

Specific Relief Act, 1963 its role in Civil Litigations

By

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Structure of SRA1963 (act No. 47 of 63)

- Specific Relief Act is hereinafter called in short as "SRA"
- SRA is younger brother of CPC, the difference of age between them initially was 18 years in its previous birth, as CPC is of 1859 while SRA is of 1877
- But in the present birth the difference of age is about 55 years, as presently CPC is of 1908 and SRA is of 1963.
- It is an act to define and amend the law relating to **certain kinds of specific relief.**
- Three parts namely à
 - Part 1st PRELIMINARY
 - PART 2nd SPECIFIC RELIEF
 - PART 3rd PREVENTIVE RELIEF

Topic for Discussion – Specific Reliefs

- Under SRA specific reliefs as follows –
- 1st Type à RECOVERING POSSESSION OF PROPERTY
– Section 5 to 8
- 2nd Type à SPECIFIC PERFORMANCE OF
CONTRACTS – section 9 to 25
 - Contract which can be specifically enforced – S.10-13
 - Contract which can not be specifically enforced –S.14-19
 - Discretion & Power of Court – S.20-25
- 3rd Type à RECTIFICATION OF INSTRUMENTS –
Section - 26
- 4th Type à RESCISSION OF CONTRACTS – S. 27 to 30
- 5th Type à CANCELLATION OF INSTRUMENTS -
S. 31 to 33
- 6th Type à DECLARATORY DECREES – S. 34 & 35
- 7th Type à Preventive Relief – S.36-42

Most important provisions of SRA – S 3 & 4

- S. 3 à Except as otherwise providing herein , nothing in this act shall be deemed –
- (a) to deprive any person of any right to relief, other than specific performance , which he may have under any contract, or
- (b) to affect the operation of the Indian Registration Act, 1908(16 of 1908),on documents
- S.4 à Specific Relief to be granted only to enforcing individual civil rights and not for the mere purpose of enforcing a penal law.

Saving Clause of S.3 SRA Vs S.4 of CPC

- Sec. 4 of CPC à Specific provisions in S.4 of CPC means that particular provisions in code must clearly indicate in itself and not merely by implication that special law in question is to be affected -- **AIR 2016 SC 1213 (5 JJ. Bench Decision (Pankajakshi Vs Chandrika)**

AIR 2016 SC 1717 à Govt. of A.P. through Principal Secretary with
A.P. Industrial Infrastructure Corporation Vs Pratap Karan

- Sec. 34 S.P.Act à Suit for ratification of Revenue Records by incorporating the name of as owner & possession of the suit land – maintainable
- Constitutional Bench Decision à AIR 2003 SC 2588
Sardar Amarjit Singh Kalra Vs Pramod Gupta à para 27
of the judgment à Law of procedure are meant for
regulate effectively , assist and aid object of doing
substantial and real justice and not to foreclose even an
adjudication on merits of substantial rights of citizen
under personal property and other laws
- ON point of O22R2 à if right to sue survives no
abatement

Bibi Mehrun Nissa Vs Md. Ehsanul Haque

- Section 20 à Suit for specific performance of contract – based on an agreement two years before institution of suit – Eviction suit drawn against vendee in the same year in which agreement was allegedly entered into parties – No date or sitting disclosed in plaint where under negotiation were finalized – Vital inconsistency seen amongst evidence of witnesses over preparation of document as well as conduct of parties

AIR 2016 SC 1438

Dheeraj Developers Pvt. Ltd. Vs Kailash Agarwal

- S. 16 à Suit for specific performance of contract à Decreeing suit only on the basis of finding of genuineness of agreement to sell not proper – Several other aspect including aspect of readiness & willingness are also require consideration.

Section 31 – Declaratory Suit

- AIR 1968 SC 956
 - AIR 2006 SC3608
 - Art. 59/ 96 of Limitation + Sec. 111 of IEA
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- If possession then prayer for declaration only
 - If no possession then only declaratory prayer shall not solve the problem.

- Whether a decision reported in AIR 1954 SC 75 delivered in a suit for specific performance of contract on the basis of Specific Relief Act, 1877 is applicable for the suit for specific performance of contract on the basis of Specific Relief Act, 1963 or it need fresh consideration because facts and law both differs in old and new cases ?

Type 1st à RECOVERING POSSESSION OF PROPERTY[s. 5 – 8]

- S. 5 à Recovery of specific immovable property
- S.6 à Suit by persons dispossessed of immovable property
- S.7 à Recovery of specific movable property
- S.8 à Liability of person in possession, not as owner, to deliver to persons entitled to Immediate possession

Statement of S. 5, 6

- A person entitled to the possession of specific immovable property may recover it in the manner provided by Code of Civil Procedure, 1908 .- 5
- 6: Suit by persons dispossessed of immovable property.
- **(1) 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.**
- **(2) No suit under this section shall be brought-**
- **(a) after the expiry of six months from the date of dispossession; or (b) against the Government.**
- **(3) No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.**
- **(4) Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.**

Discussion on the said section 6

- Whether question of Title can be considered under section 6 of the SRA?
- The question of title or nature of possession is not considered in a case filed u/s 6 (i.e. 9 of old act) of the Act –
- Lallu Yaswant Singh Vs Rao Jagdish Singh – 1968 SC 620 –
- Brief Fact → Tenancy Right of tenant has been extinguished – Land lord (Rao Jagdish Singh) dispossessed the tenant Lallu Yaswant & ors and prevented them from the some portion of agricultural land on which they were doing cultivation – Suit filed by Lallu Yaswant u/s9 of old act (now sec. 6 of the act) maintainable.
- M.C. Chockalingam Vs V. Manickavasagam – 1973 SC 104
- S. 6 has relevancy only to wrongful act of a person if it be by landlord in recovering possession of the property without recourse to law but does not at the same time declare that the possession of the evicted person is a lawful possession.

Discussion on the said section 6

- U/S 6 of SRA a civil court has to come to the conclusion as to whether the plaintiff was or was not in possession within six months prior to the date of the suit and whether the plaintiff has or has not been dispossessed within that period. It would not be necessary for the civil court to go into the right and wrong of an order u/s 145 Cr.P.C. – AIR 1971 SC 149 Atmaram Vs Prabhawatibai
- SRA has no application to proceedings u/s 145 Cr.P.C., therefore finding that applicants should have come for order restoration of possession u/s 145(6) Cr.P.C., within 6 months from the date of dispossession u/s 6 of SRA was held not tenable. – AIR 2009 SC 2075

AIR2009SC2075 – Sakuntla Devi Case

- one Dayanand Prasad, filed an application under Section 145 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') being case No. 455 (M)/86, inter alia, for restoration of possession in plot No. 3580 under Khata No. 725 measuring 14 katha 4 dhurs on the ground that he had been forcibly dispossessed therefrom by the respondent No. 1 herein within two months of such petition being filed.
- Both the parties in the said proceeding filed their respective responses showing cause and adduced evidence, whereupon the Executive Magistrate by his order dated 7. 10. 1994 declared the possession of the appellants over the land in dispute.
- The learned magistrate, while passing his order on 7. 10. 1994 under Section 145 (4) of the Code, declared as follows :- ". Therefore, on careful appreciation of the evidence adduced by the witnesses of both the parties and on perusal of the papers produced by both the sides, I have reached the conclusion that the facts stated by the first Party are true and, therefore, possession of the First Party since before the dispute is hereby declared. It is further declared that the first party is entitled to the possession over the disputed land until evicted in due course of law. "

AIR2009SC2075 – Sakuntla Devi Case

- It was argued that Section 4 of the Specific relief Act makes it quite clear that the provisions of the Act would be available only with regard to civil matters and not to criminal proceedings. He urged that by misapplying the provisions of the specific Relief Act, the High Court relied on section 6 thereof, which specifies a period of six months within which a person wrongfully dispossessed could file a suit for restoration of possession which was to be disposed of in a summary manner.
- It was argued that u/s 145(6) order for restoration of possession can be passed by the Executive Magistrate but it has to be implemented within 3 years as per Section 137 of the limitation act, 1963.
- Hon'ble S.C. decided this case on the point of limitation.

