

3. THE LAW OF SPECIFIC RELIEF

(Earlier portion not found—ed.)

*

*

*

*

Nature that the law permits its Specific Performance

(ii) Where the Plaintiff is a person in whose favour Specific Performance can be granted.

(iii) Where the Defendant is a person against whom Specific Performance might be granted.

The question is : Is the Court bound to grant Specific Relief in such cases ?

The answer to this question is contained in Sec. 22.

(A) Section 22 lays down general rules—(1) It says that Specific Relief is discretionary. The Court may grant it or may refuse it. The Court is not bound to grant it merely because it is lawful.

(2) The discretion of the Court is not arbitrary, sound and reasonable, guided by judicial principles.

(B) Section 22 also specifies cases in which Court may exercise discretion not to grant Specific Performance and cases in which Court may exercise discretion to grant Specific Performance.

Cases in which Court may exercise discretion not to grant Specific Performance

(i) Where Specific Performance would give unfair advantage over the Defendant.

(ii) Where Specific Performance would involve some hardship on the Defendant which he did not foresee and non-performance would not involve such hardship on the Plaintiff.

Cases in which Court may exercise discretion to grant Specific Performance

Where the Plaintiff has done substantial acts or suffered losses in consequence of a contract capable of Specific Performance.

Damages and Specific Performance

Sections 19, 20, 29.

Two remedies for breach. Are the mutually exclusive or are they complimentary ? Does one bar the other ?

These are question which are considered in Sections 19, 20, 29. The rules contained in these three may be summarized as below :

19. (i) In the same suit, a Plaintiff can ask for both in addition or in substitution.

(iii) In a suit where Court decides not to grant Specific Performance Court can grant Compensation to Plaintiff if entitled.

(iv) If one suit Court may grant compensation in addition to Specific Performance if it comes to the conclusion to Specific Performance is not enough.

20. (v) The fact that liquidated damages have been agreed upon is no bar to Specific Performance.

29. (vi) If suit for Specific Performance is decreed, it will be a bar to a suit for damages.

●●

PART I
INTRODUCTORY

I. The enactment which defines Specific Relief.

1. The law as to specific relief is contained in the Specific Relief Act I of 1877.

2. Before the passing of the Specific Relief Act the law as to Specific Relief was contained in Sections 15 and 192 of the Civil Procedure Code (Act VIII) of 1859.

3. The law was fragmentary. Section 15 dealt with declaratory decrees and Section 192 dealt with Specific performance of contracts.

4. The Act aims to *define* and *amend* the law relating to Specific Relief obtainable in Civil Court.

II. The nature of the Law of Specific Relief

1. Laws fall into *three* categories,—

- (a) Those which define Rights.
- (b) Those which define Remedies.
- (c) Those which define Procedure.

2. *Illustrations.*

(Space left blank—ed.)

3. The Law of Specific Relief belongs to the second category. It is a law which deals with Remedies.

4. The term '*relief*' is only another word for remedy which a Court is allowed by law to grant to suitors.

III. What is meant by Specific Relief?

1. Specific Relief is one kind of remedy recognized by law. Its nature can be best understood by distinguishing the different remedies which the law allows to a person whose right has been invaded.

2. A right to be real must have a remedy. No right can give protection if there is no remedy provided for its vindication. Law therefore invariably provides a remedy for a breach of a right.

3. The general remedy provided by law for a breach of a right is *monetary reparation* called compensation or damages.

4. This remedy of money compensation is not an adequate remedy in *all* cases. The loss of some things can be compensated by payment of money. The loss of others cannot be compensated by money. Their loss can be made good by the *return* of the very *same* article. Similarly, the refusal to perform an obligation may be compensated by money. In other cases, the only adequate remedy is to compel the performance of the very *same* obligation.

5. Thus there are two kinds of remedies provided by law :

(a) those under which the suitor is granted the *very same* things to which he is entitled, by virtue of the right he has acquired against his opponent; and

(b) those under which the suitor is granted not the very same thing to which he was entitled, but money compensation or damages in lieu thereof.

6. Specific Relief is the name given to the first kind of remedy.

7. The relief is called specific because it is relief in *specie*, i.e. in terms of the very thing to which a suitor is entitled.

IV. What Specific Reliefs are provided for in the Specific Relief Act.

1. The forms of Specific Reliefs provided for in the Specific Relief Act form under four divisions :

(1) Taking possession of property and delivering it to the claimant who is out of possession.

(2) Requiring Performance of Contract.

(3) Compelling the Performance of a Statutory Duty.

(4) Preventing the doing of a wrong.

