,000 to B, B is the decree-holder and A is the judgment-debtor.

Both statutory definitions also extend to applicable executable orders.

7. Appeal from a Decree under CPC

An appeal is a statutory remedy through which an eligible party may challenge a decree before an appellate court.

First Appeal under Section 96 CPC

Section 96 generally provides for a first appeal from decrees passed by courts exercising original jurisdiction, except where otherwise expressly provided.

A first appeal may involve questions of fact and law within the applicable appellate framework.

Section 96(2) permits an appeal against an original decree passed ex parte.

However, Section 96(3) prohibits an appeal from a decree passed with the consent of the parties.

Other statutory restrictions may also apply.

Second Appeal under Section 100 CPC

Section 100 provides for a second appeal to the High Court from an appellate decree, subject to statutory conditions.

The essential requirement is that the case must involve a **substantial question of law**.

A second appeal is therefore not an unrestricted opportunity to reconsider factual findings.

The High Court must formulate the substantial question of law in accordance with Section 100.

Appeal Against a Preliminary Decree

Section 97 CPC provides an important restriction.

Where a party does not appeal against a preliminary decree, that party may be precluded from disputing its correctness in an appeal against the final decree.

This makes it important to distinguish preliminary decrees from merely procedural orders.

8. Execution of a Decree under Order XXI CPC

Execution of a decree is the legal process through which a decree-holder seeks enforcement of the relief granted by a civil court.

Sections 36 to 74 and Order XXI CPC establish the principal procedural framework for execution.

Depending upon the nature of the decree and applicable law, execution may involve payment of money, attachment and sale of property, delivery of possession, or other authorised measures. Arrest and detention may also be available in limited circumstances subject to statutory safeguards.

The decree-holder ordinarily applies to the competent executing court, which examines the application and determines the appropriate means of enforcement.

Questions relating to execution, discharge or satisfaction of a decree between the relevant parties or their representatives are generally determined under Section 47 CPC.

A preliminary decree that only declares shares may require further proceedings before physical partition can be enforced.

Thus, **passing a decree determines rights, while execution gives practical effect to the decree**.

Related article to be published: Execution of a Decree under CPC — Order XXI, Procedure and Modes.

9. Leading Cases on Decrees under Civil Procedure Code

9.1 Phoolchand v. Gopal Lal, AIR 1967 SC 1470

The Supreme Court recognised that more than one preliminary decree may be passed in a partition suit when subsequent developments justify adjustment of the parties' shares before the final decree.

Legal Principle: Multiple preliminary decrees may be permissible in appropriate partition proceedings.

9.2 Shub Karan Bubna v. Sita Saran Bubna, (2009) 9 SCC 689

The Supreme Court discussed the nature of preliminary and final decrees in partition suits and the procedure applicable to the division of property.

Legal Principle: The preliminary and final decree stages serve different purposes in partition proceedings.

9.3 Venkata Reddi v. Pothi Reddi, AIR 1963 SC 992

The Supreme Court emphasised the conclusiveness of a preliminary decree regarding the matters decided by it.

Legal Principle: A preliminary decree conclusively determines the rights adjudicated, even though further proceedings may be required.

9.4 Shankar Balwant Lokhande v. Chandrakant Shankar Lokhande, (1995) 3 SCC 413

The Supreme Court considered questions concerning partition proceedings, final decrees and their procedural consequences.

Legal Principle: Final decree proceedings have a distinct procedural significance after the adjudication of shares.

10. Frequently Asked Questions (FAQs)

Q1. Is rejection of a plaint a decree?

Yes. Rejection of a plaint under Order VII Rule 11 is expressly included within the definition of a decree under Section 2(2) CPC. It is treated as a deemed decree.

Q2. What is a deemed decree under CPC?

A deemed decree is a decision that the law expressly treats as a decree. Section 2(2) includes rejection of a plaint and determination of questions within Section 144 CPC.

Q3. Can there be more than one decree in a suit?

Yes. A suit may involve a preliminary decree followed by a final decree. In appropriate circumstances, more than one preliminary decree may also be passed, particularly in partition suits.

Q4. What is the difference between a decree and an order?

A decree under civil procedure code conclusively determines rights concerning matters in controversy in a civil suit or is expressly deemed a decree by law. An order is the formal expression of a civil court's decision that is not a decree.

Q5. Is every decree appealable?

No. The right of appeal is subject to statutory provisions and restrictions. For instance, Section 96(3) bars an appeal from a consent decree, while a second appeal under Section 100 requires a substantial question of law.

Conclusion

A decree under Civil Procedure Code, 1908 is the formal expression of an adjudication that conclusively determines the rights of parties concerning matters in controversy in a civil suit.

The essential elements of a decree are adjudication, a suit, determination of disputed rights, conclusive determination and formal expression.

Understanding preliminary, final, partly preliminary and final, and deemed decrees is important for identifying the legal effect of a court's decision.

The distinction between a decree, judgment and order also helps determine the appropriate remedies, including appeal and execution.

A clear understanding of decrees under CPC is therefore fundamental to the study and practice of civil procedural law in India.