



Law on Claiming Special Treatment Under Principle of Equity

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ABSTRACT

The court will not order specific performance of only one part of the contract. But if that part is on a totally separate and independent basis from the rest of the contract and monetary compensation can be given for the remaining part, the court can order specific performance as well as monetary compensation.

A person suing for specific performance of a contract may seek the alternative remedy that the contract be rescinded if specific performance cannot be obtained. If the court refuses to perform the specific performance, it will order rescission of the contract. While rescinding the contract, the court may order the plaintiff to pay back the benefit received and to pay such compensation as it thinks just.

Keywords: specific performance, specific relief, breach of contract.

Introduction

A person who is entitled to a legal position or position or has a right to a property, but is denied his right, can sue the person who denied him to assert his right. No other relief is required to be sought in such suit, but the court shall refuse to declare the relief only if the plaintiff, notwithstanding his power to seek such additional relief, does so; Because a mere decree of confirmation will not serve any purpose.

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Distinct shingles is a type of symbiont. For that reason, the last law in India came into force in 1963.

According to this Act, provision is made for granting the following special rates:

- (1) Special duty to acquire possession of immovable or movable property.
- (2) Specific performance of contract and specific standard for obtaining damages.
- (3) Specific procedure for rectification of deed or document.
- (4) Specific rules for rescission of contract or document.
- (5) Specific rules for cancellation of documents.
- (6) Special procedure for grant of injunctions.

1. Special rule in the matter of possession of immovable or movable property: A person having a right to a certain immovable property can take possession of it in accordance with the provisions laid down in the Code of Civil Procedure, and the right to the immovable property has to be proved therein. Such right can be proved by sale deed, mortgage deed, gift deed or proof of possession enjoyed for many years. That claim is a claim for possession and possession.

But if the possession of immovable property has been taken from a person without his consent and without due process of law, he can recover the possession within six months, by claiming under Section 6 of the Special Appropriations Act, 1963. In such a suit the plaintiff does not have to prove his ownership, only that he was in possession of the property and that possession was forcibly taken without his consent. Defendant's defense of his ownership cannot stand. In such a suit no appeal lies against the order of restoration of possession of the property. If the defendant has proof of ownership, he can claim legal possession of the property based on that proof.

A person having title to movable property may sue for possession under the provisions of the Code of Civil Procedure, but the person not having title to the thing is in possession of the thing as an agent or trustee of the plaintiff, or if no suitable monetary compensation can be given in exchange for the thing, or If exact compensation is difficult to determine, or if possession has been unlawfully taken from the plaintiff, the person becomes liable to hand over possession of the thing to the plaintiff.

2. Specific Rule of Contract Matters : The law on compensation for performance and breach of contract is the Indian Contract Act, 1872. If a plaintiff complaining of breach of contract claims compensation for the same, it is disposed of according to the law of contract; But if there is no specific standard or criterion for determining such compensation, or if monetary compensation cannot be adequately appreciated, the court may exercise its discretion and order specific compliance with the terms of the contract; As, where a contract is made for the sale of immovable property, or a contract for the sale of a movable or immovable thing of special value to the plaintiff, or where the defendant is in possession of the thing as agent or trustee of the plaintiff, an order for specific performance of the contract may be made. ; Because fair financial compensation cannot be determined.

If a person who has no title or incomplete title to an immovable property contracts to sell or lease the property, such claim cannot be specifically enforced, but the defendant is entitled to recover the money paid by him with interest and costs of the suit. If the seller or lessee acquires a right in the property after the contract is entered into, the buyer or lessee can enforce the contract specifically.

Contracts which cannot be specifically enforced:

- 1) Monetary compensation appears to be the just remedy for breach of contract; E.g., compensation payable on termination of private employment.
- 2) The contract is of many fine details, or depends on the personal qualifications or will of the parties, or is of a nature which cannot be strictly enforced; For example, a composer may have a program implemented.
- 3) The contract is of such a nature that it can be terminated only by notice.
- 4) Performance of a contract involves continuous performance of a duty which cannot be supervised by a court.
- 5) Agreement to submit to arbitration any ongoing or future disputes between the parties.

However, in the following cases the court may enforce the contract specifically:

- (1) If the borrower is unwilling to repay the money, he may order the mortgage-deed to be foreclosed or the surety to be written.
- (2) Parties carrying on business in partnership After commencing, the partnership may be ordered to be documented.
- (3) If there is a contract to construct on land, and if damages for breach of contract cannot be adequately compensated or the defendant has obtained possession of the land by virtue of the contract, specific performance of the contract to construct.

