

LAW RELATING TO SPECIFIC RELIEF

OBJECTIVES

- The law relating to specific relief in India is provided in the Specific Relief Act of 1963.
- The Specific Relief Act, 1963 was enacted to define and amend the law relating to certain kinds of specific relief.
- The expression "specific relief" means a relief in specie means it is a remedy which aims at the exact fulfillment of an obligation.

SCOPE OF THE ACT

- There are other kinds of specific remedy provided for by other enactments e.g. the Transfer of Property Act deals with the specific remedies available to a mortgagor or mortgagee; the Partnership Act deals with the specific remedies like dissolution and accounts as between partners.
- Under the Specific Relief Act, 1963, remedies have been divided as specific relief (Sections 5-35) and preventive relief (Sections 36-42). These are :
 - Recovering possession of property (Sections 5-8)
 - Specific performance of contracts (Sections 9-25)
 - Rectification of Instruments (Section 26)
 - Rescission of contracts (Sections 27-30)
 - Cancellation of Instruments (Section 31-33)
 - Declaratory decrees (Sections 34-35)
 - Injunctions (Sections 36-42).

WHO MAY SUE FOR SPECIFIC PERFORMANCE (Section 15)

- Says that the specific performance of a contract may be obtained by
 - Any party involved
 - The representative in interest or the principal, of any party involved provided that where the learning, skill, insolvency or any personal quality involved of such party or contract specifically excludes that such representative not to be involved so he is not entitled to specific performance of the contract
 - Where the contract is a settlement on marriage, or a compromise of doubtful rights between members of the same family, any person beneficially entitled thereunder
 - Where the contract has been entered into by tenant-for-life in due exercise of a power the remainder man
 - A reversioner in possession, where the agreement is a covenant entered into with his predecessor in title and the reversioner is entitled to the benefit of such covenant
 - A reversioner in remainder, where the agreement is such a covenant, and the reversioner is entitled to the benefit thereof and will sustain material injury by reason of its breach
 - When a company has entered into a contract and subsequently becomes amalgamated with another company the new company which arises out of the amalgamation
 - When the promoters of a company have before its incorporation, entered into a contract for the purpose of the company and such a contract is warranted by the terms of the incorporation of the company provided that the company has accepted the contract and has communicated such acceptance to the other party to the contract.

Generally, only a party to the contract can get its specific performance. The general principle is that in a suit for specific performance of a contract, all the parties to the contract should be parties to the suit and no one else.

Last minute revision notes (FQU)-

Contracts which can be specifically enforced (Section 10)

- Provides the cases in which specific performance of contract is enforceable, in the discretion of the Court, be enforced
 - When there exists no standard for ascertaining the actual damage caused by the non-performance of the act agreed to be done, or
 - When the act agreed to be done is such that compensation in money for its non-performance would not afford adequate relief.
- FURTHER analysis of above, the Court shall presume:
 - That the breach of a contract to transfer immovable property cannot be adequately relieved by compensation in money, and
 - That the breach of a contract to transfer movable property can be so relieved except in the two cases:
 - (a) Where the property is not an ordinary article of commerce or is of special value or interest to the plaintiff, or consists of goods which are not easily obtainable in the market, and
 - (b) Where the property is held by the defendant as the agent or trustee of the plaintiff.
- So, under this Section, contracts for sale of patent right, copy right, shares of a company which are not easily available, future property etc, are specifically enforceable.
- **CASE LAW-** In an agreement for sale of agricultural land, the respondent vendor wilfully avoided the execution of sale deed after receiving full sale consideration. **Rajasthan High Court** held that compensation by way of damages would not be substituted to execution of sale deed. The Court directed the respondents to enforce the specific performance of the agreement (**Ram Karan and others v. Govind Lal**). In a suit for specific performance of contract of sale of a house, a stranger to the contract cannot seek to be impleaded. That will change the very nature of the suit.

