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# Critical Analysis of Section 2(2) of Code of Civil Procedure, 1908

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## ABSTRACT

*Section 2(2) of the Code of Civil Procedure, 1908 defines 'Decree'. This section is significant for clarification relating to the nature and scope of a decree, thereby further enabling enforceability of the decrees issued by Courts. For an adjudication to be defined as a decree certain elements such as formal expression, rights of parties, decision to be declared in a suit, adjudication, and conclusive determination are essential. A decree is understood as a civil suit's primary determinant of the rights of parties and is interpreted to be conclusive. This article aims to understand and analyze in detail Section 2(2) of the Code of Civil Procedure, 1908.*

**Keywords:** Decree, order, suit, judgment.

## I. INTRODUCTION

Section 2(2) of the Code of Civil Procedure, 1908 defines the term "decree." A decree formally expresses an adjudication determining the parties' rights to a suit or proceeding conclusively. In other words, it is a judicial order issued by a court following a hearing in a civil case in the context of the Code of Civil Procedure. A judge will issue a decree after all evidence has been presented and arguments from both sides of the case have been heard. A decree involves the issues raised in the case and may include orders requiring the parties to take specific actions, such as paying damages or fulfilling contractual obligations. When a decree is issued, the parties involved in the case are bound by it. If a party wishes to appeal or petition for a review of a decree, they may do so with a higher court. In most cases, however, the Decree serves as the case's final resolution.

Civil Courts must pass a final judgment and Decree after adjudication of disputes. On the other hand, Criminal Courts render judgment and sentence but not a decree. Thus, Civil Courts and Courts exercising original jurisdiction alone are empowered to pass Decrees.

Overall, Section 2(2) of the CPC is a significant provision because it defines the term "decree" and clarifies the nature and scope of a decree. It further helps to ensure that court orders are

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enforceable and legally binding.

## II. INTERPRETATION OF THE SECTION

CPC is generally understood to be a procedural law. However, the sections under CPC are substantial, whereas the orders, rules, and schedules are procedural. All civil proceedings commence with filing a plaint and conclude with a judgment being passed and a decree being granted. Judgment and Decree are inter-connected. There cannot be a decree without a judgment.

A civil court delivers a judgment after the final dispute adjudication between the parties in a suit. This is done by either granting the reliefs sought or dismissing the suit. In some situations, the Court may partly allow or dismiss the suit.

A decree is the operative portion of the judgment. It includes additional information such as names of the parties, place of the Court, name of the judge, designation of the judge, suit number, particulars and addresses of the parties, date of filing of the suit, date of judgment, the value of the suit, court fees, reliefs granted or rejected and costs if any imposed.

A decree shall include the rejection of a plaint or determining any question under Section 144, but it excludes the following:

1. Any adjudication from which an appeal lies, such as an appeal from the Order.
2. Any order of dismissal for default.

### **(A) Order vs. Decree**

It is crucial to understand that every Decree is an Order, but every Order is not a Decree. An Order passed can be interim or final. Order can be passed in an original suit or petition. Courts are empowered to pass orders as interim measures in civil suits. These Orders do not need to be appealable. However, a Decree will be drawn whenever an Order is appealable, e.g., an application filed for an interim injunction.<sup>2</sup>

### **(B) Preliminary and final Decree**

Section 2(2) explains that a decree can either be preliminary or final. A suit is said to be pending after passing a preliminary Decree and until the passing of a final Decree. For this reason alone, there is no applicability of the Limitation Act<sup>3</sup> for applying to pass the final Decree. Upon passing a preliminary Decree, the parties' rights get crystalized but will materialize only when

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<sup>2</sup> Order XXXIX Rule 1 & 2 of CPC.

<sup>3</sup> *Shubh Karan Bubna Vs. Sita Saran Bubna & Ors*, 2009 (9) SCC 689.

the final Decree is passed, which alone is executable. For instance, in a suit for partition, a party is entitled to half (½) a share in the suit properties. However, the final Decree proceedings will determine his share's demarcation and identity.

Only in certain civil cases does the CPC require passing a preliminary Decree. Such suits are as mentioned below:

1. Suits for partition and separate possession,
2. Suits for possession and mesne profits,
3. Mortgage suits,
4. Administrative suits,
5. Suits for pre-emption,
6. Dissolution of partnership and rendition of accounts.
7. Accounts between a principal and an agent

### **(C) Essential elements of a decree**

The following are the mandatory elements required to be fulfilled for an adjudication to be termed as a decree:

**1. Formal expression:** To be a decree, the Court must express its decision as the law prescribes. A judge's remark cannot be considered a decree. The Decree comes after the judgment and must be written separately. If the Decree is not drafted, there is no basis for an appeal.