Discussion on the said section 6

- Whether this section has genesis of adverse possession ?
- Possession by itself is an indication of title. A person in possession against all person except the true owner – AIR 1965 All 529
- Test of adverse possession – Dipnarayan Rai Vs Pundeo Rai - AIR 1947 pat 99
- Adverse possession can be claimed against the true owner and none other than true owner. – 1986 (i) Civil L.J. 624 pg. 627 [Union of India Vs Syed Sah Nasir Hussain]
- Adverse possession designates a possession in opposition to the true title and real owner and implies that it commences in wrong and is maintained against right.
- Possessory Title → If a possessory owner is wrongfully deprived of the thing by a person other than the true owner he can have right to recover it. In such situation defendant can not set up a defence his own possessory title. – AIR 1996 Ker 179 pf. 181 Kuttan Narayana Vs Thomman Mathaji
- Suit based on possessory title - AIR 1929 Pat 444 Ram ji Singh Vs Jholi Singh & on the same point AIR 1927 Pat 1 Bodha Ganderi Vs Ashoke Singh
- Nair service Society Ltd. Vs K.C. Alexandar AIR 1968 SC 1165 – VVI decision

Suit Based on Possessory Title Vs Section 6 SRA Vs Section 9 of SRA

- Suit based on possessory title differs from suit filed u/s 6 of SRA within 6 months of dispossession .
- The suit filed u/s 6 of the act can not be resisted on the ground of title, so that the suit can be maintained even against the true owner if he has dispossessed the plaintiff otherwise than in due course of law.
- A suit on possessory title can be filed within 12 years of dispossession (Art. 64 of the limitation act) and the plaintiff can maintain it against any person who does not have a better title - AIR 1970 Bom 405 [Mariumbi Aslam Khan Vs Vithoba Yeswanta]
- A suit based on promissory title, the court has to look that the plaintiff is entitled to a decree only whether the plaintiff's possession was sufficient proof of his title and or not whereas , in a suit u/s 9 of the act court has to look into whether the plaintiff was in possession within 6 months prior to the date of institution of suit or not. – AIR 1974 Pat 186 [Atra Devi Vs Ram Swaroop]

In a suit for injunction alternative relief about decree of possession and title

- In a suit for injunction if plaintiff is in possession of the suit and during the pendency of the suit he has been dispossessed then alternative relief already demanded in the suit is permissible.

7:Recovery of specific movable property.

- A person entitled to the possession of specific movable property may recover it, in the manner provided by Code of Civil Procedure, 1908 .
- Explanation 1 : A trustee may sue under this section for the possession of movable property to the beneficial interest in which the person for whom he is trustee is entitled.
- Explanation 2: A special or temporary right to the present possession of movable property is sufficient to support a suit under this section.

8: Liability of person in possession, not as owner, to deliver to persons entitled to Immediate possession.

- 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 cases :-
- (a) when the thing claimed is held by the defendant as the agent or trustee of the plaintiff;
- (b) when compensation in money would not afford the plaintiff adequate relief for the loss of the thing claimed;
- (c) when it would be extremely difficult to ascertain the actual damage caused by its loss;
- (d) when the possession of the thing claimed has been wrongfully transferred from the plaintiff.

8: Liability of person in possession, not as owner, to deliver to persons entitled to Immediate possession.

- 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 cases :-
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- Explanation : Unless and until the contrary is proved, the Court shall, in respect of any article of movable property claimed under clause (b) or clause (c) of this section, presume-
 - (a) that compensation in money would not afford the plaintiff adequate relief for the loss of the thing claimed, or as the case may be;
 - (b) that it would be extremely difficult to ascertain the actual damage caused by its loss.

2nd Type à SPECIFIC PERFORMANCE OF CONTRACTS [s.]

- S. 9 à Defence respecting suits for relief based on contract
- S.10 à Cases in which specific performance of contract enforceable
- S.11 à Cases in which specific performance of contracts connected with trusts enforceable
- S. 12 à Specific performance of part of contract
- S.13 à Rights of purchaser or lessee against person with no title or imperfect title
- S. 14 à Contracts not specifically enforceable
- S. 15 à Who may obtain specific performance
- S. 16 à Personal bars to relief

9: Defence respecting suits for relief based on contract.

- Except as otherwise provided herein,
 - where any relief is claimed under this Chapter in respect of a contract,
 - the person against whom the relief is claimed
 - may plead by way of defence
 - any ground which is available to him under any law relating to contracts.
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- Suit may be filed for ascertainment of the Price mentioned during enforcement of contract --AIR 1966 Ker 311 (Nair Service Society Vs R.M.Pilai)
 - Suit for alternative promise/ obligation → when a promise is made in an alternative form and one alternative is impossible to perform. – 1990(2)Civil LJ281 – Smt. Mayawati Vs SmtKaushalya Devi

Important Judgment on Sec. 9

- AIR 2011 SUPREME COURT 3351 "Citadel Fine Pharmaceuticals (A) v. Ramaniyam Real Estates P. Ltd. (B)"
- Facts → A owner of land entered in to an agreement for sale of a piece of urban property having area 66 cent for a consideration of Rs.1,00,00,000/- with B. 19 Cent of the said land was under urban ceiling which is known to both parties B was taken responsibility to get permission for sale, 1 year was the time prescribed. But when time was failed, fact A returned money to B but he refused to accept and file suit for specific performance of contract.
- S.9 of SRA read with Section 55 of Contract Act held that in Suit for specific performance of agreement to sell - Time is essence of contract, as defence - Availability - Contract for sale of urban Land - Express stipulation in contract that time is of essence - Consequences of non-performance within time also stipulated - Obligation to get permission for sale of part of suit land declared surplus placed on purchaser - Purchaser unable to get permission within time - Vendor had very right to cancel contract and raise defence that time was of essence –suit dismissed

Important Judgment on Sec. 9

- Para 31 of the said judgment à The settled law seems to be that in a case for specific performance of contract relating to immovable property time is not normally of the essence. However, this is not an absolute proposition and it has several exceptions.
- 45. In *K. S. Vidyanadam and others v. Vairavan*, reported in (1997) 3 SCC 1 : (AIR 1997 SC 1751 : 1997 AIR SCW 956) this Court explained how discretion is to be exercised by the Court before granting specific performance.
- 46. A Constitution Bench judgment of this Court in *Chand Rani (Smt.) (Dead) by L.Rs. v. Kamal Rani (Smt.) (Dead) by L.Rs.*, reported in (1993) 1 SCC 519 : (AIR 1993 SC 1742 : 1993 AIR SCW 1371) has been discussed in this case.

Important Judgment on Sec. 9

- The Constitution Bench judgment of this Court in Chand Rani (Smt.) (Dead) by L.Rs. v. Kamal Rani (Smt.) (Dead) by L.Rs., reported in (1993) 1 SCC 519 : (AIR 1993 SC 1742 : 1993 AIR SCW 1371) has decided same question, whether time was of essence of the contract ?
- The Constitution Bench of this Court while dealing with this question referred to another decision of this Court in the case of M/s. Hind Construction Contractors by its sole proprietor Bhika Mulchand Jain (Dead) by L.Rs. v. State of Maharashtra, reported in (1979) 2 SCC 70 : (AIR 1979 SC 720).
- Constitutional Bench formulated the proposition that even where parties have expressly provided time to be of the essence of the contract, such a stipulation will have to be read along with other terms of the contract.