Last minute revision notes (FQU)-

Cases in which specific performance of contracts connected with trusts enforceable (Section 11)

- Says that ,specific performance of a contract may in the discretion of the Court, be enforced when the act agreed to be done is in the performance wholly or partly of a trust.
- But if a trustee enters into a contract in excess of his powers then such a contract cannot be specifically enforced.

EXAMPLE

- A contracts with B to paint a picture for B and B agrees to pay Rs. 1000 for the same. The picture is painted. "B" is entitled to have it delivered to him on payment or tender of Rs. 1,000.
- A is a trustee of land with power of lease it for 7 years. He enters into a contract with B to grant a lease of the land for 7 years, with a covenant to renew the lease at the expiry of the term. This contract cannot be specifically enforced.
- The directors of company have power to sell the concern with the sanction of a general meeting of the shareholders, Directors contract to sell it without any such sanction. This contract cannot be specifically enforced.

Specific performance of part of a contract(Section 12)

- Deals with specific performance of a part of a contract.
- Sub-section (1) lays down the general principle that, the Court shall not direct the specific performance of a part of a contract.

EXCEPTIONS to this general rule as follows:

- Sub-section 2 says that where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed bears only a small proportion to the whole in value and admits of compensation in money, the Court may, at the suit of the either party, direct the specific performance of so much of the contract as can be performed and award compensation in money for the deficiency.

EXAMPLE -A contracts to sell B a piece of land consisting of 100 bighas. It turns out that 98 bighas of the land belongs to A and the two remaining bighas to a stranger, who refuses to part with them. The two bighas are not necessary for the use or enjoyment of the 98 bighas, nor so important for such use or enjoyment that the loss of them may not be made in goods or in money. A may be directed at the suit of B to convey to B the 98 bighas and to make compensation to him. For not conveying the two remaining bighas; B may be directed at the suit of A, to pay to A, on receiving the conveyance and possession of the land, the stipulated purchase money less the sum awarded as compensation for the deficiency.

- Sub-section 3 lays down that where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed either
 - forms a considerable part of the whole, though admitting of compensation in money;
 - does not admit of compensation in money; he is not entitled to obtain a decree for specific performance; but the Court may, at the suit of the other party, direct the party in default to perform specifically so much of his part of the contract as he can perform,

EXAMPLE, A contracts to sell B a piece of land consisting of 100 bighas for Rs. 1,00,000. It turns out that only 50 bighas of land belong to A. 50 bighas are substantial part of the contract. A cannot demand specific performance of the contract but B can demand specific performance to get 50 bighas of land from A by paying the full consideration i.e. Rs. 1,00,000.

- Sub-section 4 lays down that when a part of a contract which taken by itself, can and ought to be specifically performed, stands on a separate and independent footing from another part of the same contract which cannot or ought not to be specifically performed, the Court may direct specific performance of the former part. For the purposes of this section, a party to the contract shall be deemed to be unable to perform the whole of his part of it, if a portion of its subject matter existing at the date of the contract has ceased to exist at the time of its performance.

Last minute revision notes (FQU)-

Section 13

- It lays down that where a person contracts to sell or let certain immovable property having no title or only an imperfect title, the purchaser or lessee has the following rights, namely:
 - If the vendor or lessor has, subsequent to the contract, acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest.
 - where the concurrence of other persons is necessary for validating the title, and they are bound to convey at the request of the vendor or lessor, the purchaser or lessee may compel him to procure such concurrence and when conveyance by other person is necessary to validate the title and they are bound to convey at the request of the vendor or lessor, the purchaser or lessee may compel him to procure such conveyance
 - where the vendor professes to sell unencumbered property but the property is, mortgaged for an amount not exceeding the purchase money and the vendor has in fact only a right to redeem it, the purchaser may compel him to redeem the mortgage and to obtain a valid discharge
 - where the vendor or lessor sues for specific performance of the contract and the suit is dismissed on the ground of his want of title, or imperfect title, the defendant has a right to a return of his deposit, interest and costs on the interest
- Sub-section (2) of Section 13 lays down that the aforesaid provisions of the sections shall also apply, as far as may be to contracts for or hire of movable property.