Specific performance of the contract may be awarded to the following persons:

- (1) A party to a contract.
- (2) Representative of a party's interest (but if a party's knowledge, skill or any personal quality is an important element in the contract, his representative may not demand special compliance.).
- (3) A person entitled to the benefit of an agreement in which a congratulation is given on the occasion of a marriage, or a settlement of disputes between members of the same family is recorded.
- (4) If a person who has become a sufficient tenant during his lifetime has entered into an agreement in respect of his right, the remainderman is entitled.
- (5) A reversioner-in-possession entitled to the benefit of a person having entered into an agreement in respect of a property.
- (6) A reversioner-in-remainder is entitled to benefit in such contract and the reversioner is liable to material loss on account of the breach of contract.
- (7) A new company formed when a company amalgamates with another company after entering into an agreement.
- (8) Where the sponsors of the company have entered into an agreement for the purposes of the company before the establishment of the company, and that agreement is referred to in the memorandum of the company, the company may require specific compliance with the agreement if the company notifies the other party of its acceptance.

The following persons may not specifically enforce the contract:

- (1) who is not entitled to compensation for breach of contract,
- (2) who becomes incapable of performing his duty or obligation under the contract or breaches an essential condition of the contract, or betrays the performance of the contract, or willfully acts in a manner wholly contrary to the relationship which the contract is intended to establish.
- (3) Who fails to state or prove in his claim that he has performed or is ever ready to perform his essential obligations under the contract (required to so state in the statement of claim.).

In short, one who hopes for equity from the court must practice equity himself.

A person who has no right over the immovable property but knowingly or knowingly enters into an agreement to sell or rent the immovable property, cannot enforce the terms of the agreement on the part of the party who becomes the purchaser or lessee of the agreement.

Modification of contract:

In a suit for specific performance of a written contract, if the defendant pleads that the contract has been modified, the plaintiff cannot enforce the unmodified contract under the following circumstances:

- (1) By reason of fraud, mistake or misrepresentation, it contains different terms than those agreed upon by the parties.
- (2) The contract is not capable of producing the result which the parties intended.
- (3) The parties have modified the contract after it was made.

Specific performance of the contract can be enforced against the following persons:

- (1) Against a party to a contract.
- (2) against a purchaser of property from him.
- (3) Against a person who has a prior contractual right to the property if the defendant has evicted him.
- (4) If a company merges with another company after making the agreement, against the new company coming into being by reason of it.
- (5) Against the company if before the formation of the company the sponsors of the company have entered into an agreement for the purpose of the company and after the formation of the company the company accepts it and informs the other party to the agreement.

Jurisdiction of Court in Matter of Specific Performance of Contract:

Enforcing specific performance of the agreement is within the court's discretion, not mandatory. But discretion should not be arbitrary or capricious; A superior court should be motivated by principles of justice based on fair, sound foundations and capable of reformation.

The court will not consider it prudent to enforce the contract in the following cases:

- (1) The terms of the contract, the conduct of the parties at the time of making the contract, and the circumstances at the time of making the contract are such as to give the plaintiff an unfair advantage over the defendant.
- (2) The defendant may suffer unforeseen hardship as a result of the performance of the contract, but the plaintiff may not suffer any hardship as a result of the non-performance.
- (3) The defendant entered into the contract in such circumstances that its specific performance would be unjust.

If the plaintiff himself has taken concrete steps or suffered loss in performing the contract, the court will certainly exercise its discretion to compel the defendant to perform the contract.

Damage Compensation:

(1) In a suit for specific performance of a contract the plaintiff may demand damages for breach of contract; (2) may award damages to the plaintiff for the defendant's breach of contract if the court is unwilling to grant specific compliance; (3) In such a suit the court may also order compensation if the court is of the opinion that even specific performance of the contract would not do justice; But the Court cannot award damages unless the claim is made in the original plaint or in the amended plaint.

Other remedies: In a suit for specific performance of a contract of transfer of immovable property the plaintiff may demand possession or partition of the property, and alternatively if specific performance is refused, he may himself recover such amount or deposit; But unless such demand is made in the original plaint or in the amended plaint, the court cannot grant such a decree. Even if the contract states that the breaching party will be liable to pay a certain amount, the court may order specific performance of the contract, considering the terms and circumstances of the contract.

A claim for specific performance of the contract waives the breach of contract Plaintiff cannot claim compensation.

3. Rectification of document: If, by reason of fraud or mutual mistake of the parties, a written contract or document does not express the true intention of the parties, (a) any party or his representative may sue for the rectification of the document, (b) in a suit arising from such document may demand rectification of document, (a) Defendant may also demand rectification of document in his defense in such suit.

This provision does not include articles of association of the company.

If the aggrieved person has acquired rights in the immovable property by pure donation and payment of value, the court may order the rectification of the document in such a way as not to prejudice those rights. If the documents are not sought for correction in the original pleading or in the revised pleading, such credit cannot be granted.

4. Cancellation of written contract: Any person having an interest in the contract can sue for cancellation, and the court will declare the contract void in the following two cases:

- (1) The contract is voidable by the plaintiff on the ground of coercion, betrayal, misrepresentation etc. of the opposite party.
- (2) The defendant is more liable than the plaintiff for entering into such an agreement where the contract is illegal for reasons not apparent from the contract.