Important Judgment on Sec. 9

- **AIR 1970 SUPREME COURT 846 "Somnath Berman v. Dr. S. P. Raju"**
- S.9 SRA - POSSESSION - Action for ejectment against trespasser - Prior possession of plaintiff is sufficient title notwithstanding that suit is brought more than six months after dispossession.
- Section 9 is no way inconsistent with the position that as against a wrong doer, prior possession of the plaintiff, in an action of ejectment, is sufficient title, even if the suit be brought more than six months after the act of dispossession complained of and that the wrong doer cannot successfully resist the suit by showing that the title right to possession are in a third person. Therefore a person having possessory title can get a declaration that he was the owner of the land in suit and an injunction restraining the defendant from interfering with his possession.

Important Judgment on Sec. 9

- **AIR 1970 SC846 "Somnath Berman v. Dr. S. P. Raju"**
- Facts → The plaintiff's case is that he purchased this land from one Jamsheer Khan with other plots in the vicinity under two sale deeds marked Exhs. P-2 and P-3; thereafter he was in possession of the same; when he was in possession, the D -2 trespassed into the said property and took possession of the same, thereafter he illegally sold the same to the 1st defendant.
- The defendants denied the plaintiff's allegations. They denied that the plaintiff had any title to the suit property or that he was in possession of the same at any time. On the other hand they pleaded that the second defendant who had acquired title to the suit property by adverse possession had sold the same to the 1st defendant in the year 1946.

10: Cases in which specific performance of contract enforceable.

- Except as otherwise provided in this Chapter, the specific performance of any contract may, in the discretion of the court, be enforced-
- (a) when there exists no standard for ascertaining actual damage caused by the non-performance of the act agreed to be done; or
- (b) when the act agreed to be done is such that compensation in money for its non-performance would not afford adequate relief.

10: Cases in which specific performance of contract enforceable. – Presumption under SRA

- Explanation: Unless and until the contrary is proved, *the court shall presume-*
- (i) that the breach of a contract to transfer immovable property cannot be adequately relieved by compensation in money; and
- (ii) that the breach of a contract to transfer movable property can be so relieved except in the following cases:-
- (a) where the property is not an ordinary article of commerce, or
- Where property is of special value or
- Where property is of interest to the plaintiff, or
- Where property consists of goods which are not easily obtainable in the market;
- (b) where the property is held by the defendant as the agent
- Where property is held by defendant as trustee of the plaintiff.

Important Judgment on Sec. 10

- No right is acquired in the highest bidder till bid is accepted.
- Suit filed by the highest bidder of auction sale Suit filed by highest bidder with declaratory relief that auction in his favour is final and binding and mere non acceptance of bid amount can not deprived him from his status as Owner/allottee for the said property. –
- Suit not maintainable
- U.P. Awas & Vikas Parishad Vs Om Prakash Sharma
- (2013) 5 SCC 182

Important Judgment on Sec. 10

- AIR 2007 SC 2628 "Banshilal Soni v. Kastoor Chand Begani"
- Specific performance - Agreement to sell - Earnest money paid to defendant - Non execution of sale deed - Defendant taking two different stands –
- in reply to notice it was stated to be case of refund of earnest money,
- in written statement amount was said to be paid by way of repayment of loan -
- Finding of High Court that plaintiff had abandoned claim of specific performance by voluntarily accepting money towards part payment of loan - Would not normally be sustainable

Important Judgment on Sec. 10

- AIR 2005 SC 1420 "Sargunam v. Chidambaram"
- Specific Relief Act (47 of 1963) , S.10 , S.20(2)(b) - AGREEMENT TO SELL - Agreement to sell - Specific performance - Vendor, defendant No.1 agreed to sell suit premises free from all encumbrances and also to deliver title deeds to plaintiff - Received amount from plaintiff - But failed to carry out his obligations under agreement –
- Plaintiff issued legal notice to vendor to perform his obligations - On coming to know purported sale of premises by him to his tenant,
- defendant No.2, filed suit for specific performance - Defendant No. 2 failed to prove that she was bona fide purchaser of suit premises for value without notice - Evidence on record including evidence of two attesting witnesses examined on behalf of defendants shows that signatures of vendor on agreement to sell in favour of defendant No. 2, do not tally with signatures on agreement to sell in favour of plaintiff –
- Held, agreement to sell in favour of defendant No. 2 was concocted document

11: Cases in which specific performance of contracts connected with trusts enforceable.

- (1) Except as otherwise provided in this Act, 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.
- (2) A contract made by a trustee in excess of his powers or in breach of trust cannot be specifically enforced.

12:Specific performance of part of contract.

- (1) Except as otherwise hereinafter provided in this section, the court shall not direct the specific performance of a part of a contract.
- (2) 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 either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency.

12: Specific performance of part of contract.

- (3) 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-
 - (a) forms a considerable part of the whole, though admitting of compensation in money; or
 - (b) 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, if the other party-
- (i) in a case falling under clause (a), pays or has paid the agreed consideration for the whole of the contract reduced by the consideration for the part which must be left unperformed and in a case falling under clause (b), pays or has paid the consideration for the whole of the contract without any abatement; and
- (ii) in either case, relinquishes all claims to the performance of the remaining part of the contract and all right to compensation, either for the deficiency or for the loss or damage sustained by him through the default of the defendant.

12: Specific performance of part of contract.

- (4) 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.
- Explanation : For the purposes of this section, a party to a 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.

13: Rights of purchaser or lessee against person with no title or imperfect title.

- (1) Where a person contracts to sell or let certain immovable property having no title or only an imperfect title, the purchaser or lessee (subject to the other provisions of this Chapter), has the following rights, namely :-
 - (a) if the vendor or lessor has subsequently 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;
 - (b) where the concurrence of other persons is necessary for validating the title, and they are bound to concur at the request of the vendor or lessor, the purchaser or lessee may compel him to procure such concurrence, and when a conveyance by other persons 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;

13: Rights of purchaser or lessee against person with no title or imperfect title.

- (c) 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, and, where necessary, also a conveyance from the mortgagee;
- (d) 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, if any, with interest thereon, to his costs of the suit, and to a lien for such deposit, interest and costs on the interest, if any, of the vendor or lessor in the property which is the subject-matter of the contract.
- (2) The provisions of sub-section (1) shall also apply, as far as may be, to contracts for the sale or hire of movable property.

S.14 à Contracts not specifically enforceable.

- (1) The following **contracts cannot be specifically enforced**, namely :-
- (a) a contract for the non-performance of which compensation in money is an adequate relief;
- (b) a contract which runs into such minute or numerous details or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the court cannot enforce specific performance of its material terms;
- (c) a contract which is in its nature determinable;
- (d) a contract the performance of which involves the performance of a continuous duty which the court cannot supervise.

S.14 à Contracts not specifically enforceable.

- (2) Save as provided by Arbitration Act, 1940 , no contract to refer present or future differences to arbitration shall be specifically enforced;
- but if any person who has made such a contract (other than an arbitration agreement to which the provisions of the said Act apply) and
- has refused to perform it, sues in respect of any subject which he has contracted to refer, the *existence of such contract shall bar the suit.*

S.14 à Contracts not specifically enforceable.

- (3) Notwithstanding anything contained in clause (a) or clause (c) or clause (d) of sub-section (1), the court may enforce specific performance in the following cases:-
- (a) where the suit is for the enforcement of a contract,-
- (i) to execute a mortgage or furnish any other security for securing the repayment of any loan which the borrower is not willing to repay at once: Provided that where only a part of the loan has been advanced the lender is willing to advance the remaining part of the loan in terms of the contract; or '
- (ii) to take up and pay for any debentures; of a company;

S.14 à Contracts not specifically enforceable.

- (3) Notwithstanding anything contained in clause (a) or clause (c) or clause (d) of sub-section (1), the court may enforce specific performance in the following cases:-
 - (b) where the suit is for,-
 - (i) the execution of a formal deed of partnership, the parties having commenced to carry on the business of the partnership; or
 - (ii) the purchase of a share of a partner in a firm;

S.14 à Contracts not specifically enforceable.