Last minute revision notes (FQU)-**Contracts which cannot be specifically enforced**(Section 14)

They are

- A contract for the non-performance of which compensation in money is an adequate relief;
- A contract which runs into such minute and numerous details that the Court cannot enforce specific performance of its material terms or which is dependant upon the personal qualification or volition of the parties or a contract from its nature is such that the Court cannot enforce specific performance
- A contract which is in its nature determinable
- A contract, the performance of which involves the performance of a continuous duty which the court cannot supervise.

EXAMPLE -

- A contracts to render personal service to B or A contracts to marry B or A contracts to employ B on personal service or A, an author, contracts with B, a publisher to complete a literary work. B cannot enforce specific performance of these contracts. Not only contract of personal service, but any contract requiring personal skill, knowledge or volition of the parties, for example, to marry, to paint a picture, to complete a literary work or to sing or act at a theatre will not be specifically enforced as such contracts would require a constant and general superintendence as cannot be conveniently undertaken by a Court of Justice.
- A and B contract to become partners, the contract is not specifying the duration of the proposed partnership. In such a case the contract cannot be specifically enforced since, either A and B might at once dissolve the partnership (Scott v. Rayment).
- Contracts of personal service cannot be specifically enforced. These contracts are based upon the personal relations of the parties. They require mutual trust and confidence of the parties. When the contract is for personal service, it requires some skill or talent or of some intellectual pursuit, and in that case a decree for its specific performance cannot be passed by the court. The Court will refuse specific performance of a contract if it is of such a nature that the Court cannot enforce its specific performance.

RECOVERY OF POSSESSION OF MOVABLE AND IMMOVABLE PROPERTY

- Sections 5 to 8 deal with recovery of possession of property.
- Property may either be (i) immovable, or (ii) movable.
- Sections 5 and 6 deal with recovery of possession of immovable property while Sections 7 and 8 deal with movable property.

Recovery of possession of specific immovable property

- According to Section 5, a person, entitled to the possession of specific immovable property may recover the same in the manner provided by the Code of Civil Procedure, 1908. The word "person" includes any company or association or body of individuals, whether incorporated or not. The action under Section 5 arises when claim is made on the basis of 'title'.

Recovery of possession of dispossessed immovable property

- The Act provides another relief under Section 6 for the recovery of possession of immovable property where the claim is based merely on "possession". Section 6 provides that if any person is dispossessed without his consent, of immovable property otherwise than in due course of Law, he or any person claiming through him may by suit recover possession thereof, notwithstanding any other title that may be set up in such suit.
There are two restrictions; no suit under Section 6 shall be brought
 - After the expiry of 6 months from the date of dispossession, or
 - Against the Government.
- Under Sub-section (3) no appeal or review is allowed of any order of decree passed under this Section.
- Sub-section (4) allows a person to file a suit to establish his title to such property and recover possession thereof.
- The object of these provisions is to discourage people from taking the law into their own hands.

Recovery of specific movable property

- A person is entitled to recover the possession of specific movable property in the manner provided by the Code of Civil Procedure, 1908. (Section 7)

Explanation of above

- A trustee may sue for possession of movable property of which he is a trustee. The term "trustee" includes every person holding property in trust.
- A special or temporary right to the present possession of movable property is sufficient to support a suit under this section.

EXAMPLE

- A bequeaths(transfers) land to B for his life, with remainder to C. A dies, B enters on the land, but C, without B's consent, obtains possession of the title deeds, B may recover them from C.
- A receives a letter addressed to him by B. B gets back the letter without A's consent. A has such a property therein as entitles him to recover it from B
- A deposits books and papers for safe custody with B. B losses them and C finds them, but refuses to deliver them to B when demanded. B may recover them from C, subject to C's right, if any, under Section 168 of the Indian Contract Act, 1872.
- A, a warehouse-keeper, is charged with the delivery of certain goods to Z, which B takes out of A's possession. A may sue B for the goods.

