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UNIT –I Concepts

Decree-holder

Section 2(3) “decree holder” means any person in whose favour a decree has been passed or an order capable of execution has been made;

The term decree holder under Section 2(3) of the Code, a decree holder means a person in whose favour a decree has been passed or an order capable of execution has been made. Under old Code even a transferee from decree-holder was included in the definition of the term decree-holder. But now a transferee from decree holder is not included within the purview of decree holder because of the omissions of the words “ and includes any person to who such decree or order is transferred” from the Code. The result is as state earlier a decree-holder is a person in whose favour a decree or order capable of execution is passed and whose name is on the records of the suit. The definition contemplates a person to be a decree-holder even though he is not a party to the suit. It is enough that an order capable of execution is made in his favour. In other words, a decree-holder need not be a party to the suit. If the decree confers upon someone, same enforceable right, he is entitled to execute the same.

Both the parties to the suit-plaintiff as well as defendant can be decree-holders. Thus, when a decree for specific performance is passed, such decree is capable of execution by either parties. A decree-holder is one whose name is inscribed on the decree and in whose favour such decree has been passed.

Judgment-debtor:

Section 2(10) Judgment-debtor means any person against whom a decree has been passed or an order capable of execution has been made;

In terms of Section 2(10) judgment debtor means any person against whom a decree has been passed or an order capable of execution is passed. The term judgment debtor does not include assignee of the judgment debtor. A person who is a party to the suit but against whom no decree has been passed is not a judgment debtor. The term judgment debtor does not include the legal representative of a deceased judgment debtor. A surety of a judgment debtor is not himself a judgment debtor. However, when a decree is passed against a surety he is a judgment debtor within the meaning of this section. A person who is a party to the suit but no decree has been passed against him, is not a judgment debtor.

Mesne Profits

The expression 'mesne profits' has the same meaning both under Section 2 (12) and Section 144 of the Code. It means those profits which the person in wrongful possession of property actually received or might with ordinary diligence have received there from together with interest there on but shall not include profits due to improvement by the person in wrongful possession. In Short it means those profits which a person is entitled from which he has been kept out by the defendants. Mesne profits includes interest, Salami, rent when sale is set aside.

The rationale behind awarding a decree for mesne profits to compensate the person who has not only been kept out of possession of the property but also deprived of enjoyment of his property even though he was entitled to the possession of such property.

Mesne profits can be awarded only in respect of wrongful possession of immovable property and not in regard to such property which cannot be deemed to be immovable property.

A decree for mesne profit cannot be awarded against a person who is not in the possession of the property at all. Same would be the case of a person who is in the rightful possession of the property. Such a person is not liable to mesne profits.

Thus, the wrongful possession of immovable property is an essential element for the concept of mesne profits and in a way the foundation for the award of mesne profits and there can be no claim if the possession of the defendant has not been wrongful.

The instance where a decree for mesne profits can be passed are:

- (i) It can be passed against a trespasser, both mala fide and bona fide; or
- (ii) Against a person against whom a decree for possession has been passed ; or
- (iii) Against a tenant holding over tenancy-at-will after a notice to quit has been served; or where after the expiry of the lease period an eviction decree is passed against tenant , appeal by tenant with prayer to stay eviction decree. Tenant will be liable to pay mesne profits for occupation of premises at prevalent rate and not contractual-rate.
- (iv) Against a mortgagor in possession of the mortgaged property after a decree for foreclosure has been passed against him; or
- (v) Against a tenant who refuses to vacate the premises after the termination of tenancy.