- (3) Notwithstanding anything contained in clause (a) or clause (c) or clause (d) of sub-section (1), the court may enforce specific performance in the following cases:-
- (c) where the suit is for the enforcement of a contract for the construction of any building or the execution of any other work on land : Provided that the following conditions are fulfilled, namely:-
 - (i) the building or other work is described in the contract in terms sufficiently precise to enable the court to determine the exact nature of the building or work;
 - (ii) the plaintiff has a substantial interest in the performance of the contract and the interest is of such a nature that compensation in money for non-performance of the contract is not an adequate relief; and
 - (iii) the defendant has, in pursuance of the contract, obtained possession of the whole or any part of the land on which the building is to be constructed or other work is to be executed.

S.15

- 15:Who may obtain specific performance. Except as otherwise provided by this Chapter, the specific performance of a contract may be obtained by-
- (a) any party thereto;
- (b) the representative in interest or the principal, of any party thereto : Provided that where the learning, skill, solvency or any personal quality of such party is a material ingredient in the contract, or where the contract provides that his interest shall not be assigned, his representative in interest or his principal shall not be entitled to specific performance of the contract, unless such party has already performed his part of the contract, or the performance thereof by his representative in interest, or his principal, has been accepted by the other party;

S.15

- 15:Who may obtain specific performance. Except as otherwise provided by this Chapter, the specific performance of a contract may be obtained by-
- (c) 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;
- (d) where the contract has been entered into by a tenant for life in due exercise of a power, the remainderman;

S.15

- 15: Who may obtain specific performance. Except as otherwise provided by this Chapter, the specific performance of a contract may be obtained by-
- (e) 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;
- (f) 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;
- (g) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;

S.15

- 15: Who may obtain specific performance. Except as otherwise provided by this Chapter, the specific performance of a contract may be obtained by-
- (h) when the promoters of a company have, before its incorporation, entered into a contract for the purposes of the company, and such contract is warranted by the terms of the incorporation, the company: Provided that the company has accepted the contract and has communicated such acceptance to the other party to the contract.

S.16

- 16: Personal bars to relief. Specific performance of a contract cannot be enforced in favour of a person-
- (a) who would not be entitled to recover compensation for its breach; or
- (b) 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 wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or
- (c) who fails to aver and 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, other than terms the performance of which has been prevented or waived by the defendant.

S.16

- 16:Personal bars to relief. Specific performance of a contract cannot be enforced in favour of a person-
- Explanation:
- For the purposes of clause (c),-
- (i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;
- (ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction.

S.16

- 16:Personal bars to relief.
- Specific performance of a contract cannot be enforced in favour of a person-
- (a) who would not be entitled to recover compensation for its breach; or
- (b) 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 wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or

S.16

- 16:Personal bars to relief.
- Specific performance of a contract cannot be enforced in favour of a person-
- (c) who fails to aver and 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, other than terms the performance of which has been prevented or waived by the defendant. Explanation:
- For the purposes of clause (c),- (i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court; (ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction.

S.16

- 16:Personal bars to relief.
- Specific performance of a contract cannot be enforced in favour of a person-
- Explanation: For the purposes of clause (c),-
- (i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;
- (ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction.

2015 (1) PLJR (SC) 7

Zarina Siddiqui Vs A, Ramalingam @ R
Amamathan

- Section 16 & 20 --> In suit for specific performance of contract the conduct of parties are the essence
- If parties must come with clean hand and without suppression of material facts.
- Plaintiff must not be denied SR only on account of phenomenal increase of price during the pendency of litigation.

2015(1) PLJR SC 219

Rathnavati & anr Vs Kavita Ganashamdas

- 1st Suit for permanent injunction
- 2nd Suit for specific performance of contract
- Both suits based on same pleadings
- Both suits based on same cause of action
- Plea of bar not available under O2R2 CPC – 2nd suit not barred
- Limitation Act section 54 à When date is not fixed for performance of the agreement limitation of 3 years to file suit would begin when plaintiff has refused the performance of agreement.

2nd Type à SPECIFIC PERFORMANCE OF CONTRACTS [s.]

- S. 17 à Contract to sell or let property by one who has no title, not specifically enforceable
- S. 18 à Non-enforcement except with variation
- S. 19 à Relief against parties and persons claiming under them by subsequent title
- S. 20 à Discretion as to decreeing specific performance
- S. 21 Power to award compensation in certain cases
- S. 22 à Power to grant relief for possession, partition, refund of earnest money, etc
- S. 23 à Liquidation of damages not a bar to specific performance
- S. 24 à Bar of suit for compensation for breach after dismissal of suit for specific performance
- S. 25 à Application of preceding sections to certain awards and testamentary directions to execute settlements–

S. 25 of the SRA

- 25:Application of preceding sections to certain awards and testamentary directions to execute settlements.
- The provisions of this Chapter as to contracts shall apply to awards to which Arbitration Act, 1940 , does not apply and to directions in a will or codicil to execute a particular settlement.

3rd Type à RECTIFICATION OF INSTRUMENTS [s.]

- 26: When instrument may be rectified.
- (1) When, through fraud or a mutual mistake of the parties, a contract or other instrument in writing [not being the articles of association of a company to which the Companies Act, 1956, applies] does not express their real intention, then-
 - (a) either party or his representative in interest may institute a suit to have the instrument rectified; or
 - (b) the plaintiff may, in any suit in which any right arising under the instrument is in issue, claim in his pleading that the instrument be rectified; or
 - (c) a defendant in any such suit as is referred to in clause (b), may, in addition to any other defence open to him, ask for rectification of the instrument.

3rd Type à RECTIFICATION OF INSTRUMENTS [s.]

- 26: When instrument may be rectified.
- (2) If, in any suit in which a contract or other instrument is sought to be rectified under subsection (1), the court finds that
 - the instrument, through fraud or mistake, does not express the real intention of the parties,
 - the court may, in its discretion, direct rectification of the instrument so as to express that intention, so far as this can be done without prejudice to rights acquired by third persons in good faith and for value.

3rd Type à RECTIFICATION OF INSTRUMENTS [s.]

- 26: When instrument may be rectified.
- (3) A contract in writing may first be rectified, and then if the party claiming rectification has so prayed in his pleading and the court thinks fit, may be specifically enforced.
- (4) No relief for the rectification of an instrument shall be granted to any party under this section unless it has been specifically claimed : Provided that where a party has not claimed any such relief in his pleading, the court shall, at any stage of the proceeding, allow him to amend the pleading on such terms as may be just for including such claim.

4th Type à RESCISSION OF CONTRACTS [s.27-30]

- S. 27 à When rescission may be adjudged or refused
- S. 28 à Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed
- S. 29 à Alternative prayer for rescission in suit for specific performance
- S. 30 à Court may require parties rescinding to do equity

5th Type à CANCELLATION OF INSTRUMENTS [s.31-33]

- S. 31 à When cancellation may be ordered
- S. 32 à What instruments may be partially cancelled
- S. 33 à Power to require benefit to be restored or compensation to be made when instrument is cancelled or is successfully resisted as being void or voidable

6th Type → DECLARATORY DECREES [s.34-35]

- S.34 → Discretion of court as to declaration of status or right
- S. 35 → Effect of declaration

- 34:Discretion of court as to declaration of status or right. 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. Explanation : A trustee of property is a "person interested to deny" a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee.

Specific Relief Act

- It is Equitable Relief recognized by law.
- What is fair, reasonable & Right ?
- What was recognized, regulated and enforced by the courts of Equity ?
- It is specific performance of equitable relief.
- Fundamental Rule of equity → The equitable relief shall always to be granted to a person who comes before the court with clean hands.
- The party who makes false allegations does not come with clean hands and is not entitled to equitable relief.

