



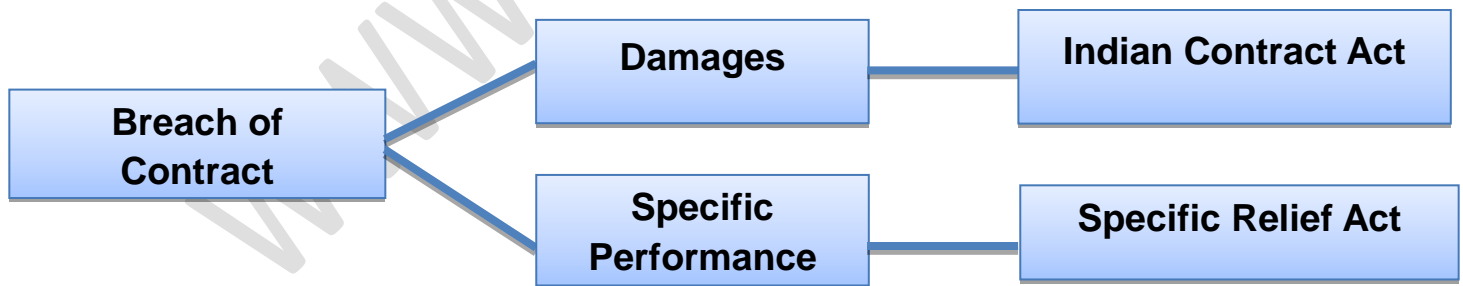
Study Notes

The Specific Relief Act, 1963

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Introduction

- The Specific Relief Act (“Act”) consists of **3 parts, 8 Chapters, 42 Sections**
- It was enacted on **13th December, 1963** and commenced its operation on **1st March, 1964**
- Kinds of Specific Relief
 - Part I - Preliminary- Section 1-4
 - Part II Specific Reliefs-
 - Chapter I Recovery of possession of property Section 5-8
 - Chapter II Specific Performance of Contracts Section 9-25
 - Chapter III Rectification of Instruments section 26
 - Chapter IV Rescission of Contracts Section 27-30
 - Chapter V Cancellation of Instruments Section 31-33
 - Chapter VI Declaratory Decrees Section 34-35
 - Part III Preventive Relief
 - Chapter VII Injunctions Generally Section 36-37
 - Chapter VIII Perpetual Injunction Section 38-42
- This Act provides **remedies for the person who’s civil or contractual rights have been violated.**
- There is either breach of a contract or the contract is to be breached.
- In case, where there is a breach of a contract two types of remedies are available; firstly, compensation or damages and secondly, Specific Relief. However, if the contract is to be breached then preventive relief or injunction is provided to the party(ies).
- Specific Relief is granted on the following principles: -
 - Damage is not an adequate remedy
 - Only for enforcing individual civil rights
- It is **also known as equitable relief** and it aims at the exact fulfilment of an obligation.