Last minute revision notes (FQU)-

Liability of person in possession, not as owner to deliver to persons entitled to immediate possession(Section 8)

- Says that any person having the possession or control of a particular article of movable property of which he is not the owner, may be compelled specifically, to deliver it to the person entitled to its immediate possession in any of the following four cases:
 - When the thing claimed is held by the defendant as the agent or trustee of the plaintiff
 - When the compensation in money would not afford the plaintiff adequate relief for the loss of the thing claimed
 - When it would be extremely difficult to ascertain the actual damage caused by its loss
 - When the possession of the thing claimed has been wrongfully transferred from the plaintiff.

Thus under this part of the Act, if a person, who has been dispossessed, does not bring a suit under Section 6 of the Specific Relief Act within 6 months, he may still bring a suit for recovery alleging any title to the property. But in this case, the suit may be defeated by the defendant by proving a better title.

EXAMPLE

- A, proceeding to Europe, leaves his furniture in charge of B, as his agent during his absence. B, without A's authority, pledges the furniture to C, and C knowing that B had no right to pledge the furniture, advertises it for sale. C may be compelled to deliver the furniture to "A" for he holds it as A's trustee.
- Z has got possession of an idol belonging to A's family, and of which A is the proper custodian. Z may be compelled to deliver the idol to A.

Last minute revision notes (FQU)-

PERSONS AGAINST WHOM SPECIFIC PERFORMANCE AVAILABLE (Section 15)

- lays down the parties who can bring an action for specific performance.

According to Section 19, specific performance of a contract may be enforced against

- Either party thereto,
- Any person claiming under him, by a title arising subsequently to the contract except a transferee for value who has paid his money in good faith and without notice of the original contract
- Any person claiming under a title which though prior to the contract, and known to the plaintiff, might have been displaced by the defendant, Examples to clause (c) are voluntary alienness, joint tenants claiming survivorship and remainder man.
- When a company has entered into a contract and subsequently becomes amalgamated with another company — the new company which arises out of the amalgamation,
- When the promoters of a company have before its incorporation entered into a contract, for the purpose of the company and such contract is warranted by the terms of the incorporation of the company; provided that the company has accepted the contract and communicated such acceptance to the other party to the contract.

Last minute revision notes (FQU)-

PERSONS AGAINST WHOM SPECIFIC PERFORMANCE CANNOT BE ENFORCED(Section 16)

Specific performance of a contract cannot be enforced in favour of a person —

- who would not be entitled to recover compensation for its breach, or
- who has become incapable of performing, or violates any essential term of the contract that on his part remains to be performed, or acts in fraud of the contract, or willfully acts at variance with, or in subversion of, the relation intended to be established by the contract, or
- who fails to prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him,
- A Court may not, therefore, grant to a plaintiff who has failed to prove that he has performed or has always been ready and willing to perform his part of the agreement, the specific performance whereof he seeks (Ram Awadh v. Achhaibar Dubey)

Section 17 sets out two more cases where specific performance cannot be enforced in favour of a vendor or lessor.

- It states that a contract to sell or let any immovable property cannot be specifically enforced in favour of vendor or lessor
 - who knowing himself not to have any title to the property, has contracted to sell or let the property
 - who, though he entered into the contract believing that he had a good title to the property, cannot at the time fixed by the parties or by the Court for the completion of the sale or letting, give the purchaser or lessee a title free from reasonable doubtSub-section (2) lays down that the provisions of Sub-section (1) shall also apply as far as may be, to contracts for the sale or hire of movable property.
- Explanation of above , a contract to sell or hire property cannot be specifically enforced in favour of a seller or lessor if he had no title to the property. A person who knows that he has no title to the property but still enters into a contract with regard to that property, he cannot have the remedy of specific performance. It is the duty of the vendor to make a reasonable, clear and marketable title about which there must not be any rational doubt.