Applicability

- It dealt relating to followings disputes
 - Specific performance of Contract
 - Rescission of Contract
 - Rectification of Instruments
 - Cancellation of Instruments
 - Declaratory Decrees
 - Injunction – temporary & permanent
-
- The provisions of Specific relief act, 1963 would not apply to the contract which are governed by the Statutory provisions – AIR 2006 SC 2751 UOI Vs

Designing of this act

- Total Sections 44 divided into 8 chapters & 3 parts
 - Part I
 - Short Title -, extent & Commencement
 - Part II
 - Ch. I à Recovering Possession Of Property
 - Ch. II à Specific Performance Of Contract
 - Cn.III à Rectification Of Instruments
 - Ch. IV à Rescission Of Contract
 - Ch. V à Cancellation of Instruments
 - ChVI à Declaratory Decree
- Part III
- Ch. VII à Injunctions Generally
 - Ch. VIII à Perpetual Injunctions

Definition under this act – S.2

- (a) "obligation" includes every duty enforceable by law
- (b) "settlement" means an instrument (other than a will or codicil as defined by Succession Act, 1925 , whereby the destination or devolution of successive interests movable or immovable property is disposed of or is agreed to be disposed of;
- (c) "trust" has the same meaning as in S.3 of the Indian Trusts Act, 1882, and includes an obligation in the nature of a trust within the meaning of Chapter 9 of that Act;
- (d) "trustee" includes every person holding property in trust;
- (e) all other words and expressions used herein but not defined, and defined in Contract Act, 1872 , have the meanings respectively assigned to them in that Act.

Def. of Trust as u/s 3 of Trust Act

- 3: Interpretation clause-"trust" → A "trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner:
- "author of the trust": the person who reposes or declares the confidence is called the "author of the trust"
- "trustee": the person who accepts the confidence is called the "trustee"
- "beneficiary": the person for whose benefit the confidence is accepted is called the "beneficiary"
- "trust property": the subject-matter of the trust is called "trust-property" or "trust-money"
- "beneficial interest": the "beneficial interest" or "interest" of the beneficiary is his right against the trustee as owner of the trust-property

Def. of Trust as u/s 3 of Trust Act

- 3: Interpretation clause-
- "instrument of trust": the instrument, if any, by which the trust is declared is called the "instrument of trust" :
- "breach of trust": a breach of any duty imposed on a trustee, as such, by any law for the time being in force, is called a "breach of trust".
- "registered": & "notice": and in this Act, unless there be something repugnant in the subject or context, "registered" means registered under the law for the registration of documents for the time being in force a person is said to have "notice" of a fact either when he actually knows that fact or when, but for wilful abstention from inquiry or gross negligence, he would have known it, or when information of the fact is given to or obtained by his
- agent, under the circumstances mentioned in the S.229 Indian Contract Act, 1872, ; and all expressions used herein and defined in the Indian Contract Act, 1872 (expressions defined in Act 9 of 1872), shall be deemed to have the meanings respectively attributed to them by that Act.

Saving Clause of SPA

- 3:Savings. Except as otherwise provided herein, nothing in this Act shall be deemed-
- (a) to deprive any person of any right to relief, other than specific performance, which he may have under any contract; or
- (b) to affect the operation of Registration Act, 1908 , on documents. 1967

4: Specific relief only for enforcing individual civil rights and not for enforcing penal laws

- . Specific relief can be granted only for the purpose of enforcing individual civil rights and not for the mere purpose of enforcing a penal law.

Specific Relief Act not applicable when there is statutory relief available under any law

- AIR 2006 SUPREME COURT 2751 "Union of India v. M/s. Millenium Mumbai Broadcast Pvt. Ltd."
- Specific Relief Act (47 of 1963) , S.1 , S.14(1)(c)
- - APPLICABILITY OF AN ACT - CONTRACT -
Applicability - Statutory contracts - Provisions of Specific Relief Act would not apply.
(Para 33)

5:Recovery of specific immovable property

- . A person entitled to the possession of specific immovable property may recover it in the manner provided by Code of Civil Procedure, 1908 .

Plaintiff purchased suit property from real owner, defendant is in possession under agreement for sale, suit filed by defendant for specific performance of agreement
– Who has better title plaintiff or defendant?

- AIR 2009 SC (Supp) 2011 "P. H. Dayanand v. S. Venugopal Naidu"
- P. H. Dayanand v. S. Venugopal Naidu and Ors.
- Specific Relief Act (47 of 1963) , S.5 - POSSESSION - AGREEMENT TO SELL - DECREE - Suit for possession - Plaintiff purchasing suit property from real owner - Defendant in possession of suit property - Refusing to vacate - Claiming to be in lawful possession under agreement for sale - Suit filed by defendant for specific performance of agreement admittedly withdrawn - Defendant cannot be said to have better title than plaintiff - Plaintiffs suit liable to be decreed.
(Paras 8 , 12 , 13)

Facts of this case

- The plaintiff-respondent No. 1 purchased the suit property in the year 1991 from one T. Bayarappa. Apparently plaintiff-respondent No.2 was in permissive possession thereof. As despite request he refused to vacate the licensed premises, the suit was filed. On the other hand, the defence of the appellant before us was that he had been in lawful possession of the property in his own right.
- Appellant, inter alia, contended that the original owner of the property, viz., Shri T. Bayrappa had entered into an agreement of sale with one Shri Krishnamurthy. A Power of Attorney was also executed in his favour. The said Krishnamurthy has assigned his rights under an agreement in favour of defendant No. 1, (late Shri G. Srinivas) and delivered possession of the property to him. Shri Srinivas raised constructions thereupon. Shri Krishnamurthy allegedly as an agent of T. Bayrappa assigned his rights in favour of G. Srinivas on 10.5.1997.
- He filed a suit for specific performance of contract. It was furthermore claimed that Shri Srinivasan entered into an agreement with the petitioner to convey the property for a total consideration of Rs.9,60,000/-.
- A joint written statement was filed in the said suit by the contesting defendants. Admittedly, however, the said suit for specific performance of contract was withdrawn. An additional written statement was filed by the petitioner claiming his title under the aforementioned agreement entered into by and between him and the defendant No.1.

6: Suit by persons dispossessed of immovable property.

- (1) 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.
- (2) No suit under this section shall be brought-
- (a) after the expiry of six months from the date of dispossession; or
- (b) against the Government.

6: Suit by persons dispossessed of immovable property.

- (3) No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.
- (4) Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.

AIR 2012 SUPREME COURT 1727 "Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria"

- (B) Specific Relief Act (47 of 1963) , S.6 SPECIFIC RELIEF - PLEADINGS
- Suit for possession - By person other than title holder - Nature of pleadings and details to be given therein enumerated.
- In an action for recovery of possession of immovable property, or for protecting possession thereof, upon the legal title to the property being established, the possession or occupation of the property by a person other than the holder of the legal title will be presumed to have been under and in subordination to the legal title, and it will be for the person resisting a claim for recovery of possession or claiming a right to continue in possession, to establish that he has such a right. To put it differently, wherever pleadings and documents establish title to a particular property and possession is in question, it will be for the person in possession to give sufficiently detailed pleadings, particulars and documents to support his claim in order to continue in possession. It would be imperative that one who claims possession must give the following below :

AIR 2012 SUPREME COURT 1727 "Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria"

- (B) Specific Relief Act (47 of 1963) , S.6 SPECIFIC RELIEF - (a)
Who is or are the owner or owners of the property;
- (b) Title of the property;
- (c) Who is in possession of the tile documents;
- (d) Identity of the claimant or claimants to possession;
- (e) The date of entry into possession;
- (f) How he came into possession whether he purchased the property or inherited or got the same in gift or by any other method;
- (g) In case he purchased the property, what is the consideration; if he has taken it on rent, how much is the rent, license fee or lease amount;
- (h) If taken on rent, license fee or lease then insist on rent deed, license deed or lease deed;
- (i) Who are the persons in possession/occupation or otherwise living with him, in what capacity; as family members, friends or servants etc.,
- (j) Subsequent conduct, i.e., any event which might have extinguished his entitlement to possession or caused shift therein; and
- (k) Basis of his claim not to deliver possession but continue in possession.

