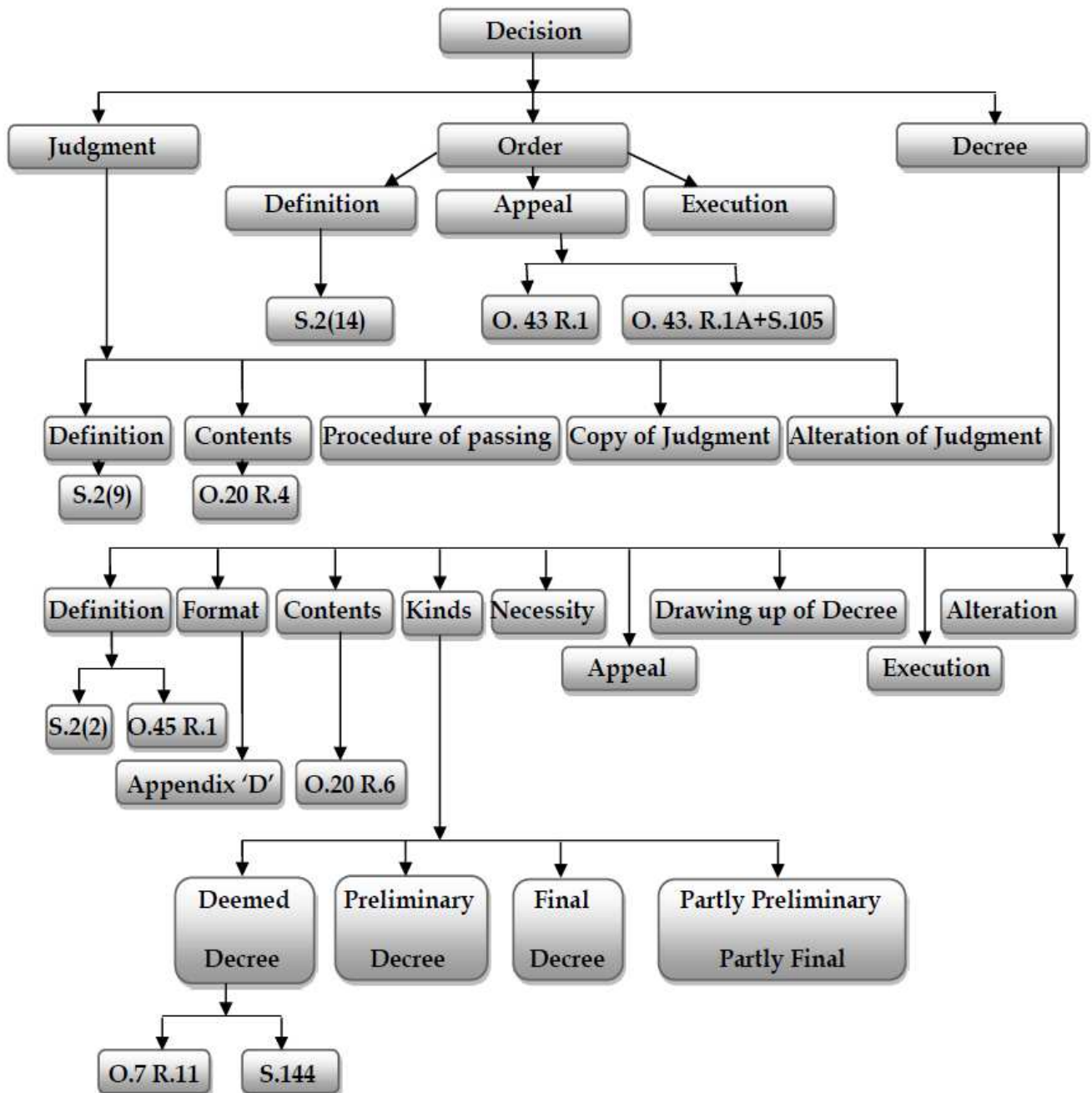


THE CODE OF CIVIL PROCEDURE  
 JUDGMENT, DECREE AND ORDER



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**Contact us at: 8929514009**