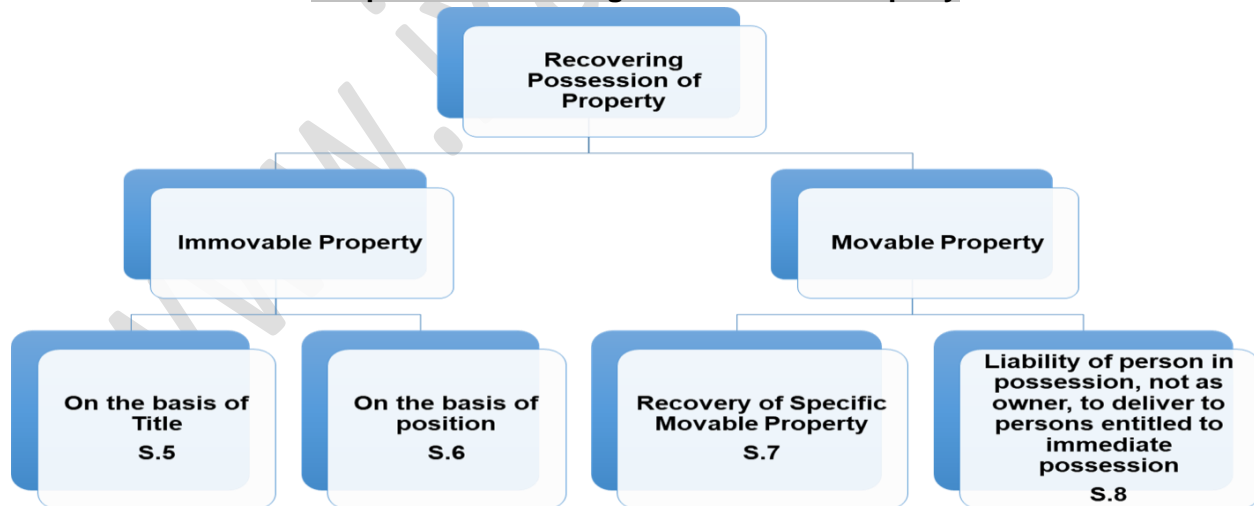
Part I - Preliminary

- **Section 1** - It is called the Specific Relief Act, 1963. It extends to the whole of India.
- **Section 2** – Definitions

- **Obligation** - includes every duty enforceable by law;
 - **Settlement** - means an instrument (other than a will or codicil as defined by the Indian Succession Act, 1925 (39 of 1925), whereby the destination or devolution of successive interests in movable or immovable property is disposed of or is agreed to be disposed of;
 - **Trust** - has the same meaning as in section 3 of the Indian Trusts Act, 1882 (2 of 1882), and includes an obligation in the nature of a trust within the meaning of Chapter IX of that Act;
 - **Trustee** - includes every person holding property in trust;
 - All other words and expressions used herein but not defined, and defined in the Indian Contract Act, 1872, have the meanings respectively assigned to them in that Act
- **Section 3 – Savings**
 - The provisions of this Act shall not-
 - deprive any person of any right to relief, other than specific performance, which he may have under any contract; or
 - affect the operation of the Indian Registration Act, 1908 on documents.
 - **Section 4 – Specific Relief is granted only for the enforcement of the individual civil rights and not for enforcing penal laws.**

Part II – Specific Relief

Chapter I - Recovering Possession of Property



- **Section 5 - Recovery of specific immovable property**
 - Person entitled to the possession of specific immovable property may recover such property as per the Code of Civil Procedure, 1908.
- **Section 6 - Suit by person dispossessed of immovable property**

- When a person in possession of immovable property is dispossessed without his consent, otherwise than in the due course of law, he or any person through whom he has been in possession or any person claiming through him, may by a suit, recover possession of immovable property, notwithstanding any other title that may be set up in such suit.
- **No suit can be brought** under this section: -
 - after the expiry of 6 months from the date of dispossession
 - against the Government
- **No appeal shall lie** from any order or decree passed in any suit instituted under this section, nor any review of any such order or decree be allowed.
- No bar on any person to sue to establish his title and to recover possession of such property.

NOTE: Both the sections 5 & 6 provide for alternative remedies and are mutually exclusive. However, under section 5, a person dispossessed can get possession on the basis of title/ownership, whereas under section 6, claim is based on possession and no proof of title required. Further, under Section 5 the limitation period for filing a suit is 12 year while under section limitation is only 6 months from dispossession.

- **Section 7 - Recovery of specific movable property**
 - A person who is entitled to the possession of specific movable property may recover it as per the CPC, 1908.
 - a trustee may sue for the possession of movable property to the beneficial interest in which the person for whom he is trustee is entitled
 - the presence of a special or temporary right to the present possession of movable property would be sufficient as an essential to file a suit.
 - There must be a presence of movable property which is capable of being delivered or disposed of.
 - The person suing must have the possession of the property in question.
 - There may be an existence of a special or temporary right on the property.
- **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** when: -
 - Defendant holds it as the trustee or agent of the plaintiff;
 - Compensation in money would not afford the plaintiff adequate relief for the loss of the thing claimed;

- It would be extremely difficult to ascertain the actual damage caused by its loss to the plaintiff;
- The possession of the thing claimed has been wrongfully transferred from the plaintiff.

