

### \* Types of Decree :-

Explanation :-

- **Preliminary Decree** - Preliminary decree ascertains what is to be done while,
- **final Decree** - final Decree States results achieved by means of Preliminary decree.

### CASE LAW :-

Example :- A files law Suit against B claiming Ownership of agricultural Land and Seeking mesne Profit

The Court decides A is the rightful Owner and grants A Possession of the Land this is final decree as it Conclusively Settles the issue of ownership and possession.

Court Orders and enquiry to determine the amount of mesne profit, this is Preliminary decree as it requires further Proceedings to Calculate the Compensation.

- **Dependant is final decree on Preliminary.**  
**Superior is Preliminary decree**

- **favour of decree** → Decree-holder  
**Against decree** → Judgment Debtor.

Mesne Profit → Anyone who is living in my Property illegally और उससे जो मैं Compensation में लेता

Case no. 11 - Hoja. Kahlidhi  
\* Res-Judicata [Section 11]

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\* Consent or Compromise decree is not a decision by Court it is acceptance of something to which party has agreed. So principle of Res Judicata does not generally apply to Consent or Compromise decree but if Court comes to conclusion that party intended that consent decree should have effect of deciding question finally, principle of Res Judicata may apply to it.

\* Application for amending decrees are not considered suits and may be entertained, but if such an application is decided it may prevent subsequent applications and Res Judicata may apply.

## \* Important stages in proceedings of a Suit.

### - Presentation of plaint :- (Order 4)

- According to Order 4 of CPC, every Suit shall be instituted by presentation of plaint.

### - Service of Summons :- (Order 5)

- When Suit has been instituted then Summons is to be issued to defendant by Court.

### - Filing of written Statement :- (Order 8)

- Defendant shall within 30 days of Summons shall present a written Statement to his defence.
- Maximum period to present written Statement is 120 days.

### - Appearance of parties :- (Order 9)

- Parties should appear on date fixed by Summons.

### - Examination of parties :- (Order 10)

- Court examines the both parties to the Court.

### - Framing of issues :- (Order 14)

- The Court frames the issues according to Order 14.

- Hearings :- (Order 18)

- The Court hears the both parties according to order 18.

- Judgement :- (Order 20)

- The Court pronounces decree according to order 20.

\* Appearance of Parties and Consequences of non-appearance.

- Both appearance & non-appearance is an important issue to settle the dispute.

- When a suit is filed by plaintiff, a Summons is to be issued by Court to defendant and defendant shall file a written statement of his defence within 30 days to Court.

- After the due service of summons, the defendant does not appear and the plaintiff only appears. Then Court may proceed such defendant 'ex-parte'.

It means a suit will continue & the Court will decide suit on the basis of facts & evidence & documents of plaintiff, in the absence of defendant.

- If the plaintiff does not appear on that day, but the defendant appears the Court shall

dismiss the suit.

- If the defendant or the plaintiff may be gives sufficient reason for his non-appearance on the previous date of hearing, the Court may set aside ex-parte order or the order of dismissal of the suit.
- If the defendant is not served with summon, then the Court shall order second summon to be issued.
- If summon is served to defendant without sufficient time to appear, then Court will postpone hearing to further date.
- If summon was not served to defendant due to plaintiff's default, then Court shall order plaintiff to pay costs of adjournment.
- The period of limitation for filing an application to set aside ex-parte decree is 30 days from date of passing decree.

## \* Delivery of Summons by Court

- No Summons is to be issued when defendant has appeared at presentation of plaint and admitted Plaintiff's claim.
- Defendant may appear in person or by duly instructed pleader.
- Every Summons must be signed by the Judge or an authorised officer by the Court and it must have Sealed of Court
- Every Summons must be accompanied by a Copy of Plaint.
- Where no date is fixed for appearance of defendant, Court has no power to dismiss the Suit.
- Summons must be delivered to Person Summoned either personally, or to his agent or any adult male or female member of his family. Against Signature Obtain in the acknowledgement of the Services.
- If defendant avoids Service of Summons Court can Order Summons to be affixed in a conspicuous place at the Court and at defendant's last known residence or business location.

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- Summons for public officers can be sent to their head office. For partnership firms, summons can be served on one or more partners or at the principal place of business. If a partnership is dissolved, it must be served on each person liable.

\* Set-off Counter-claim and Equitable Set-off:-

\* Set-off :- (Order 8 Rule 6) Set-off is a reciprocal acquittal of debts between plaintiff and defendant. It has the effect of reducing the plaintiff's claim by the amount claimed by the defendant.

- It is applicable in suits for recovery of money.
- Sum is always ascertained.
- Defendant must present a written statement containing details of set-off at the first hearing of the suit. If the defendant misses this opportunity, then he may present set-off only with the court's permission.
- In short, set-off allows the defendant to reduce the plaintiff's claim by the amount the plaintiff owes the defendant, ensuring efficient resolution of mutual claims.

within same legal proceedings.

\* Counter-claim :- It is the claim made by defendant against the Plaintiff presented along with the defence of the same suit.

- Cause of Action for Counter-claim must accrue before the defendant has submitted the defence.
- Counter-claim is included in written Statement of defence.

