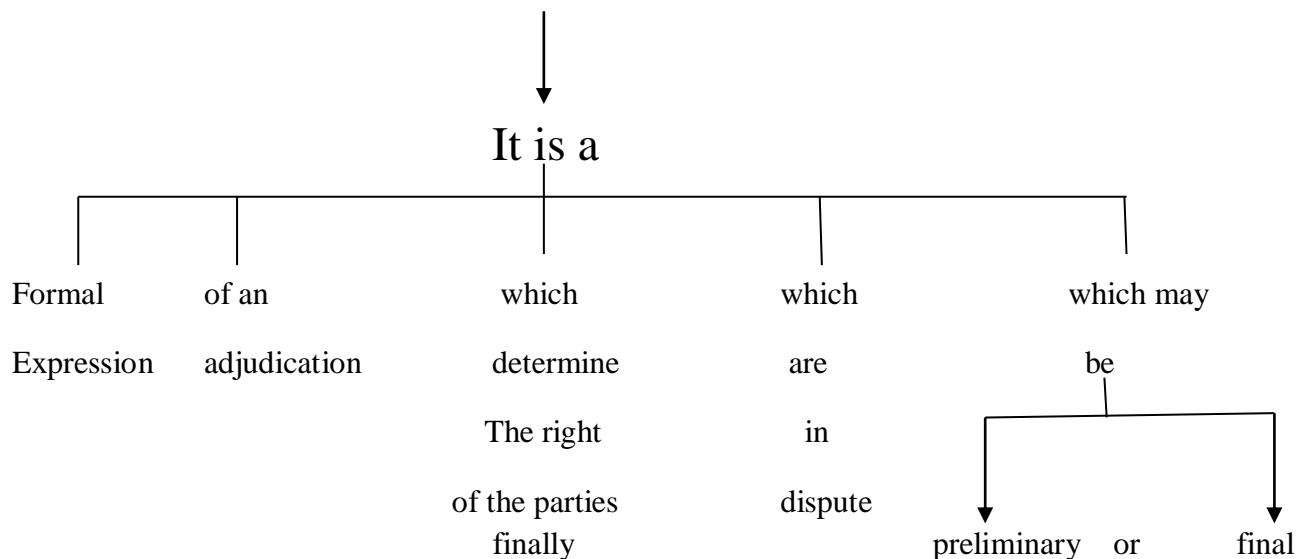


B.A.LL.B. IXth Semester
Subject - CIVIL PROCEDURE CODE
Code - BL – 903

DECREE

Definition

According to sec . 2(2) of c.p.c.



ESSENTIAL ELEMENTS OF DECREE:-

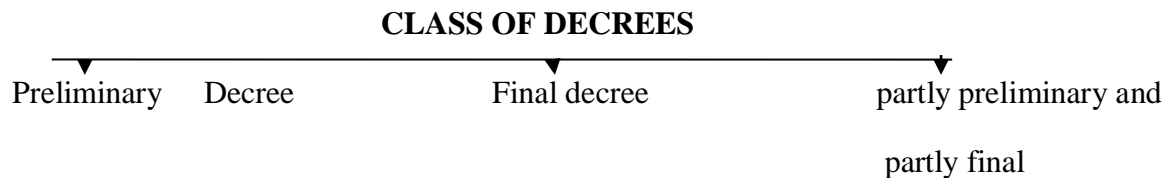
- 1 There must be adjudication
- 2 Such adjudication must have been given in a suit
- 3 It must have determined the rights of the parties with regard to all or any of the matters in controversy in the suit .
- 4 Such determination must be of conclusive nature
- 5 There must be a formal expression of such adjudication
- 6 The adjudication must have been given by a civil or revenue court

Decisions which are decrees : Illustrations

- A. Order of abatement of suit;
- B. Dismissal of appeal as time barred ;
- C. Dismissal of suit or appeal for want of evidence or proof ,
- D. Rejection of plaint for non- payment of court fees ,
- E. Granting or refusing to grant installments ,
- F. Modification of scheme under Section 92 of the Code ,
- G. Order holding appeal not maintainable
- H. The determination of any question under Section 144 (Restitution)

Decisions which are not decrees : Illustrations

- A. Dismissal of appeal for default ;
- B. Appointment of commissioner to take accounts ;
- C. Order of remand ;
- D. Order granting interim relief ;
- E. Return of plaint for presentation to proper court :
- F. Dismissal of suit under Order 23 , Rule 1;
- G. Refusing to wind up a company ;
- H. Any adjudication from which an appeal lies as an appeal from an order.



DECREE

- Rejection of plaint is a decree under Section 2 (2) C P C
- Restitution order under section 144 is a decree.