EXAMPLE

- A without C's authority contracts to sell to B an estate which A knows to belong to C. A cannot enforce specific performance of this contract even though C is willing to confirm it.

Last minute revision notes (FQU)-

Non-enforcement except with variation

- According to Section 18, where a plaintiff seeks specific performance of a contract in writing, to which the defendant sets up a variation, the plaintiff cannot obtain the performance sought, except with the variation so set up in the following cases, namely:
 - where by fraud, mistake of fact or misrepresentation, the written contract of which performance is sought
 - where the object of the parties was to produce a certain legal result which the contract as framed is not calculated to produce,
 - Where the parties have subsequently to the execution of the contract, varied its terms.

EXAMPLE

- Contracts in writing to let a house to B for a certain term, at the rent of Rs. 100/- per month, putting it first into tenantable repair. The house turns out to be not worth repairing. So with B's consent, A

pulls it down and erects a new house in its place. B contracting orally to pay rent at Rs. 120/- per month. B then sues to enforce specific performance of the contract in writing. He cannot enforce it except with the variations made by the subsequent oral contract.

Last minute revision notes (FQU)-

DISCRETION OF THE COURT(Section 20)

- Lays down that the jurisdiction to decree specific performance is discretionary and the Court is not bound to grant such relief merely because it is lawful to do so, but the discretion of the Court is not arbitrary but based on sound and reasonable grounds guided by judicial principles and capable of correction by a Court of appeal.
- Sub-section (2) lays down that the following are cases in which the Court may properly exercise discretion not to decree specific performance —
 - where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant
 - where the performance of the contract would involve some hardship on the defendant which he did not foresee whereas its non-performance would involve no such hardship on the plaintiff
 - where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.
- Sub-section (3) lays down that Court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequences of a contract capable of specific performance.
- Sub-section (4) says that the court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the other party.
- Specific performance is a discretionary remedy.
- The Court is not bound to decree specific performance merely because it is lawful to do so.
- Courts can take into consideration the conduct of the parties and the circumstances attending its execution and may exercise a discretion in granting or withholding a decree for specific performance (Jethalal v. Bachu). However, this discretion is not an arbitrary discretion but one governed by sound principles of equity.

EXAMPLE

In Dennev-light the Court refused specific performance against a buyer where the land contracted to be purchased was wholly surrounded by land belonging to others over which there was no right of way.

Last minute revision notes (FQU)-

Court's power to award damages in certain cases(Section 21)

The Court is empowered to award compensation in certain cases.

- In a suit for specific performance of a contract, the plaintiff may also claim compensation for its breach, either in addition to, or in substitution of such performance,
- In any suit the Court decides that specific performance ought not to be granted but that there is a contract between the party which has been broken by the defendant and that the plaintiff is entitled to compensation for that breach, it shall award him such compensation accordingly.
- If in any such suit the Court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.
- In determining the amount of any compensation awarded under this section, the Court shall be guided by the principles specified in Section 73 of the Indian Contract Act, 1872.
- That no compensation shall be awarded under this Section unless the plaintiff has claimed such compensation in his plaint provided that where the plaintiff has not claimed any such compensation in the plaint, the Court shall at any stage at the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such compensation.

The conditions according to which damages may be awarded by the Court in addition to specific performance are:

- The Court decides that specific performance ought to be granted but, the justice of the case requires that not only specific performance but also some compensation for the breach of the contract should also be given to the plaintiff.
- In a suit for specific performance, the plaintiff may ask for damages in the alternative or in addition to specific performance of the contract. The Court's power to award damages in a suit for specific performance is laid down in Section 21.

The circumstances in which a court would award damages in lieu of specific performance:

- Specific performance could have been granted but in the circumstances of the case the Court in its discretion considers that it would be better to award damages instead of specific performance.
- Though specific performance is refused, plaintiff is entitled to compensation for breach of the contract.