**2. Adjudication:** It refers to a judicial decision on the issue at hand. As a result, if the decision is administrative, it cannot be regarded as a decree. The adjudication must address any or all issues raised in the suit. The Court should resolve the dispute on its own, considering the facts and circumstances of the case. The Supreme Court ruled in *Madan Naik v. Hansubala Devi* that if a matter is not judicially determined, it is not a decree. In the *Deep Chand v. Land Acquisition Officer* case, the Supreme Court ruled that the officer of the Court should adjudicate. Otherwise, the Decree should not be recognized.

**3. Suit:** The decision must have been made in a suit, which begins with filing a plaint in a civil court. There is no decree without a civil suit. However, specific provisions in the Hindu Marriage Act, the Indian Succession Act, and the Land Acquisition Act allow specific applications to be treated as suits. These are statutory suits, and the decisions are issued as decrees. Their Lordships of the Privy Council stated in *Hansraj Gupta v. Official Liquidators*

of the *Dehra Dun Missorie Electric Tramway Co. Ltd.* that the term "suit" ordinary means a civil proceeding initiated by the filing of a plaint.

**4. Rights of parties:** Right refers to substantive rights, not just procedural rights. The plaintiffs and defendants should be the parties to the rights in dispute, and an order made on the application of a third party who is a stranger to the suit is not a decree. For example, an order rejecting a poor plaintiff's application to waive court costs is not a decree because it does not determine the party's right concerning the matters alleged in the suit.

**5. Conclusive Determination:** The decision must be complete and final in terms of the Court that issued it. This means the Court will not consider any arguments to overturn the decision. For example, an order striking out a tenant's defense under a relevant Rent Act, or an order refusing an adjournment, is not considered a decree because it does not determine a party's right conclusively. An interlocutory order that does not resolve the parties' rights is not considered a decree. In *Narayan Chandra v. Pratirodh Sahini*, the Calcutta High Court ruled that the determination should be final and conclusive for the Court that makes it.

### III. CRITICAL ANALYSIS

In *Vidyacharan Shukla v. Khubchand Baghel*,<sup>4</sup> the Supreme Court held that in order for a decision of a court to be a "decree," the following elements must be present:

- There must be an adjudication.
- Such adjudication must have been given in a suit;
- It should have determined the rights of the parties concerning all or any of the matters in dispute in the suit;
- Such determination must be conclusive, and
- There must be a formal expression of such adjudication.

In *Bal Kishan v. Tulasi Bai*,<sup>5</sup> case, the Court held that an order must satisfy the requirements of Section 2(2) in order to become a decree. Merely labeling it as a decree does not make it a decree. After an in-depth analysis of Section 2(2) of the CPC, it can be understood that only certain decisions are considered as Decree, and the test for determining this was laid down in the case of *Venkata Reddy v. Pethi Reddy*. The following decisions are considered to be a decree:

- Order of abetment of the suit.

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<sup>4</sup> *Vidyacharan Shukla v. Khubchand Baghel*, AIR 1964 SC 1099 (1113).

<sup>5</sup> *Bal Kishan v. Tulasi Bai*, AIR 1987 MP 120.

- Dismissal of a time-barred appeal.
- Dismissal of suit or appeal due to requirement of evidence of proof not being met.
- Rejection of a plaint due to non-payment of the court fees.
- Order granting or refusing costs.
- Order stating that there is no cause of action.
- Order refusing to grant one or several reliefs.

The following decisions are not considered to be a decree:

- Dismissal of appeal for default.
- Order granting or refusing an interim relief.
- Order holding an application to be maintainable.

#### **IV. CONCLUSION**

The Code of Civil Procedure consists of provisions enabling the pronouncement of decisions by the Courts, and Section 2(2) defining Decree is one of them. A decree is a civil suit's primary determinant of parties' rights. It is conclusive. It can be passed only in a suit that is commenced by presenting a plaint and must be formal in expression. As understood earlier, a decree can be preliminary or final. Further, a decree is appealable and does not require a statement of ground to be given by the judge.

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