Not a decree

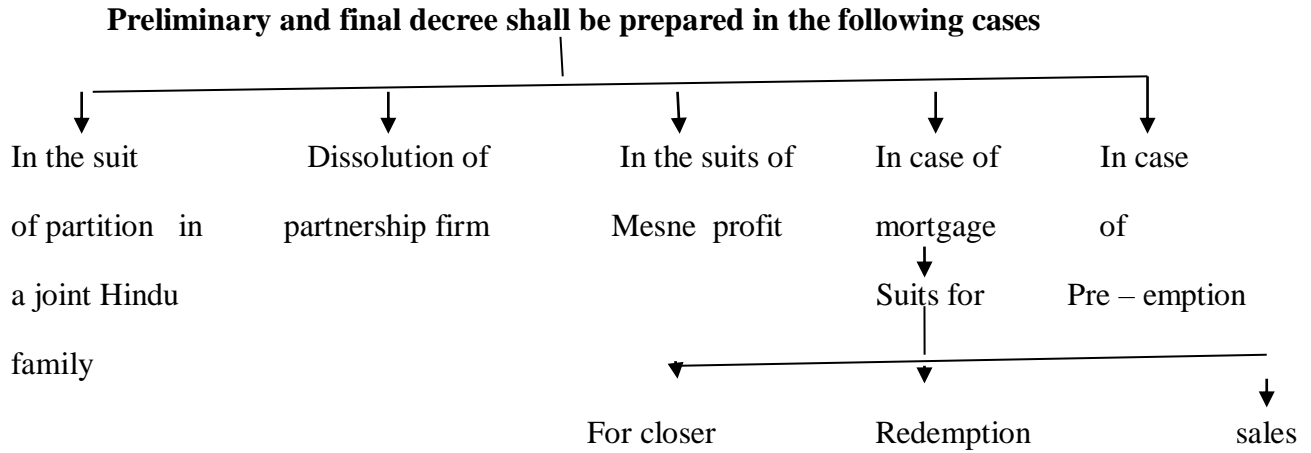
- **Appealable orders** : section 104 , Order 43, Rule 1 are not decrees. No second appeals lies in case of appealable orders .
- Dismissal for default order is not a decree

- **Cross decrees** :- A decree of plaintiff against defendant and a decree of defendant against plaintiff.
- A decree passed by a court without jurisdiction is nullity.
- An order imposing compensatory costs under section 35 A is an appealable order under section 104 (1) (ff) , so it is not a decree.

Difference between Decree and Order :-

S.NO	DECREE		ORDER
1.	Section 2 (2)	➔	Section 2 (14)
2.	Only in a suit	➔	Suit / Petition / Application
3.	Conclusively adjudicates the right and liabilities of the parties	➔	May / may not
4.	Preliminary / final / partly Preliminary and partly final	➔	Not applicable
5.	Generally one decree is passed in each suit	➔	Numerous orders are passed in a single proceeding
6.	It is appealable under 96, C P C	➔	Only those orders are appealable which are described under Section 104 , Order 43 , Rule 1
7.	Second appeal on substantial question of law under Section 100 .	➔	No second appeal

Preliminary and final decree:



Difference between preliminary and final decree

S.No	Preliminary decree	Final decree
1	Further proceeding necessary to dispose of the suit finally	⇒ It disposes of the suit finally
2	Only some or one of the controversial matters an disposed of	⇒ Rights and liabilities are finally adjudicated
3	It ascertains what to be done	⇒ It states the result of preliminary decree
4	It is independent	⇒ It is dependent on the preliminary decree and subordinate to preliminary decree
5	In partition and partnership Suit several preliminary decrees may be passed	⇒ Only one [Shanker vs Chanderkant AIR 1995 SC]

Case law of decree (J A B)

1. Jaithanand and Sons vs. State of U . P . AIR 1961 SC

In the case supreme court held that where a dispute arise from a plaint.

Determine by the court after hearing both the parties finally and an adjudication has been formally expressed Summarily and which determines the rights of the parties from a decree finally

Every decree arises from an adjudication .

2. Anchala Wenket Reddy v/s Manchala Wenket Reddy AIR 1956 SC

In this case supreme court held that any order passed under Order 43 , Section 104 is not a decree.

3 Bibi Wahidunnisha v/s Deep Narayan Prasad

Court held that any order passed in respect of indigent passion is not a decree.

Compiled by
DR VIKAS Kumar
Assistant professor of Law
ILS, CCSU Campus, Meerut

For further queries you may reach us via..
E-mail –vikasrathimrt@gmail.com
Mob - 9058459666