Last minute revision notes (FQU)-

RECTIFICATION OF INSTRUMENTS

- Section 26 of the Specific Relief Act, 1963 contains the law as to rectification of instruments.
- Rectification means correction of an error in an instrument in order to give effect to the real intention of the parties.
- Where a contract reduced into writing in pursuance of a previous agreement, fails to express the real intention of the parties, the court will rectify the instrument in accordance with their true intention.
- In such a case, if such instrument is enforced, one party will suffer and if it is rescinded altogether both the parties will suffer but if it is rectified and enforced neither party will suffer.
- The principle on which the courts act in correcting instruments is that the parties are to be placed in the same position as that in which they would have stood if no error had been committed (Sudha Singh v. Munshi Ram).

- Thus rectification would be granted where, though there was a consensus between the parties as to the contract through fraud of one of the parties, the instrument did not correctly express the real intention.
- Sub-section (2) makes it clear that rectification would not be allowed so as to prejudice rights acquired by third party in good faith and for value.
- For example, A intending to sell to B his house and one of three godowns adjacent to it, executes a conveyance prepared by B in which through B's fraud, all three godowns are included. Of the two godowns which were fraudulently included, B gives one to C and let the other to D for a rent, neither C nor D having any knowledge of the fraud. The conveyance may, as against B and C, be rectified so as to exclude from it the godown given to C, but it cannot be rectified so as to affect D's lease.
- The only limitation placed on the Courts discretion is that the rectification can be done without prejudice to the rights acquired by third persons in good faith and for value.

Last minute revision notes (FQU)-

RESCISSION OF CONTRACTS

- Section 27 deals with Rescission of Contracts. 'Rescission' means putting an end to a contract which is still operative and making it null and void ab initio. It does not apply to void contracts.
- Section 27 states the principle upon which rescission can be ordered. A person suing for rescission cannot, in the alternative sue for specific performance but a person suing for specific performance can sue for rescission.
- Sub-section (1) lays down that any person interested in a contract may sue to have it rescinded, and such rescission may be adjudged by the Court in any of the following cases, namely – (a) where the contract is voidable or terminable by the plaintiff; (b) where the contract is unlawful for causes not apparent on its face and the defendant is more to blame than the plaintiff.
- Sub-section (2) lays down that notwithstanding anything contained in Sub-section (1), the Court may refuse to rescind the contract –
 - (a) where the plaintiff has expressly or impliedly ratified the contract; or
 - (b) where, owing to the change of circumstances which has taken place since the making of the contract (not being due to any act of the defendant himself), the parties cannot be substantially restored to the position in which they stood when the contract was made; or
 - (c) where third-parties have, during the subsistence of the contract, acquired rights in good faith without notice and for value; or
 - (d) where only a part of the contract is sought to be rescinded and such part is not severable from the rest of the contract. The explanation provides that in this Section, 'contract' in relation to the territories to which the Transfer of Property Act, 1882, does not extend, means a contract in writing.

Doctrine of part performance

The doctrine of part performance has been applied in India to the contracts of transfer of immovable property which though required to be registered have not been registered. The doctrine has been given statutory recognition in 1929 adding two new sections to Section 53A of the Transfer of Property Act and Section 27A to the Specific Relief Act, and a proviso to Section 49 of the Indian Registration Act.

Last minute revision notes (FQU)-

CANCELLATION OF INSTRUMENTS

- Sub-section (1) of Section 31 provides that any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable, and the Court may in its discretion, so adjudge it and order it to be delivered up and cancelled.
- Sub-section (2) lays down that if the instrument has been registered under the Indian Registration Act, 1908, the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.
- Relief of cancellation under Section 31 would be available when
 - (i) An instrument is void or voidable against the plaintiff
 - (ii) Where the plaintiff may apprehend serious injury if the instrument is left outstanding and
 - (iii) Where it is proper under the circumstances of the case to grant the relief.

