Subject :-

Equity and Special Relief Act

Topic :-

Declaration

Submitted To :-

Miss Amina Anam

Submitted By :-

Rashid Latif

Roll No :-

F22-1192

Semester :-

8th

Section :-

B

Declaration under Specific Relief Act

Introduction

Declaration is a vital equitable remedy provided under the Specific Relief Act, 1877. It enables a person to seek a judicial declaration regarding their legal status or rights. This remedy is preventive in nature and aims to remove uncertainty and insecurity concerning legal rights. It plays a crucial role in civil litigation by avoiding future disputes and unnecessary litigation.

Historical Background

The concept of declaration originates from English equity courts where justice was administered on principles of fairness. The Specific Relief Act, 1877 incorporated these equitable principles into statutory form in Pakistan and India. Declaration suits became an essential tool for individuals seeking recognition of their legal rights without necessarily claiming damages or possession.

Meaning of Declaration

A declaration is a formal pronouncement by a court determining the legal character or right of a person. It does not necessarily grant any further relief but merely confirms the legal position of the plaintiff.

Legal Provision (Section 42)

Section 42 of the Specific Relief Act, 1877 provides that any person entitled to any legal character or to any right as to property may institute a suit against any person denying or interested in denying such title. The court may, in its discretion, make a declaration that the plaintiff is entitled to such character or right.

Essential Elements of Declaration

1. Legal Character or Right: The plaintiff must possess a legal right or status. 2. Denial of Right: There must be an actual or threatened denial by the defendant. 3. Discretion of Court: The court has discretionary power to grant or refuse declaration. 4. Further Relief Rule: If further relief is available but not claimed, declaration may be refused.

Types of Declaration

simple Declaration: Where only the declaration of a right is sought. Declaration with Consequential Relief: Where declaration is accompanied by additional relief such as injunction or possession.

Important Case Laws

1. PLD 1966 SC 102: The Supreme Court held that declaration cannot be granted where the plaintiff fails to seek consequential relief. 2. PLD 2003 SC 494: It was observed that declaratory relief is discretionary and depends on the facts and circumstances of each case. 3. 2007 SCMR 85: The court emphasized that mere denial of title is sufficient to file a suit for declaration. 4. PLD 1991 SC 731: The Supreme Court ruled that declaration is not granted where it serves no practical purpose. 5. 2015 SCMR 928: It was held that courts must exercise discretion carefully while granting declaratory decrees.

Discretion of Court

The court has wide discretionary power in granting declaration. It may refuse declaration where the plaintiff has an alternative effective remedy or where the declaration would be useless.

Advantages of Declaration

Declaration helps in protecting legal rights, preventing future litigation, clarifying legal positions, and reducing uncertainty in legal relationships.

Limitations of Declaration

Declaration cannot be granted where no real controversy exists. It is also refused where the plaintiff seeks to misuse the legal process or where no useful purpose is served.

Conclusion

Declaration is an essential equitable remedy that ensures justice by recognizing and protecting legal rights. It serves as a preventive measure and promotes legal certainty in society.