Chapter II – Specific Performance of Contracts

- **Section 9 - Defences respecting suits for relief based on contract**
 - Defendant may plea by way of defence any ground which is available to him under any law relating to contracts.
- **Section 10 - Cases in which specific performance of contract enforceable**
 - Specific performance of contracts shall **be enforced by the court** subject to the provisions contained in **section 11(2), section 14 and section 16.**
- **Section 11 - Cases in which specific performance of contracts connected with trust enforceable**
 - Specific performance of a contract shall be enforced when the act agreed to be done is in the performance wholly or partly of a trust
 - A contract made by a trustee in excess of his powers or in breach of trust **cannot be specifically enforced**
- **Section 12 - Specific performance of part of a contract**
 - Court shall **not direct the specific performance of a part of a contract, except** as under: -
 - If a party is unable to perform a small portion of his part of the contract out of 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.
 - If a party is unable to perform whole of his part of the contract, and part left unperformed forms a considerable part of the whole though admitting compensation or does not admit of compensation in money, he is not entitled to obtain a decree for specific performance. However, 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
 - ✓ if other party has paid or agreed to pay the consideration for the whole of the contract reduced by the consideration for the part which must be left unperformed; or
 - ✓ has paid for the whole contract without abetment; and
 - ✓ 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.

- 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.
- **Section 13 - Rights of purchaser or lessee against person with no title or imperfect title**
 - The purchaser or lessee has the following rights, if a person contracts to sell or let certain immovable property having no title or only an imperfect title: -
 - if the vendor or lessor has subsequent to the contract acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest;
 - where concurrence of other person 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/conveyance;
 - where 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;
 - 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 lesser in the property which is the subject-matter of the contract.
 - The provisions applicable to immovable property shall also apply, as far as may be, to contracts for the sale or hire of movable property.
- **Section 14 - Contracts which cannot be specifically enforced**
 - Where party to the contract has **obtained substituted performance of contract** as per Section 20 of the Act
 - A contract the performance of which **involves the performance of a continuous work/duty** which the court cannot supervise
 - Where contract for its performance depends on the **personal qualifications** of the party(ies) that the court cannot enforce specific performance of its material terms
 - A contract whose **nature is determinable** i.e., damages can be ascertained
- **Section 14A - Power of Court to engage experts**
 - The **court may engage one or more experts**, if the court considers it necessary to get expert opinion in order to assist any specific issue involved in the suit and

may secure attendance of the expert for providing evidence, including production of documents on the issue.

- Court may require or direct any person to give relevant information to the expert or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.
 - The opinion or report given by the expert shall form part of the record of the suit; and the court, or with the permission of the court any of the parties to the suit, may examine the expert personally in open court on any of the matters referred to him or mentioned in his opinion or report, or as to his opinion or report, or as to the manner in which he has made the inspection
 - Fees, cost or expense payable to the expert, as the **court may fix**, by the parties shall be in such proportion, and at such time, as the court may direct.
- **Section 15 - Who may obtain specific performance**
 - any **party** thereto;
 - the **representative in interest or principal of any party** thereto; i.e., any assignee, transferee, executor etc.,
 - provided learning skill, solvency, personal quality of a party is ingredient or where the contract provides that the interest of the party shall not be assigned, the representative in interest or 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;
 - Where the contract is a settlement on marriage, or a compromise of doubtful rights between **members of the same family, any person beneficially entitled** thereunder;
 - Where the contract has been entered into by a tenant for life in due exercise of power, a **remainderman**.
 - A **reversioner in possession**, where the agreement is a covenant entered into with his predecessor in title and the reversioner is entitled to the benefit of such covenant.
 - A **reversioner in remainder**, where the agreement is such a covenant, and the reversioner is entitled to the benefit thereof and will sustain material injury by reason of its breach;
 - Where an LLP entered into contract and is subsequently amalgamated with another LLP, the **new LLP** which arises out of the amalgamation
 - When a new company arises out of amalgamation and subsequently becomes amalgamated with another company, **the new company** which arises out of the amalgamation;
 - The **company** provided the promoters, before its incorporation, entered into a contract and such contract is warranted by the terms of incorporation.
 - The company has accepted the contract and has communicated such acceptance to the other party to the contract.

