

**CLASS- B.A.LL.B VIIIth SEMESTER**

**SUBJECT- ADMINISTRATIVE LAW**

**PAPER CODE- 801**

**DECLARATION SUIT**

**Section 34 of Specific Relief Act, 1963**

Any person entitled to any legal character or to any right as to any property, may institute a suit against any person denying, or interested in denying, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any relief.

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Person claiming declaratory relief must show that he is entitled

1. to a legal character, or
2. to a right as to property, and that
3. the defendant has denied or is interested to deny his title to such character or right
4. he has sought all reliefs in the suit

In the **State of M.P. vs. Khan Bahadur Bhiwandiwala and co.**<sup>1</sup> the court observed that in order to obtain the relief of declaration the plaintiff must establish that (1) the plaintiff was at the time of the suit entitled to any legal character or any right to any property (ii) the defendant had denied or was interested in denying the character or the title of the plaintiff, (iii) the declaration asked for was a declaration that the plaintiff was entitled to a legal character or to a right to property (iv) the

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<sup>1</sup> AIR 1971 MP 65

plaintiff was not in a position to claim a further relief than a bare declaration of his title. Since declaration is an equitable remedy the court still has discretion to grant or refuse the relief depending on the circumstances of each case.

### **Effect of Declaration- Section 35**

“A declaration made under this chapter is binding only on the parties to the suit, persons claiming through them respectively, and where any of the parties are trustees, on the persons for whom, if in existence at the date of the declaration, such parties would be trustees”

Thus a declaratory decree binds-

- (a) the parties to the suit;
- (b) persons claiming through the parties;
- (c) where any of the parties are trustees, on the persons for whom, if in existence at the date of the declaration, such parties would be trustees.

In **Dayawati v. Madan Lal Varma**<sup>2</sup>, it has been held that a suit was filed for declaration that the sale deed is null and void limitation arises under Art. 58 within three years from the date of accrual of cause of action. The suit having been filed more than 13 years after the execution of the sale deed is barred by limitation.

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<sup>2</sup> (AIR 2003 All. 276)