

Decree

The term decree is defined in Section 2(2) of Code of Civil Procedure, 1908. A decree always follows judgement and is based upon a judgement. It is divided into five types unlike judgement which is final in itself. A decree may be final or preliminary. It is a formal declaration or adjudication and is conclusive in nature. A decree is of three kinds namely, preliminary decree, final decree and partly preliminary & partly final. A decree may be delivered with an order. The decree contains the outcome of the suit and conclusively determines the rights of the parties with regard to the issues in dispute in the suit. After passing the decree, the suit stands disposed of since the rights of the parties are finally determined by the court.

Deemed Decree

A decree shall be deemed to include the rejection of a plaint and any question within Section 144 of Code of Civil Procedure, 1908 but shall not include:

Any such sentence(adjudication) from which it appears that an appeal lies as an appeal from an order, or any such order of discharge(dismissal) of default.

Kinds of Decrees

According to Section 2(2) of the Code of Civil Procedure, 1908 decrees are divided into three categories:

Preliminary Decree

In general sense, the word preliminary means preparation for the main matter, initial, introductory, preparatory. In a legal sense, a preliminary decree is a decree where further proceedings have to take place before the suit can be completely disposed of. It decides the rights of the parties in respect to all or any of the matters of discussion but it does not completely dispose of the suit. In such a decree the rights and liabilities of the parties are stated leaving the actual result or decision to be worked out in future proceedings. A preliminary decree is passed in those cases where the proceedings are to be carried out in two different stages. The first stage is when the rights of the parties are adjudicated and the second stage is when those rights are implemented or executed.

Final Decree

In general sense, the word 'final' means last, ultimate, conclusive or decisive. In legal sense, a final decree is a decree which completely disposes of the suit and settles all the questions in discussion between the parties and nothing is left further for deciding thereafter. It is only said to be final when such adjudication completely disposes of the suit.

Partly preliminary and partly final Decree

A decree is said to be partly preliminary and partly final when the court decides two questions by the same decree. For instance, if the court passes a decree in favour of one party along with a direction of inquiry for the other party, the former part of the decree is final while the latter part is a preliminary decree for which further proceedings have to take place. For example, in a suit of possession of a property with company 'C', if the court passes a decree of possession of the property in favour of the plaintiff and directs an enquiry into the company 'C', then the former part of the decree is final decree while the latter part is the preliminary decree.

The necessity of a Decree

The Code of Civil Procedure requires the passing of a decree in all the suits. A decree is based upon judgement and it also follows a judgement which is the reason why it is an indispensable and essential requisite. The decree is indispensable or an absolute requisite. It is an essential part of the ultimate outcome of the suit. An appeal can be made against a decree and not against a judgement. If the decree is absent an appeal cannot be 'put in motion'.

Contents of a Decree

A decree always follows the judgement, coincide with it and contains:

1. The suit's number – Every suit has a particular number and it should be mentioned in the decree.
2. The names, description and registered addresses of the parties – Every decree shall have the names of all the parties of that particular suit, the proper description of the parties of the suit, and the registered addresses of all the parties of the suit.
3. The particulars of the parties claims or defence – Every decree shall contain the details of the claims and the defences the parties are claiming as an outcome of the said suit.
4. The relief or the remedy granted to the aggrieved party – The decree should in particular mention the relief granted to the particular party as a remedy and not a reward.
5. The total amount of cost incurred in the suit-
 1. by whom; or
 2. out of what property; and
 3. in what portions are they paid or are to be paid.
6. The judgement's date of pronouncement or delivery date of the judgement – The decree should mention the date on which the judgement was delivered followed by the decree.
7. The judge's signature on the decree – The judge's signature is an essential and indispensable element of any decree. The signature of the judge delivering the judgement is an essential requisite.

Drawing up of a Decree

Rule 6A Order XX of Code of Civil Procedure, 1908 states that a decree shall be drawn within 15 days of the judgement. An appeal can be favoured or preferred without filing a copy of a decree if it is not drawn within 15 days of the judgement.

Decrees in Special cases

- In a lawsuit for the recovery or process of regaining or repossession of an immovable property (real estate), the decree shall include a description of such property so that it is sufficient to recognise or identify it.
- In a decree for movable property (personality), it must mention the exact amount of money to be paid as an alternative in case the delivery is not made due to any reason either it be reasonable or appropriate.
- In a decree for payment of money, the Court may order that the payment of decretal amount i.e., the amount mentioned in the decree shall be:
 1. postponed which is delayed to a future date; or
 2. made by installments with or without interests.
- In a suit for the recovery or process of regaining or repossession of immovable property, the Court may pass a decree- for possession or gaining of property. for past rents or mesne profits. (mesne profits are the profits of an estate received by a tenant in wrongful possession and recoverable by the landlord) that is a final decree in respect of rent or mesne profits in accordance with results of such enquiry as mentioned.

Rule 12A of the Code of Civil Procedure, 1908 states that a decree for specific performance of a contract for sale or lease of an immovable property which can also be termed as real estate shall specify the exact period within which the amount of money or other sum is to be paid by the purchaser or lessee.

Rule 13 of the Code of Civil Procedure, 1908 states that the final decree shall be passed or delivered in accordance with the result of preliminary enquiry i.e., in a lawsuit for an account of any property either movable or immovable and for its due administration under the decree of Court, before passing a final decree, the court should pass a preliminary decree ordering accounts to be taken and enquiries to be made.

Rule 14 of the Code of Civil Procedure, 1908 states a decree in a pre-emption suit, it is a suit where the displacement of a lower jurisdiction's laws when they conflict with those of a higher jurisdiction, where the purchase money has not been paid into Court, shall specify a particular day on or before which the purchase money has to be paid and direct that on payment to Court, the defendant shall deliver property to the plaintiff, but if the payment is not made on a specific day, the lawsuit shall be dismissed with costs. In cases the Court has settled upon rival claims to pre-emption, the decree shall direct:

The claim or defence of each pre-emptor shall take effect proportionately if the claims decreed are equal in degree.

The claim or defence of the inferior pre-emptor will not take place till the superior pre-emptor fails to make the payment if the claims decreed are different in degree.

In a lawsuit for dissolving of partnership or taking of partnership accounts, the Court can pass a preliminary decree before passing a final decree declaring the exact shares of all the parties, fixing of a particular day on which the partnership shall become dissolved and directing the accounts to be taken and other necessary actions to be done. In a lawsuit for accounts between a principal person and agent, the Court can pass a preliminary decree before passing a final decree directing the accounts that have to be taken and it can also provide special directions in regards to the mode of taking accounts as well. In a decree passed in a lawsuit for partition of property either movable or immovable or for separate possession of share in the property, The decree shall declare the rights of several parties interested in that property but shall direct partition or separation to be made by collector and in other cases of immovable property in case the estate is assessed to the payment of revenue to the government.

The Court shall pass a preliminary decree declaring all the rights of the parties in estate and giving necessary directions and then the final decree is passed, if separation or partition cannot conveniently be made without further inquiry.

A decree where the defendant has been allowed leave or start with a counterclaim against the initial claim of the plaintiff shall state with what amount is due to the plaintiff and what amount is due to the defendant thereafter.