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Unit I Concepts

Topic- Restitution

Subject: The Code of Civil Procedure

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Restitution: The expression restitution has not been defined in the Code of Civil Procedure, but it is an act of restoring a thing to its proper owner. In other words restitution means restoring to a party the benefit which the other party has received under a decree subsequently held to be wrong.

“any civilized system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is to prevent a man from retaining the money of, or some benefit derived from, another which it is against conscience that he should keep.

Restitution is an ancient institution which has had an established position in the history of law and justice. It has its historical origin in the middle ages and can mainly be found in the Germanic Common laws. Restitution as “an act of restoring a thing to its proper owner. The word in its etymological sense

means restoring to a party on the modification variation or reversal of a decree or order, what has been lost to him in execution of decree or order of the court or in direct consequence of a decree or order.

The term has been defined in three senses

1. Return or restoration of some specific thing to its rightful owner or status;
2. Compensation for benefits derived from a wrong done to another;
3. Compensation or reparation for the loss caused to another;
4. The Code of Civil Procedure is concerned, though the term “restitution” has not been defined in the Code, it has got its statutory recognition in the section 144.

Section 144. Application for restitution-

(1) Where and in so far as a decree or an order is varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose, the Court which passed the decree or order shall, on the application of any party entitled to any benefit by way of restitution or otherwise cause such restitution to be made as will, so far as may be place the parties in the position which they would have occupied but for such decree or order or such part thereof as has been varied, reversed, set aside or modified ; and for this purpose, the Court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits which are properly consequential on such variation, reversal, setting aside or modification of the decree or order.

The expression –“Court which passed the decree or order has been varied or reversed in exercise of appellate or revisional jurisdiction, the Court of first instance.

Where the decree or order has been set aside by a separate suit the Court of first instance which passed such decree or order

Where the Court of first instance has ceased to exist or has ceased to have jurisdiction to execute it, the Court which if the suit wherein the decree or order was passed were instituted at the time of making the application for restitution under this section would have jurisdiction to try such suit.

Restitution is not a new concept and section 144 is merely recognition of the principle of equity and justice prevalent for a long time.

The objective behind the Section 144 is that no person should be allowed to enjoy a benefit derived pursuant to an order/judgment is ultimately finally not sustained.