But the court will refuse to set aside the contract in the following circumstances:

- (1) The plaintiff has expressly or impliedly ratified the contract.
- (2) There has been such a change in circumstances since the contract was made that the parties cannot be restored to the position they were in at the time of the contract.
- (3) During the subsistence of the contract the affected persons have acquired rights in the subject matter of the contract without knowledge of the contract by paying the price out of pure donation.
- (4) If only one part of the contract is sought to be rescinded and that part is not distinguishable from the rest.

Can a decree for specific performance of an agreement to sell or lease immovable property be decreed for rescission of that agreement?

After a decree is passed in a suit for specific performance of an agreement for sale or lease of immovable property, if the purchaser or lessee fails to pay the purchase price or other sum as ordered by the court within the time specified in the decree, the seller or lessee may apply for rescission of the agreement in the same suit. can and the court can order rescission of the contract against the defaulting party. If the contract is so rescinded, the court may restore the possession of the property from the buyer or lessee to the seller or lessee, as well as the amount of rent and profit arising from the property, and if it thinks fit in the interest of justice, the buyer or lessee may pay the sum or deposit to the buyer or lessee. can give back; But if the buyer or the lessee pays the money as per the order of the court, then in the same suit the court will order a proper sale deed or lease and after such document, possession or distribution of the property can be awarded and the property handed over. A separate claim cannot be made for all these ringworms.

5. Cancellation of an instrument: If the consent is tainted, i.e. due to factors such as coercion, fraud, misrepresentation or misrepresentation, or due to mistake, the victim may cancel or declare the instrument void and fear or that the document, if it continues to exist, will seriously injure him in the future, he may sue for the annulment or annulment of the document, and the court in its discretion shall order the cancellation of the document and its delivery to the plaintiff. If the document is registered under the Indian Registration Act, 1908, the court shall send a copy of such order or decree to the registering officer to record the fact of cancellation in his register.

While deciding the annulment of the document, the court shall also order the plaintiff to recover the benefit received from the opposite party and such compensation as may be appropriate in the interest of justice.

If the claim for cancellation of the document is to fail, however

- (1) A defendant may be ordered to return or pay compensation for any benefit received from the plaintiff under such document.
- (2) If the contract is void ab initio because the defendant is unable to perform the contract, the benefit received by him under such contract may be ordered to be recovered from his property.

6. About injunctions: Injunctions are of two types: (1) temporary, or (2) permanent. A temporary injunction lasts for a specified period of time or until the court makes another order. A permanent injunction may be decreed on the merits after the trial of the suit, and such injunction permanently restrains the defendant from asserting rights or doing any act contrary to the rights of the plaintiff. Such an injunction can be granted to prevent the defendant from breaching its obligations to the plaintiff. If the liability arises out of such contract the court may act according to the provisions regarding specific performance of the contract. A permanent injunction may be granted if the defendant encroaches or threatens to encroach on the plaintiff's right to enjoy the property in the following cases: (1) the defendant is a trustee of the plaintiff's property, (2) the damage caused or likely to be caused by such encroachment is not a criterion for determining the value of (3) the encroachment is such that monetary compensation cannot be adequately redressed, (4) an injunction is necessary to prevent multiple legal proceedings.

If the defendant is required to do certain acts to prevent the breach of the obligation, the court using its discretion can issue an injunction to prevent the breach of the obligation and to do the necessary acts.

Plaintiff in suit for permanent injunction in addition to or barred from injunction may seek compensation in lieu of decree and the court may grant such compensation. But the court cannot grant compensation unless such compensation is demanded in the original plaint or later in the amended plaint. A claim for compensation for breach of obligation cannot be made if the suit for injunction is dismissed.

The following injunctions cannot be granted:

- (1) An injunction shall not be granted to stay any judicial proceedings pending between the parties while suing for an injunction, unless the injunction is necessary to prevent a multiplicity of judicial proceedings.

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- (2) No person shall be estopped from proceeding in a court not inferior to that in which the suit for injunction is sought.
 - (3) No person shall be prevented from petitioning the Legislature.
 - (4) No person shall be prevented from prosecuting a criminal case.
 - (5) A breach of contract which cannot be specifically enforced cannot be prevented.
 - (6) If it is not clear whether an act is a nuisance or not, that act cannot be stopped.
 - (7) A continuing breach to which the plaintiff has given implied consent cannot be prevented.
 - (8) Any other effective remedy may be obtained by taking any other action.
 - (9) The conduct of the plaintiff or his agent is such that the court deems him ineligible for relief.
 - (10) The plaintiff does not have personal interest in the case.

Conclusion

If a contract contains a promise to do a certain act as well as a promise not to do a certain act, the court is unable to enforce the promise to do a certain act, but can grant an injunction to prevent the act promised not to be done. But such an injunction may be granted only in reasonable circumstances and in exceptional cases; For example, in a contract the plaintiff undertook the duty to advertise and the defendant was to pay for that work. The duty to give notice cannot be specifically enforced, but an injunction against assigning the work to another person can be granted until the outstanding salary for the work done is paid.

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