Example

- (a) A, the owner of a ship, by fraudulently representing her to be seaworthy, induces B, an underwriter, to insure her. B may obtain the cancellation of the policy.
- Section 32 lays down that where an instrument is evidence of different rights or different obligations, the Court may, in proper case, cancel it in part and allow it to stand for the residue. The Court is not bound to cancel the whole of the instrument but may, in its discretion, when necessary, cancel it in part and allow rest of it to stand.
- A executes a deed of mortgage in favour of B. A gets back the deed from B by fraud and endorses on it a receipt for Rs. 1,200 purporting to be signed by B. B's signature is forged. B is entitled to have the endorsement cancelled, leaving the deed to stand in other respects (Ram Chandar v. Ganga Saran).

Last minute revision notes (FQU)-

DECLARATORY DECREES

- A declaratory decree is a decree whereby any right as to any property or the legal character of a person is judicially ascertained.
- Section 34 lays down that 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 to deny, 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 further 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.
- One of the objects of the legislature was to allow the right to enjoy the property rightfully belonging to the plaintiff. In case of declaratory decree, neither specific performance nor any compensation is awarded but only a declaration of the rights of the parties is made without any consequential relief being granted.
- The declaration does not confer any new rights upon the plaintiff but it merely declares what he had before.
- The plaintiff must be a person entitled to any legal character or to any right as to any property
- The defendant must be a person denying or interested to deny the plaintiff's title to such legal character or right
- The declaration issued for must be a declaration that the plaintiff is entitled to a legal character or to a right to property
- Where the plaintiff is able to seek further relief than a mere declaration he must seek such relief.

Example:

A is properly in possession of certain lands. The inhabitants of a neighbouring village claim a right of way across the land. A may use for a declaration that they are not entitled to the right so claimed.

The relief by way of declaration is purely discretionary. Instances of legal characters are —

Divorce on the ground of impotency

Legal character by marriage

Status of an adopted son

Priest of temple

Effect of Declaration

Section 35 lays down that a declaration 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.

Such a declaration is not judgement in rem and as such it cannot bind strangers.

Last minute revision notes (FQU)-

PREVENTIVE RELIEFS

- Specific Relief Act, 1963 grants specific relief called Preventive Relief i.e., preventing a party from doing that which he is under an obligation not to do.
- Preventive relief is granted at the discretion of the court by way of an injunction.
- An injunction is a specific order of the Court forbidding the commission of a wrong threatened or the continuance of a wrongful course of action already begun, or in some cases (when it is called a "mandatory injunction") commanding active restitution of the former state of things.
- **Lord Halsbury defines injunction as 'a judicial process whereby a party is ordered to refrain from doing or to do a particular act or thing'.**
- *The main difference between an injunction and specific performance is that the remedy in case of an injunction is generally directed to prevent the violation of a negative act and therefore deals not only with contracts but also with torts and many other subjects of purely equitable one, whereas specific performance is directed to compelling performance of an active duty.*

Characteristics of an injunction

An injunction has three characteristic features;

- It is a judicial process.
- The object of this judicial process is to restrain or to prevent.
- The act restrained or prevented is a wrongful act.

If the wrongful act has already taken place, the injunction prevents its repetition. If it is merely threatened, the threat is prevented from being executed.

Temporary and perpetual injunctions

Section 36 states that preventive relief is granted at the discretion of the Court by injunction, temporary or perpetual.

- The temporary injunctions are granted under Civil Procedure Code while perpetual injunctions are dealt within Section 38 of the Specific Relief Act.
- The temporary injunction may be dissolved at any time under Civil Procedure Code by the defendant showing specific cause to the satisfaction of the Court against the order granting the injunction or it automatically terminate with the disposal of the suit.
- The general principles governing temporary and permanent injunctions are mainly the same except that a temporary injunction is granted before the plaintiff establishes his case at the trial.