- **Section 16 - Who cannot obtain specific performance/Personal bar to relief**
 - Specific performance of a contract cannot be enforced in favour of a person
 - who has **obtained substituted performance of contract** under section 20
 - 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
 - who **fails to prove that he has performed or has always been ready and willing to perform the essential terms of the contract** which are to be performed by him, other than terms of the performance of which has been prevented or waived by the defendant.

- **Section 17 - Contract to sell or let property by one who has no title, not specifically enforceable**
 - A contract to sell or let any immovable property cannot be specifically enforced in favour of a vendor or lessor-
 - who knows that he does not have any title to the property but has contracted to sell or let the property;
 - who although 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.
 - The above provisions shall apply, as far as may be, to contracts for the sale or hire of movable property.

- **Section 18 - Non- Enforcement except with a variation**
 - plaintiff seeks specific performance of a contract in writing, but defendant sets up a variation, the **plaintiff cannot obtain the performance sought, except with the variation so set up: -**
 - by fraud, mistake of fact or mis-representation, and the contract in its terms or effect is different from what the parties agreed to, or it does not contain all the terms agreed to between the parties, on the basis of which the defendant entered into the contract;
 - where the object of the parties was to produce a certain legal result which the contract as framed is not calculated to produce;
 - where the parties have, subsequently to the execution of the contract, varied its terms.

- **Section 19 - Relief against parties and persons claiming under them by subsequent title**
 - either party thereto;

- 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;
 - any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;
 - when a limited liability partnership has entered into a contract and subsequently becomes amalgamated with another limited liability partnership, the new limited liability partnership which arises out of the amalgamation.
 - when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;
 - when the promoters of a company have, before its incorporation, entered into a contract for the purpose of the company and such contract is warranted by the terms of the incorporation, the company:
 - Provided that the company has accepted the contract and communicated such acceptance to the other party to the contract.
- **Section 20 - Substituted performance of contract**
 - Breach of contract- Contract if broken due to non-performance of promise by any party, then the party who suffers by such breach shall be entitled to substituted performance through a third party or by his own agency, and, recover the expenses and other costs actually incurred, spent or suffered by him, from the party committing such breach.
 - Substituted performance **cannot be claimed unless the party who suffers gives a notice in writing of not less than 30 days** is given to the party in breach calling upon him to perform his contract within such time as specified in the notice
 - On refusal or failure to do so by the party in breach, the party who suffers can get the same performed by a third party or by his own agency
 - Party who suffers such breach shall **not be entitled to recover the expenses and costs unless he has got the contract performed through a third party** or by his own agency.
 - Where the party suffering breach of contract has got the contract performed through a third party or by his own agency after giving notice shall not be entitled to claim relief of specific performance against the party in breach.
 - Party who has suffered breach of contract is not prevented from claiming compensation from the party in breach.
- **Section 20A - Special provisions for contract relating to infrastructure project**
 - **No injunction** shall be granted by a court in a suit involving a **contract relating to an infrastructure project** specified in the schedule, where granting of injunction would cause impediment or delay in the progress or completion of such infrastructure project.