AIR 2002 SUPREME COURT 335 "Ashok Nagar Welfare Association v. R. K. Sharma"

- (B) Constitution of India , Art.136 - Specific Relief Act (47 of 1963) , S.6(3) - SPECIAL LEAVE APPEAL - Special leave to appeal - Grant of - Suit under S. 6 of Specific Relief Act for possession - Decreed ex parte by single Judge of High Court in original jurisdiction - Division Bench in intra-Court appeal setting aside ex parte decree on finding that ex parte decree had been obtained by manipulating regard to show due service-Special leave against order setting aside ex parte decree not granted - Despite fact that pleas as to non- maintainability of appeal before Division Bench in view of bar contained in S. 6(3) of Specific Relief Act could not be said to be without substance. (Para 13)
- (C) Specific Relief Act (47 of 1963) , S.6(3) - Delhi High Court Act (26 of 1966) , S.10 - APPEAL - Bar to appeal - Plea that bar is absolute - Cannot be got over by invoking provisions of intra-Court appeal - Is not without substance - Question about correctness of contrary view taken in AIR 1998 SC 424 : 1997 AIR SCW 4415 to larger Bench in circumstances of case. (Para 11)

7:Recovery of specific movable property

- . A person entitled to the possession of specific movable property may recover it, in the manner provided by Code of Civil Procedure, 1908 .
- Explanation 1 : A trustee may sue under this section for the possession of movable property to the beneficial interest in which the person for whom he is trustee is entitled.
- Explanation 2: A special or temporary right to the present possession of movable property is sufficient to support a suit under this section.

AIR 1999 SUPREME COURT 1999 "State of Gujarat v. Biharilal"

- Specific Relief Act (47 of 1963) , S.7 - FOREST - AGREEMENT - Agreement entered into by 'B' with occupants of land to cut and remove trees for period of two years only –
- Refusal by forest authorities to grant him permission to cut trees - Period of agreement expiring - Period not extended by occupants nor fresh agreement entered –
- Civil suit by 'B' for declaration of his rights to trees and for permission to cut and remove them - Cannot be decreed –
- Rights of 'B' under agreement having come to an end on expiry of term of 2 years decreeing the suit would amount to granting 'B' higher rights than what was available under agreement.

8:Liability of person in possession, not as owner, to deliver to persons entitled to Immediate possession

- . 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 cases :-
 - (a) when the thing claimed is held by the defendant as the agent or trustee of the plaintiff;
 - (b) when compensation in money would not afford the plaintiff adequate relief for the loss of the thing claimed;
 - (c) when it would be extremely difficult to ascertain the actual damage caused by its loss;

8: Liability of person in possession, not as owner, to deliver to persons entitled to Immediate possession

- . 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 cases :-
 - (d) when the possession of the thing claimed has been wrongfully transferred from the plaintiff. Explanation : Unless and until the contrary is proved, the Court shall, in respect of any article of movable property claimed under clause (b) or clause (c) of this section, presume- (a) that compensation in money would not afford the plaintiff adequate relief for the loss of the thing claimed, or as the case may be; (b) that it would be extremely difficult to ascertain the actual damage caused by its loss.

9:Defence respecting suits for relief based on contract

- . Except as otherwise provided herein, where any relief is claimed under this Chapter in respect of a contract, the person against whom the relief is claimed may plead by way of defence any ground which is available to him under any law relating to contracts.

AIR 2011 SUPREME COURT 3351 "

- M/s. Citadel Fine Pharmaceuticals v. M/s. Ramaniyam Real Estates P. Ltd. and Anr. WITH
- M/s. Ramaniyam Real Estates P. Ltd. and Anr. v. M/s. Citadel Fine Pharmaceuticals and Anr.
- (A) Specific Relief Act (47 of 1963) , S.16 , S.9 - Contract Act (9 of 1872) , S.55 - CONTRACT - AGREEMENT TO SELL - LAND - DECREE - Suit for specific performance of agreement to sell - Time is essence of contract, as defence - Availability - Contract for sale of urban Land - Express stipulation in contract that time is of essence - Consequences of non-performance within time also stipulated - Obligation to get permission for sale of part of suit land declared surplus placed on purchaser - Purchaser unable to get permission within time - Vendor had very right to cancel contract and raise defence that time was of essence - Decree for specific performance could not be granted.

10: Cases in which specific performance of contract enforceable

- Cases in which Specific Performance of Contract enforceable except
- (a) when there exists no standard for ascertaining actual damage caused by the non-performance of the act agreed to be done; or
- (b) when the act agreed to be done is such that compensation in money for its non-performance would not afford adequate relief.
- Explanation: Unless and until the contrary is proved, the court shall presume-
- (i) that the breach of a contract to transfer immovable property cannot be adequately relieved by compensation in money; and
- (ii) that the breach of a contract to transfer movable property can be so relieved except in the following 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;
- (b) where the property is held by the defendant as the agent or trustee of the plaintiff.

- AIR 2007 SUPREME COURT 2628 "Banshilal Soni v. Kastoor Chand Begani"
- = 2007 AIR SCW 4745
- (From : Madhya Pradesh)*
- Coram : 2 Dr. A. PASAYAT AND LOKESHWAR SINGH PANTA , JJ.
- Civil Appeal No. 5453 of 2000, D/-12 -7 -2007.
- Banshilal Soni (Dead) by L.Rs. v. Kastoor Chand Begani (Dead) by L.Rs. and Ors.
- Specific Relief Act (47 of 1963) , S.10 , S.22 - CONTRACT - AGREEMENT TO SELL - EXECUTION - SALE DEED - DEED - HIGH COURT - LOAN - Specific performance - Agreement to sell - Earnest money paid to defendant - Non execution of sale deed - Defendant taking two different stands - While in reply to notice it was stated to be case of refund of earnest money, in written statement amount was said to be paid by way of repayment of loan –Finding of High Court that plaintiff had abandoned claim of specific performance by voluntarily accepting money towards part payment of loan - Would not normally be sustainable - However, considering that plaintiff and defendant have died and suit house is the only one in occupation of L.Rs. of defendant, direction issued to defendant's L.Rs. to pay sum of Rs. 7.5 lacs to plaintiff's L.Rs. (Paras 7 , 9)

11: Cases in which specific performance of contracts connected with trusts enforceable.

- (1) Except as otherwise provided in this Act,
- 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.
- (2) A contract made by a trustee in excess of his powers or in breach of trust cannot be specifically enforced.

12: Specific performance of part of contract

- . (1) Except as otherwise hereinafter provided in this section, the court shall not direct the specific performance of a part of a contract.
- (2) 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 either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency.

12: Specific performance of part of contract

- (3) 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-
- (a) forms a considerable part of the whole, though admitting of compensation in money; or
- (b) 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, if the other party- (i) in a case falling under clause (a), pays or has paid the agreed consideration for the whole of the contract reduced by the consideration for the part which must be left unperformed and in a case falling under clause (b), pays or has paid the consideration for the whole of the contract without any abatement; and (ii) in either case, relinquishes all claims to the performance of the remaining part of the contract and all right to compensation, either for the deficiency or for the loss or damage sustained by him through the default of the defendant.

12: Specific performance of part of contract

- (4) 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.
- Explanation : For the purposes of this section, a party to a 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.