## DECREE (Section 2(2))

According to Section 2(2), C.P.C, 1908, the essential elements of decree are as follows:

- a) Adjudication
- b) Suit
- c) Rights of parties in controversy
- d) Formal expression
- e) Conclusive determination

### A. Adjudication

- Adjudication = judicial determination of the matter in dispute.
- Judicial determination must be by a court.
- For e.g., dismissal of a suit for default of appearance of parties or a decision on a matter of an administrative nature..... are not decrees

### B. Suit

- Not defined in the Code.
- **Hansraj Gupta v. Official Liquidators of the Dehradun-Mussoorie Electric Tramways Co. Ltd** - "a civil proceeding instituted by presentation of plaint".
- No Civil Suit = No Decree
- For e.g., rejection of an application for leave to sue in forma pauperis is not a decree, as there is no plaint till the application is granted.
- **Statutory suits:** Under certain enactments specific provisions have been made to treat applications as suits, they are called Statutory Suits. For e.g., Proceedings under:
  - o Indian Succession Act
  - o Hindu Marriage Act.
  - o The Land Acquisition Act.
  - o The Arbitration and Conciliation Act.

### Q. What is the difference between Court and Tribunal?

### C. Right of Parties in controversy

- Rights = Substantive rights and Nayab not the Procedural rights
- For e.g., an order for dismissal of a suit for default of appearance etc.

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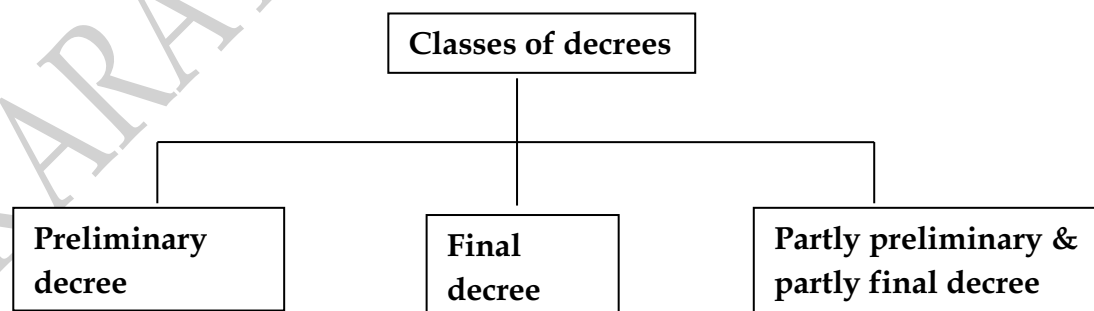
- Parties = Plaintiff and Defendant
- For e.g., in interpleader suit, the contesting defendants will be deemed to be parties to the suit.
- “Matters in controversy” refers to the subject matter of the suit with reference to which some relief is sought.
- For e.g., interlocutory orders on matters of procedure which do not decide the substantive rights of the parties are not decrees.

#### **D. Conclusive determination**

- The determination must be final and conclusive as regards the court which passes it.
- For e.g., an order dismissing an appeal summarily under Order 41 of the Code: Decree
- An order refusing an adjournment, or an order passed by the Appellate Court deciding some issues and remitting other issues to the trial court for determination under Order 41 Rule 23..... No Decrees

#### **E. Formal expression**

- All the requirements of form must be complied with.
- The formal expression must be deliberate and given in the manner provided by law.
- The decree follows the judgment and must be drawn up separately.



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**(1) Preliminary decree**

- Preliminary decree is only a stage in working out the rights of parties which are to be finally adjudicated by a final decree.
- O.20 R.12-16, 18 and O.34 R.2-5, 7-8 are the provisions under the Code which provides for passing of preliminary decree
- But the list is not exhaustive.
- Whether there can be more than one preliminary decree in the same suit.
- What will be the consequence if any aggrieved party does not appeal against the preliminary decree?