- The Schedule relating to any Category of projects or Infrastructure Sub-Sectors can be amended by the Central Government depending upon the requirement for development of infrastructure projects, and if it is considered necessary or expedient to do so, may be done by notification in the Official Gazette.
- **Section 20B Special Courts –**
 - One or more of civil courts to be designated as special courts to try a suit in respect of infrastructure projects, within the local limits of the area to exercise jurisdiction and to try a suit under this Act in respect of contracts relating to infrastructure projects.
 - Such designation is to be done by the **State Government, in consultation with the Chief Justice of the High Court**, by notification published in the Official Gazette.
- **Section 20C - Expeditious disposal of suits**
 - A suit filed under this Act shall be disposed of by the Court **within a period of 12 months** from the date of service of summons to the defendant. The said period can further **be extended for a period not exceeding 6 months in aggregate** after recording reasons in writing for such extension by the court

Section 21 - Power to award compensation in certain cases

- In a suit for specific performance of contract, the plaintiff may also claim compensation for its breach in addition to such performance.
- If the Court decides that specific performance may not to be granted but there has been a breach of 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.
- If the Court decides that specific performance ought to be granted, but it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be awarded to the plaintiff, it shall award him such compensation.
- For the purpose of determining such compensation to be awarded, the court shall be guided by the principles specified in section 73 of the Indian Contract Act, 1872.
- No compensation be awarded unless the plaintiff has claimed such compensation in his plaint:
 - 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.

Section 22 - Power to grant relief for possession, partition, refund of earnest money, etc.

- Any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for-

- possession, or partition and separate possession, of the property, in addition to such performance; or
- 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.
- Relief shall not be granted by the court unless it has been specifically claimed:
 - Plaintiff, if 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.

Section 23 - Liquidation of damages not a bar to specific performance

- Even if the damages have been ascertained by the parties, as the amount to be paid in case of breach of contract, for securing performance, still there is no bar to claim specific performance, 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.
- The specific performance if enforced under this section, the court shall not also decree payment of the sum so named in the contract.

Section 24 - Bar of suit for compensation for breach after dismissal of suit for specific performance

- A suit which has been dismissed for specific performance of a contract or part thereof, cannot be brought by the party for compensation, for the breach of such contract or part, as the case may be, as it is barred.
- However, there is no bar to a party's right to sue for any other relief to which he may be entitled, by reason of such breach.

Chapter III - Rectification of Instruments

Section 26 - When instrument may be rectified

- Rectification means correction and Instrument means any document or contract. So, **rectification of instruments means correction or changes in the contract.**
- Parties are entitled for the rectification of a contract or other instrument in writing not being the articles of association of a company to which the Companies Act, 1956, applies if it does not express their real intention due to fraud or mutual mistake by both the parties.
- **Parties entitled to rectification** are: -
 - either party or his representative in interest
 - 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

- a defendant may, in any suit in which any right arising under the instrument is in issue, may, in addition to any other defence open to him, ask for rectification of the instrument.
- In a suit where a contract or instrument is sought to be rectified, and the court finds that instrument, through fraud or by mutual mistake of the parties, does not express the real intention of the parties, then the court has discretionary power to rectify the instrument so as to express that intention, so far as it can be done without prejudice to rights acquired by third persons in good faith and for value.
- 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.
- No relief shall be granted for rectification of the instrument until the parties specifically claim for rectification of the instrument.
 - 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.

CHAPTER IV - RESCISSION OF CONTRACTS

Section 27 - When rescission may be adjudged or refused

- Any **person interested in a contract may sue to rescind a contract and the court may adjudge recession if:**
 - where the contract is voidable or terminable by the plaintiff;
 - where the contract is unlawful for causes not apparent on its face and the defendant is more to blame than the plaintiff
- Court may **refuse to rescind the contract**
 - where the plaintiff has expressly or impliedly ratified the contract
 - 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
 - where third parties have, during the subsistence of the contract, acquired rights in good faith without notice and for value
 - where only a part of the contract is sought to be rescinded and such part is not severable from the rest of the contract.

Section 28 - Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed

- Where a suit 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.