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\* Equitable Set off :- An equitable Set-off defendant is permitted to claim Set-off in respect of unascertained sum of money where claim arises out of same transaction.

- This allows the defendant to balance out their debt against the Plaintiff claim without initiating the separate law suit.
- It helps in achieving Justice and fairness without unnecessary litigation.

→ Court Case

- In Ramchandra Arya V. Madan Singh  
Supreme Court of India held that decree passed against a minor or Lunatic without appointing a legal guardian is void and not merely voidable.  
↳ Mental

This means decree has no legal effect from the start.

\* Discovery and interrogatories and production of documents. :-

- If a party denies possessing a document via affidavit, other party cannot cross examine or contradict this claim as affidavit is considered conclusive.

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\* Appeal from original decree :-

→ No appeal lies in suits cognizable by Courts of Small Cause if amount or value of subject matter does not exceed 10 thousand Rupees.

\* CASE LAW :-

In Dalpat Kumar Vs Prahlad Singh, Court held that there are three main requirements while granting temporary injunctions,

- (i) there should be (prima facie) case.
- (ii) If injunction not granted it would lead to irreparable loss. → At first site.
- (iii) Balance of Convenience.

after Summary Procedure :-

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• CASE LAW :-

\* Uma Shankar Kamal Narain Vs. M.D Overseas Ltd.

Facts :-

• Defendant applied for leave to defend a Summary Suit filed against them. Delhi High Court found their defence grounds inadequate but granted Condition Leave to defend upon depositing a specified amount.

• Supreme Court laid down Principles for Summary Suits :

① Defendants with strong defence on merits should get unconditional leave to defend.

② Those with reasonable or fair defence should also receive unconditional leave

③ If defence is found to be illusory, <sup>false, bogus</sup> Sham or not genuine, defendant may be required to deposit amount claimed into Court or to provide other security.

• Judgement :-

• In this case Supreme Court directed the defendant to deposit rupees twenty lakhs (20,00,000) within 3 months into registry of High Court as a condition for being allowed to defend the suit.

(Saving of inherent power of Court.)

\* in Case k.k Velusamy v. N. Planisamy :-

• Section 151 has been explained by Supreme Court in Case of k.k Velusamy v. N. Planisamy.

1. Section 151 doesnot grant New Powers to Court but acknowledges their inherent discretionary Powers to ensure Justice and Prevents abuse of proces.

2. Court Can use this Power when CPC does not Cover a procedural aspect.

3. Court Cannot use this inherent Power if CPC already Provides Specific remedy or Procedure for a matter

4. Inherent Power Can be used when Code is silent.

5. Court has no Power to do that is Prohibited by Law.

6. Court must exercise this Powers Cautiously and when absolutely necessary.

## \* Commercial Courts Act, 2015

- It came into force on 23rd Oct. 2015.
- It provides for Constitution of Commercial Courts, Commercial Division and Commercial Appellate Division.

### • CASE LAW :-

in Case of Daimler Finance Services India Pvt. Ltd. v. Vikash Kumar.

- Commercial Court dismiss the petition on ground of no pecuniary Jurisdiction

### • Inherent Power Case Law :-

in Case of Padam Sen v. State of Uttar Pradesh,

- Court held that inherent power of Court are not defined anywhere,
- It shall be freely exercise its discretion of Court but it shall not be in conflict all against intension of Legislature.

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## \* In Case of Yashpal Jain Vs. Sushila devi.

- Supreme Court on 20 October 2023 highlights issue protracted litigation in Indian Judicial System.

- Supreme Court issued 12 directions first Speedy trial of Civil Cases.

↳ Ensuring timely and proper execution of Summon by district and taluka level Courts monitored by principal district Judge and Committees constituted by High Court.

↳ Written Statement must be filed within 30 days with reasons documented for any extensions

3. After Pleadings are Complete Party should appear in the Court for admissions and denial.

4. Court's Can encourage ADR, but if ADR is not chosen Court should frame the issues for determination within A week preferably in Open Court.

5. Trials dates should be in consultations with advocate.

6. Trial Judges should maintain diaries to manage Case loads effectively, avoiding Over Crowding and unnecessary adjournments

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7. Councils should be informed about provisions of Order 11 and 12 to narrow down disputes

8. Trials must adhere to provisions of Order Courts

17 proceedings with trials on day to day basis.

9. Court should enforce provisions for payment of cost to prevent adjournments intended to delay litigation

10. Oral Arguments must be heard immediately after conclusion of trial and judgement should be pronounced within stipulated time period.

11. Cases pending beyond 5 years should be forwarded monthly by presiding officers to principal district judge who will then forward them to review committee for further action.

12. Committees constituted by Chief Justices of respective state should meet every 2 months to direct corrective majors and constantly monitors old cases specially those pending for more than 5 years.

Max 8 points learn for exam

Prospective

3/July/24

## \* Summary Judgment :-

- Order 13A of the Commercial Act, 2015
- Commercial disputes : Can be disposed off by the Commercial Court established under the Act without complete trial.
- The application for Summary Judgment made by Party after service of Summons to defendant & before framing of issues.
- Summary judgement can be given if Court believes that :-
  - ① Plaintiff or defendant has no real chance of winning the case and,
  - ② There is no important reason to continue the case and hear oral evidence.