**(2) Final decree**

A decree may be said to be final in two ways:

- a) When within prescribed period no appeal is filed against the decree or it has been decided by the decree of the highest court.
  - b) When the decree so far as regards the court passing it, completely disposes of the suit.
- For e.g., a suit for the recovery of money, past mesne profit, future mesne profits at a particular rate, without directing any future proceeding.

**Q. Can there be more than one preliminary and one final decree?**

- **Gulusam Bivi v. Ahamadasa Rowther**, AIR 1919 Mad 998: The High Court of Madras referring to Rules 12 and 18 of Order 20 of the Code stated that “Neither rule contemplates more than one preliminary decree and one final decree in one suit. In fact, the Code nowhere contemplates more than one final decree in one suit. To have two final decree and to call for the first one a final decree will be really a misnomer as it will not be final”.
- **Kasi v. Ramanathan Chettiar**, (1947) 2 MLJ 523: The Madras High Court has held that there can be more than one preliminary decree and more than one final decree in a suit. Patanjali Sastri, J. stated that “The question is not whether the Code allows more than one preliminary decree or final decree to be made, but whether the Code contains a prohibition against the Court in a proper case passing more than one such decree.”

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- **Shankar v. Chandrarant**, (1995) 3 SCC 413: Supreme Court has clarified that there can be more than one final decree.

### **(3) Partly preliminary and partly final decree**

For e.g., A suit for possession of immovable property with mesne profits.

### **Deemed decree**

The term “deemed” is generally used to create a statutory fiction for the purpose of extending the meaning which it does not expressly cover.

An adjudication not fulfilling the requisite of Section 2(2) of the Code cannot be said to be a decree. But by legal fiction, certain orders and determinations are deemed to be decrees under the Code.

According to Section 2(2), C.P.C, deemed decree are as follows:

#### **1. Rejection of plaint [O.7 R.11]**

- Fresh suit not barred [O.7 R.13]
- Appealable
- Must be under the Code
- Returning of plaint or memorandum of appeal to be presented to the proper court is not a decree.
- See the substance not the form.

#### **2. Restitution [Section 144]**

- Section 144 deals with restitution and determination of a question under that section.
- It is included in the definition of decree for the purpose of giving a right of appeal.
- It is necessary that such order must have decided the rights of parties with regard to matters in controversy in proceedings under that section.
- It must be a final decision either granting a relief or refusing an application.

### • **Not a Decree**

1. Dismissal for default:
  - For e.g., default for non-appearance.
2. Appealable orders: [Section 104 & O.43 R.1]

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- For e.g., order returning a plaint for presentation to the proper court, order rejecting an application for an order to set aside an ex parte decree.

### **Similarities between Order and Decree**

- a) Both relate to matter in controversy
- b) Both are decision given by court
- c) Both are adjudication of court of law
- d) Both are the formal expression of a decision

### **Distinction between order and decree**

- a) A decree can only be passed in a suit which is commenced by the presentation of the plaint. An order may originate from a suit by the presentation of a plaint or may arise from a proceeding commenced by a petition or an application.
- b) A decree conclusively determines the rights of the parties with regard to all or any of the matters in controversy. An order may or may not finally determine such rights.
- c) A decree can be preliminary or final or partly preliminary and partly final. An order cannot be preliminary order.
- d) Generally, in every suit there can be only one decree except in certain suits. But in case of suit or proceeding, a number of orders may be passed.
- e) Every decree is appealable unless otherwise expressly provided. Every order is not appealable. Only those orders are appealable as specified under Section 104 and O.43 R.1.
- f) A Second appeal lies to High Court on certain grounds from the decree passed in first appeal. (Section 100). No Second appeal lies in the case of appealable orders.

### **Distinction between Judgment and Decree**

- 1) It is necessary in Judgment to give Statement by a JUDGE. It is not necessary for a judge to give statement in a decree.
- 2) It is not necessary that judgment should be a formal expression. A decree must be a formal expression of a decision.
- 3) A judgment contemplates a stage prior to the passing of a decree or an order. A decree follows the judgment.

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