- Where a contract is rescinded, the court: -
 - 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
 - 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 refund of any sum paid by the vendee or the lessee as earnest money or deposit in connection with the contract.
 - if the purchase or lessee pays the purchase money or other sum which he is ordered to pay under the decree, 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:
 - the execution of a proper conveyance or lease by the vendor or lessor;
 - the delivery of possession, or partition and separate possession, of the property on the execution of such conveyance or lease.
 - No separate suit in respect of any relief which may be claimed shall lie at the instance of a vendor, purchaser, lessor or lessee, as the case may be.
 - The costs of any proceedings shall be in the discretion of the court.

Section 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.

Section 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 he may have received from the other party and to make any compensation to him which justice may require.

Chapter V - Cancellation of Instruments

Section 31 - When cancellation may be ordered

- 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.
- If the instrument has been registered under the Indian Registration Act, 1908, the court shall also send a copy of its decree to the (registration office) 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

Section 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

Section 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

- 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.
- Where a defendant successfully resists any suit on the ground
 - 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;
 - 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 section 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.

CHAPTER VI - DECLARATORY DECREES

Section 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
 - 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.

Section 35 - Effect of declaration

A declaration is **binding only on the parties to the suit, persons claiming through them** respectively, and, where any of the parties are trustees, on the persons for whom, if in existence at the date of the declaration, such parties would be trustees

Part III PREVENTIVE RELIEF

Chapter VII Injunctions Generally

- It is defined by Burney as a judicial process by which one who has invaded or is threatening to invade the rights (legal or equitable) of another, is restrained from continuing or commencing such wrongful act.
- According to Halsbury injunction is a judicial process whereby a party is ordered to refrain from doing or to do a particular act or thing.
- An injunction **may be issued for and against individuals, public bodies or even the state**. Disobedience of an injunction is punishable as contempt of court.

Section 36 - Preventive relief how granted

- Preventive relief is said to be such a relief by which a **person is prevented to do an act**, which he is not validly liable to do.
- It is **granted at the discretion of the court by injunction**, temporary or perpetual.

Section 37 - Temporary and perpetual injunctions

- Temporary injunctions (for specific time) are such as are to continue until a specific time, or until the further order of the court, and they **may be granted at any stage of a suit**, and are regulated by the CPC, 1908.
- Perpetual injunction (granted at the end of the suit) 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.

Chapter VIII Perpetual Injunctions

Section 38 - Perpetual injunction when granted

- **Granted to the plaintiff to prevent the breach of an obligation existing in his favour**, whether expressly or by implication.
- When any such obligation arises from contract, the court shall be guided by the rules and provisions contained in Chapter II.
- When the **defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property**, the court may grant perpetual injunction in the following cases:
 - - where the defendant is trustee of the property for the plaintiff;
 - where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;
 - where the invasion is such that compensation in money would not afford adequate relief;
 - where the injunction is necessary to prevent a multiplicity of judicial proceedings.

Section 39 - Mandatory injunctions

- 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.

Section 40 - Damages in lieu of, or in addition to, injunction

- 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.
- 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.
- 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.

Section 41 - Injunction when refused

- **An injunction cannot be granted: -**
 - to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;
 - to restrain any person from instituting or prosecuting any proceeding in a court not sub-ordinate to that from which the injunction is sought;
 - to restrain any person from applying to any legislative body;
 - to restrain any person from instituting or prosecuting any proceeding in a criminal matter;
 - to prevent the breach of a contract the performance of which would not be specifically enforced;
 - to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;
 - to prevent a continuing breach in which the plaintiff has acquiesced/consent;
 - when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust; if it would impede or delay the progress or completion of any infrastructure project or interfere with the continued provision of relevant facility related thereto or services being the subject matter of such project.
 - when the conduct of the plaintiff or his agents has been such as to disentitle him to be the assistance of the court;
 - when the plaintiff has no personal interest in the matter.

Section 42 - Injunction to perform negative agreement

- 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.
- The plaintiff should not have failed to perform the contract so far as it is binding on him.

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