Kalipatnapu Atchutamma"

- (C) Specific Relief Act (47 of 1963) , S.12 - CONTRACT - AGREEMENT TO SELL - Specific performance of part of contract - Vendor agreed to sell property in its entirety - But it later turned out that vendor had only half share in property and his wife held remaining half - Agreement would be binding on vendor as it is without being fractured- Thus there would be no impediment for enforcement of agreement against vendor to the extent of his half share in property. (Paras 21 , 24)
- (B) Specific Relief Act (47 of 1963) , S.20 - CONTRACT - AGREEMENT TO SELL - IMMOVABLE PROPERTY - APPLICABILITY OF AN ACT - Specific performance - Agreement of sale executed by vendor - Vendor's wife has half share in property - Wife not executant to agreement - Facts and evidence showing no express or implied authority by wife in favour of her husband - S.41 of Transfer of Property Act, 1882 would not be applicable - Vendee would not be entitled to seek specific performance of agreement to the extent of half share of vendor's wife. Transfer of Property Act (4 of 1882) , S.41 . (Para 18)

13: Rights of purchaser or lessee against person with no title or imperfect title

- . (1) Where a person contracts to sell or let certain immovable property having no title or only an imperfect title, the purchaser or lessee (subject to the other provisions of this Chapter), has the following rights, namely :-
- (a) if the vendor or lessor has subsequently 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;
- (b) where the concurrence of other persons is necessary for validating the title, and they are bound to concur at the request of the vendor or lessor, the purchaser or lessee may compel him to procure such concurrence, and when a conveyance by other persons 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;

13: Rights of purchaser or lessee against person with no title or imperfect title

- (1) Where a person contracts to sell or let certain immovable property having no title or only an imperfect title, the purchaser or lessee (subject to the other provisions of this Chapter), has the following rights, namely :-
- (c) 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, and, where necessary, also a conveyance from the mortgagee;
- (d) 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, if any, with interest thereon, to his costs of the suit, and to a lien for such deposit, interest and costs on the interest, if any, of the vendor or lessor in the property which is the subject-matter of the contract.

14:Contracts not specifically enforceable.

- (1) The following contracts cannot be specifically enforced, namely :-
- (a) a contract for the non-performance of which compensation in money is an adequate relief; (
- b) a contract which runs into such minute or numerous details or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the court cannot enforce specific performance of its material terms;
- (c) a contract which is in its nature determinable;
- (d) a contract the performance of which involves the performance of a continuous duty which the court cannot supervise.

14:Contracts not specifically enforceable.

- (2) Save as provided by Arbitration Act, 1940 , no contract to refer present or future differences to arbitration shall be specifically enforced; but if any person who has made such a contract (other than an arbitration agreement to which the provisions of the said Act apply) and has refused to perform it, sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit. (3) Notwithstanding anything contained in clause (a) or clause (c) or clause (d) of sub-section (1), the court may enforce specific performance in the following cases:-
 - (a) where the suit is for the enforcement of a contract,-
 - (i) to execute a mortgage or furnish any other security for securing the repayment of any loan which the borrower is not willing to repay at once: Provided that where only a part of the loan has been advanced the lender is willing to advance the remaining part of the loan in terms of the contract; or '
 - (ii) to take up and pay for any debentures; of a company;

14:Contracts not specifically enforceable.

- (2) Save as provided by Arbitration Act, 1940 , no contract to refer present or future differences to arbitration shall be specifically enforced; but if any person who has made such a contract (other than an arbitration agreement to which the provisions of the said Act apply) and has refused to perform it, sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit. (3) Notwithstanding anything contained in clause (a) or clause (c) or clause (d) of sub-section (1), the court may enforce specific performance in the following cases:-
 - (b) where the suit is for,- (i) the execution of a formal deed of partnership, the parties having commenced to carry on the business of the partnership; or (ii) the purchase of a share of a partner in a firm;

14:Contracts not specifically enforceable.

- (2) Save as provided by Arbitration Act, 1940 , no contract to refer present or future differences to arbitration shall be specifically enforced; but if any person who has made such a contract (other than an arbitration agreement to which the provisions of the said Act apply) and has refused to perform it, sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit. (3) Notwithstanding anything contained in clause (a) or clause (c) or clause (d) of sub-section (1), the court may enforce specific performance in the following cases:-
 - (c) where the suit is for the enforcement of a contract for the construction of any building or the execution of any other work on land :

14:Contracts not specifically enforceable.

- Provided that the following conditions are fulfilled, namely:-
 - (i) the building or other work is described in the contract in terms sufficiently precise to enable the court to determine the exact nature of the building or work;
 - (ii) the plaintiff has a substantial interest in the performance of the contract and the interest is of such a nature that compensation in money for non-performance of the contract is not an adequate relief; and
 - (iii) the defendant has, in pursuance of the contract, obtained possession of the whole or any part of the land on which the building is to be constructed or other work is to be executed.

- 15: Who may obtain specific performance. Except as otherwise provided by this Chapter, the specific performance of a contract may be obtained by- (a) any party thereto; (b) the representative in interest or the principal, of any party thereto : Provided that where the learning, skill, solvency or any personal quality of such party is a material ingredient in the contract, or where the contract provides that his interest shall not be assigned, his representative in interest or his principal shall not be entitled to specific performance of the contract, unless such party has already performed his part of the contract, or the performance thereof by his representative in interest, or his principal, has been accepted by the other party; (c) 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; (d) where the contract has been entered into by a tenant for life in due exercise of a power, the remainderman; (e) 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; (f) 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; (g) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation; (h) when the promoters of a company have, before its incorporation, entered into a contract for the purposes of the company, and such contract is warranted by the terms of the incorporation, the company: Provided that the company has accepted the contract and has communicated such acceptance to the other party to the contract.

- 16: Personal bars to relief. Specific performance of a contract cannot be enforced in favour of a person- (a) who would not be entitled to recover compensation for its breach; or (b) 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 wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or (c) who fails to aver and 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, other than terms the performance of which has been prevented or waived by the defendant. Explanation: For the purposes of clause (c),- (i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court; (ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction.

- 17:Contract to sell or let property by one who has no title, not specifically enforceable. (1)A contract to sell or let any immovable property cannot be specifically enforced in favour of a vendor or lessor- (a) who, knowing himself not to have any title to the property, has contracted to sell or let the property; (b) 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 doubt. (2) The provisions of sub-section (1) shall also apply, as far as may be, to contracts for the sale or hire of movable property.

- 18:Non-enforcement except with variation. 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:- (a) where by fraud, mistake of fact or misrepresentation, the written contract of which performance is sought is in its terms or effect different from what the parties agreed to, or does not contain all the terms agreed to between the parties on the basis of which the defendant entered into the contract; (b) where the object of the parties was to produce a certain legal result which the contract as framed is not calculated to produce; (c) where the parties have, subsequently to the execution of the contract, varied its terms.

- 19:Relief against parties and persons claiming under them by subsequent title. Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against- (a) either party thereto; (b) any other 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; (c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant; (d) when a company has entered into a contractid subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation; (e) 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, the company : Provided that the company has accepted the contract and communicated such acceptance to the other party to the contract.

- 20: Discretion as to decreeing specific performance. (1) 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 sound and reasonable, guided by judicial principles and capable of correction by a court of appeal. (2) The following are cases in which the court may properly exercise discretion not to decree specific performance- (a) 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; or (b) 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; (c) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance. Explanation 1: Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of clause (a) or hardship within the meaning of clause (b). Explanation 2: The question whether the performance of a contract would involve hardship on the defendant within the meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract. (3) The court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance. (4) 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.

- 21: Power to award compensation in certain cases. (1) 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. (2) If, in any such suit, the court decides that specific performance ought not to be granted, but that there is a contract between the parties 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. (3) 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. (4) In determining the amount of any compensation awarded under this section, the court shall be guided by the principles specified in S.73 of the Indian Contract Act. 1872. (5) 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 of the proceeding, allow him to amend the plaint on such terms as may be just, for including a claim for such compensation. Explanation: The circumstance that the contract has become incapable of specific performance does not preclude the court from exercising the jurisdiction conferred by this section.

- 22: Power to grant relief for possession, partition, refund of earnest money, etc. (1) Notwithstanding anything to the contrary contained in Code of Civil Procedure, 1908, any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for- (a) possession, or partition and separate possession, of the property, in addition to such performance; or (b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or made by him, in case his claim for specific performance is refused. (2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed : Provided that where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief. (3) The power of the court to grant relief under clause (b) of sub-section (1) shall be without prejudice to its powers to award compensation under section 21 .