- Section 37(1) lays down that temporary injunctions are such as are to continue until a specified time or until the further order of the Court and they may be granted at any stage of a suit and are regulated by the Code of Civil Procedure, 1908.
- Sub-section (2) states that a perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit; the defendant is thereby perpetually enjoined from the assertion of right or from the commission of an act, which would be contrary to the rights of the Plaintiff. It may be pointed out that:
- Section 38 deals with granting of perpetual injunction.
 - Sub-section (1) states a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour.
 - Sub-section (2) provides that when any such obligation arises from contract, the Court shall be guided by the rules and provisions
 - Sub-section (3) lays down that when the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of property, the Court may grant a perpetual injunction in the following cases, namely:
 - (a) where the defendant is a trustee of the property for the plaintiff
 - (b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused by the invasion
 - (c) where the invasion is such that compensation in money would not afford adequate relief;
 - (d) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

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Difference between the remedies of specific performance and injunction

- Specific performance is decreed to compel the performance of an active duty, while injunction is decreed to prevent the violation of a negative duty.
- Normally, the SP deals with contracts, while the injunction with torts and other subjects of equitable nature.
- If a contract is positive in its nature, it calls for the relief of specific performance, on the other hand, if it is negative in its nature, it calls for relief of injunction.

Mandatory injunction

- Section 39 dealing with mandatory injunctions states that when to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the Court is capable of enforcing, the Court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts. For example, A builds a house with eaves projecting over B's land, B may sue for an injunction to pull down so much of the eaves as so projecting over his land.
- According to Section 40, the plaintiff in a suit for perpetual injunction under Section 38 or mandatory injunction under Section 39, may claim damages either in addition to, or in substitution for such injunction and the Court, may, if it thinks fit, award such damages.

Injunction when refused

- Section 41 gives a list of cases in which a perpetual injunction cannot be granted. It says that an injunction cannot be granted —
 - To restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;
 - To restrain any person from instituting or prosecuting any proceeding in a Court not subordinate to that from which the injunction is sought;

- To restrain any person from applying to any legislative body;
- To restrain any person from instituting or prosecuting any proceeding in a criminal matter
- To prevent the breach of a contract the performance of which would not be specifically enforced;
- To prevent on the ground of nuisance, an act of which it is not reasonably clear that it will be nuisance;
- To prevent a continuing breach in which the plaintiff has acquiesced;
- When equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;
- When the conduct of the plaintiff or his agents has been such as to disentitle him to the assistance of the Court;
- When the plaintiff has no interest in the matter.

It may be noted that this relief also is a discretionary remedy. It may be refused even if the case is not covered by Section 41.

Injunction to perform negative agreement

- Section 42 provides that where a contract comprises an affirmative agreement to do a certain act, coupled with negative agreement, express or implied, not to do a certain act, the circumstance that the Court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement, provided that the plaintiff has not failed to perform the contract so far as it is binding on him.

This Section is based upon an English case viz., Lumley v. Wagner (21) L.J. CH. 898. In this case Miss W, a singer agreed to sing at L's theatre for a certain period and not to sing anywhere else during that period. Afterwards, she entered into a contract to sing at another theatre and refused to perform her contract with L. The Court refused to enforce her positive agreement to sing at L's theatre (by specific performance since it is based on personal volition) but granted an injunction restraining her from singing at any other theatre thereby preventing breach of the negative part of the agreement though the positive part of it, being a contract for the personal service, could not be specifically enforced.

Conditions necessary for the applicability of this Section are:

- The contract should comprise of two agreements, one affirmative and another negative.
- Both the agreements must be divisible.
- The negative agreement must relate to a specific act.
- The Court should be unable to compel specific performance of the affirmative agreement.
- The plaintiff must not have failed to perform the contract, so far as it is binding upon him.
- A negative stipulation may be express or implied.
- An express negative stipulation in one where the negative stipulation is put expressly.

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