

Declaratory decree under the Specific Relief Act, 1963

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Abstract:

The general power vested in the courts in India under the Civil Procedure Code is to entertain all 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.

In this paper an attempt has been made to examine the scope of declaratory decrees.

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. 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.¹ 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.² Provision regarding declaratory decree has been provided in

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1. *Naganna v Sivanappa* 38 Mad. 1162

2. *Devkali v Kedar Nath* (1912) I.L.R.39 Cal. 704.

Sections 34 and 35 of the Specific Relief Act, 1963. Section 34 of Specific Relief Act 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 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.”

Section 34 provides for "a suit against any person denying or interested to deny the plaintiffs' title to the legal character or right to any property". So it is clear that the 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.

Requisites:

Section 34 of the Specific Relief Act, 1963 contemplates certain conditions which are to be fulfilled by a plaintiff. In the ***State of M.P. vs. Khan Bahadur Bhiwandiwala and co.***³ the court observed that in order to obtain the relief of declaration the plaintiff must establish that (1) 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

3. *A.I.R. 1971 M.P., 65*

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 the court still has 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
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.⁴ 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.⁵ 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.⁶ 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 determent 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.⁷ 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.

4. *Life Insurance Corporation of India vs. Smt. Iqbal Kaur*, A.I.R., 1984 J&K 5.

5. *Bhujandra Bhusan vs. Trigunath*, L.L.R. 8 Cal. 761

6. *Sheoparsan Singh vs. Ramanandan Singh*, A.I.R. 1916, P.C. 78

7. *Hiralal v Gulab*, 10 C.P.L.R., 1

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. The Madras High Court held that an agreement to sell certain property in favour of a person certainly gave him a right to property but not a right in the property.⁸ In *Mohammed Akabar Khan vs. Parsan Ali*⁹ a suit for a mere declaration that one person is related to another was held as not a suit to establish a legal right or any right as to any property and such suit would be incompetent. In a Calcutta case,¹⁰ it was observed that a declaration might be sought with regard to a contingent right. 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. 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.

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,¹¹ 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 in founded, 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

8. *Moharala Pitchayya vs. B. V. Krishnaiyya, A.I.R., 1943 Mad.497*

9. *A.I.R. 1930 Lah. 793.*

10. *Tarak Chandra Das vs. Anukul Chandra Mukherjee, A.I.R. (1946) Cal. 118.*

11. *Bicell vs. Kellogg, 60 Barbout 629*

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 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.¹² Under Section 34, 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.¹³ A remote chance of succeeding an estate cannot give a right for obtaining a declaration that alienation by a limited owner is void.¹⁴

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.¹⁵ Similarly, a suit lies for obtaining a negative declaration that there is no relationship of landlord and tenant between the plaintiff and defendant.¹⁶ 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.¹⁷

Effect of Declaration-

Section 35 makes it clear that a declaration made under this section does not operate a judgment *in rem*. Section 35 says:

12. *Maharaja Benares vs. Ranji Khan*, ILR 27 All. 138.

13. *Ram Tawakkal Tewari vs. Dulari*, AIR 1934 All. 469.

14. *Faryad Fatima vs. Mujahid Abbas*, AIR 1931 All. 1064.

15. *Jagatram vs. Basanti*, AIR 1959 Pun. 581.

16. *Lakshman Das vs. Arjun Singh*, 1962 Cr L J 528.

17. *Mool Raj v. Atma Ram*, AIR 1986 J&K 24.

“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) 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.¹⁸ By virtue of this Section, a judgment is binding only if it is *inter partes*, which is not *in rem*, and does not operate as *res-judicata*, may be admissible under Section 13 of the Evidence Act.¹⁹

Court Fee-

The Court fee when a declaratory decree is sought is a fixed amount.²⁰ When the plaintiff claims a further relief, the court fee payable is determined by the amount at which relief sought is valued in the plaint.²¹ The Hon'ble Supreme Court in ***Shailendra Bhardwaj & Ors vs. Chandra Pal & Anr.***²² held that

“....Article 17(iii) of Schedule II of the Court Fee Act is applicable to cases where the plaintiff seeks to obtain a declaratory decree without any consequential relief and there is no provision under the Act for payment of fee relating to relief claimed. If there is no provision under the Court Fee Act in case of suit involving cancellation or adjudging/declaring void or voidable a will or a sale deed on the question of payment of court fee, then Article 17(iii) of the Schedule II will be applicable. But if such relief provision is covered by any other provisions of the Court Fee Act, then Article 17(iii) of the Schedule II will not be applicable....”

18. *Ram Lal vs. Secretary of State*, ILR, Cal. 304

19. *Dinomoni vs. Brojo Mohini*, ILR, 29 Cal. 187

20. Article.17 Schedule II, The Court Fee Act, 1870

21. The Court Fee Act, 1870, Section 7, sub-section (iv), clause (c) *Life Insurance Corporation of India vs. Smt. Iqbal Kaur*, A.I.R., 1984, J&K, 5-6

22. Civil Appeal No. 8196 of 2012

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 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 of suits and to remove clouds over legal rights of a rightful person.