- 23: Liquidation of damages not a bar to specific performance. (1) A contract, otherwise proper to be specifically enforced, may be so enforced, though a sum be named in it as the amount to be paid in case of its breach and the party in default is willing to pay the same, if the court, having regard to the terms of the contract and other attending circumstances, is satisfied that the sum was named only for the purpose of securing performance of the contract and not for the purpose of giving, to the party in default an option of paying money in lieu of specific performance. (2) When enforcing specific performance under this section, the court shall not also decree payment of the sum so named in the contract.

- 24:Bar of suit for compensation for breach after dismissal of suit for specific performance. The dismissal of a suit for specific performance of a contract or part thereof shall bar the plaintiff's right to sue for compensation for the breach of such contract or part, as the case may be, but shall not bar his right to sue for any other relief to which he may be entitled, by reason of such breach.

- 25:Application of preceding sections to certain awards and testamentary directions to execute settlements. The provisions of this Chapter as to contracts shall apply to awards to which Arbitration Act, 1940 , does not apply and to directions in a will or codicil to execute a particular settlement.

- 26:When instrument may be rectified. (1) When, through fraud or a mutual mistake of the parties, a contract or other instrument in writing [not being the articles of association of a company to which the Companies Act, 1956 , applies] does not express their real intention, then- (a) either party or his representative in interest may institute a suit to have the instrument rectified; or (b) the plaintiff may, in any suit in which any right arising under the instrument is in issue, claim in his pleading that the instrument be rectified; or (c) a defendant in any such suit as is referred to in clause (b), may, in addition to any other defence open to him, ask for rectification of the instrument. (2) If, in any suit in which a contract or other instrument is sought to be rectified under sub-section (1), the court finds that the instrument, through fraud or mistake, does not express the real intention of the parties, the court may, in its discretion, direct rectification of the instrument so as to express that intention, so far as this can be done without prejudice to rights acquired by third persons in good faith and for value. (3) A contract in writing may first be rectified, and then if the party claiming rectification has so prayed in his pleading and the court thinks fit, may be specifically enforced. (4) No relief for the rectification of an instrument shall be granted to any party under this section unless it has been specifically claimed : Provided that where a party has not claimed any such relief in his pleading, the court shall, at any stage of the proceeding, allow him to amend the pleading on such terms as may be just for including such claim.

- 27:When rescission may be adjudged or refused. (1) 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. (2) 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. Explanation: 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.

- 28:Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed. (1) Where in any suit or decree for specific performance of a contract for the sale or lease of immovable property has been made and the purchaser or lessee does not, within the period allowed by the decree or such further period as the court may allow, pay the purchase money or other sum which the court has ordered him to pay, the vendor or lessor may apply in the same suit in which the decree is made, to have the contract rescinded and on such application the court may, by order, rescind the contract either so far as regards the party in default or altogether, as the justice of the case may require. (2) Where a contract is rescinded under sub-section (1), the court- (a) shall direct the purchaser or the lessee, if he has obtained possession of the property under the contract, to restore such possession to the vendor or lessor, and (b) may direct payment to the vendor or lessor of all the rents and profits which have accrued in respect of the property from the date on which possession was so obtained by the purchaser or lessee until restoration of possession to the vendor or lessor, and, if the justice of the case so requires, the refund of any sum paid by the vendee or lessee as earnest money or deposit in connection with the contract. (3) If the purchaser or lessee pays the purchase money or other sum which he is ordered to pay under the decree within the period referred to in sub-section (1), the court may, on application made in the same suit, award the purchaser or lessee such further relief as he may be entitled to, including in appropriate cases all or any of the following reliefs, namely:- (a) the execution of a proper conveyance or lease by the vendor or lessor; (b) the delivery of possession, or partition and separate possession, of the property on the execution of such conveyance or lease. (4) No separate suit in respect of any relief which may be claimed under this section shall lie at the instance of a vendor, purchaser, lessor or lessee, as the case may be. (5) The costs of any proceedings under this section shall be in the discretion of the court.

- 29:Alternative prayer for rescission in suit for specific performance. A plaintiff instituting a suit for the specific performance of a contract in writing may pray in the alternative that, if the contract cannot be specifically enforced, it may be rescinded and delivered up to be cancelled; and the court, if it refuses to enforce the contract specifically, may direct it to be rescinded and delivered up accordingly.

- 30: Court may require parties rescinding to do equity. On adjudging the rescission of a contract, the court may require the party to whom such relief is granted to restore, so far as may be, any benefit which h.e may have received from the other party and to make any compensation to him which justice may require.

- 31:When cancellation may be ordered. (1) 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. (2) If the instrument has been registered under 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.

- 32:What instruments may be partially cancelled. Where an instrument is evidence of different rights or different obligations, the court may, in a proper case, cancel it in part and allow it to stand for the residue.

- 33: Power to require benefit to be restored or compensation to be made when instrument is cancelled or is successfully resisted as being void or voidable. (1) On adjudging the cancellation of an instrument, the court may require the party to whom such relief is granted, to restore, so far as may be any benefit which he may have received from the other party and to make any compensation to him which justice may require. (2) Where a defendant successfully resists any suit on the ground- (a) that the instrument sought to be enforced against him in the suit is voidable, the court may if the defendant has received any benefit under the instrument from the other party, require him to restore, so far as may be, such benefit to that party or to make compensation for it; (b) that the agreement sought to be enforced against him in the suit is void by reason of his not having been competent to contract under s.11 of the Indian Contract Act, 1872, the court may, if the defendant has received any benefit under the agreement from the other party, require him to restore, so far as may be, such benefit to that party, to the extent to which he or his estate has benefited thereby.

34:Discretion of court as to declaration of status or right.

- Any person entitled to any legal character;
 - Any person entitled to any right as to any property,
 - that person may institute a suit against
 - any person denying his title to such character or right
 - Any person interested to deny, his title to such character or right,
 - the court may in its discretion make therein a declaration that
 - Plaintiff 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.
- Explanation : A trustee of property is a "person interested to deny" a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee.

34:Discretion of court as to declaration of status or right.

- 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. Explanation : A trustee of property is a "person interested to deny" a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee.

34:Discretion of court as to declaration of status or right.

- 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. Explanation : A trustee of property is a "person interested to deny" a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee.

- 35:Effect of declaration. 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.

- 36:Preventive relief how granted. Preventive relief is granted at the discretion of the court by injunction, temporary or perpetual.

- 37:Temporary and perpetual injunctions. (1) Temporary injunctions are such as are to continue until as 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 Code of Civil Procedure, 1908 . (2) 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 a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.

- 38:Perpetual injunction when granted. (1) Subject to the other provisions contained in or referred to by this Chapter, a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication. (2) When any such obligation arises from contract, the court shall be guided by the rules and provisions contained in Chapter II . (3) 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 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.

- 39:Mandatory injunctions. 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.

- 40: Damages in lieu of, or in addition to, injunction. (1) 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. (2) No relief for damages shall be granted under this section unless the plaintiff has claimed such relief in his plaint : Provided that where no such damages have been claimed in the plaint, the court shall, at any stage of the proceedings, allow the plaintiff to amend the plaint on such terms as may be just for including such claim. (3) The dismissal of a suit to prevent the breach of an obligation existing in favour of the plaintiff shall bar his right to sue for damages for such breach.

- 41: Injunction when refused. An injunction cannot be granted- (a) 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; (b) to restrain any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is sought; (c) to restrain any person from applying to any legislative body; (d) to restrain any person from instituting or prosecuting any proceeding in a criminal matter; (e) to prevent the breach of a contract the performance of which would not be specifically enforced; (f) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance; (g) to prevent a continuing breach in which the plaintiff has acquiesced; (h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust; (i) when the conduct of the plaintiff or his agents has been such as to disentitle him to the assistance of the court; (j) when the plaintiff has no personal interest in the matter.

- 42: Injunction to perform negative agreement. Notwithstanding anything contained in clause (e) of section 41, where a contract comprises an affirmative agreement to do a certain act, coupled with a 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.