2. The subdivisions of the 4th category are :

(i) Rectification of an instrument.

(ii) Rescission of an instrument.

(iii) Cancellation of an instrument.

(iv) Declaration of status.

(v) Receivers—appointment of—

(vi) Injunctions.

V. Other Laws defining Specific Reliefs.

1. These are not the only specific remedies administered by courts in India. There are other specific remedies recognized by the Indian Law and which are enforced by courts in India.

2. These specific remedies outside the Specific Relief Act are:

(i) Taking an account of the property of a deceased person and administering the same.

(ii) Taking accounts of a trust and administering the trust property.

(iii) The foreclosure of the right to redeem or sale of the mortgaged property.

(iv) Redemption and reconveyance of mortgaged property.

(v) Dissolution of partnership, taking partnership accounts, realizing assets ; discharging debts of partnership, etc.

3. We are not concerned with these.

PART II

Consideration of the Different Kinds of Specific Reliefs Recognized by the Act.

Division I

Recovery of possession of Property Sections 8, 9, 10 and 11.

1. Recovery of Possession of immoveable property
—Sections 8, 9.
2. Recovery of Possession of moveable property
—Sections 10, 11.

Recovery of Possession of Immoveable Property.

1. The Question is—

When can a person, who has lost possession of immovable property and sues to recovery possession thereof—be granted possession thereof instead of damages or compensation for the loss of possession.

2. The emphasis is on the nature of the relief—i.e. the recovery of the specific piece of property of which possession is lost. The relief by way of damages or compensation is always open under the general law. Question is when can an injured person insist upon specific relief for the recovery of property.

3. The cases in which a person has lost possession of immoveable property fall under two classes.—

(i) The case of a person who is entitled to possession but who has lost possession.

(ii) The case of a person who had possession but who has lost possession.

4. The difference consists in *being entitled to possession* and *being in possession*.

5. These two cases are dealt with in Sections 8 and 9. Both provide that in either case the Plaintiff shall be entitled to Specific Relief by way of recovery of property.

6. Requirements of Section 8.

(i) Prove that you have a title to possession and you will succeed in recovering possession by way of specific relief.

7. Requirements of Section 9.

1. Prove that you were in possession within six months prior to the date of suit.

2. Prove that you were dispossessed *without your consent* or *otherwise* than in due course of law.

A *in possession is dispossessed by* B

- | | | | | | |
|------|-----------------|---|----|---|---------------|
| I. | a with title | “ | is | “ | without title |
| II. | a without title | “ | is | “ | with title |
| III. | a without title | “ | is | “ | without title |

1. In *all* three cases A can recover possession if he brings suit under Section 9 i.e. within six months—irrespective of the question of title.

2. If he brings a suit after six months, he must rely on title so that A can recover possession in

(i) —because he has a title.

(iii) —because he has a possessory title.

But cannot recover in (ii) because B has title and A has not.

Who can maintain a suit under Section 10

1. According to Section 10, only a person *entitled* to the possession of the suit property can sue.

2. Meaning of “entitled to possession”.

3. Title to possession may arise

(i) as a result of ownership or

(ii) independently of ownership, as a temporary or special right to present possession

4. Title to possession as a result of ownership.

(i) Ownership may be bare legal ownership or it may be legal ownership coupled with beneficial interest.

(ii) It is not necessary that a legal owner must have also a beneficial interest in the property to have a right to maintain a suit under Section 10.

(iii) This is made explicit in Explanation I, where a trustee is permitted to sue for the possession of the trust property although he has no beneficial interest in it.

5. Title to possession independently of ownership

1. Title to possession independently of ownership may arise in two ways.—

(i) By the act of owner.

(ii) Otherwise than by the act of the owner.

(I) TITLE TO POSSESSION BY THE ACT OF THE OWNER

(i) The owner may by his own act create in another person a right to the possession of the thing which belongs to him as *owner*.

(ii) Illustrations of such a right to possession are to be found in Bailment and lien.

(1) Simple bailment cover the cases of.—

(i) loan

(ii) custody

(iii) carriage

(iv) agency.

(2) Other Bailments.

1. Pawn

2. Hire.

2. Difference between Simple Bailment and other Bailments of Pawn or Hire.—

(i) In Simple Bailment the owner (Bailer) has a right to possession and the Bailee has legal possession. The Bailee being entitled to possession can maintain a suit to recover possession. The Bailer having a right to possession can also maintain a suit to recover possession against any person other than a Bailee.

(ii) In other Bailments of Pawn or Hire—The Bailer has no right to possession. The right to possession is vested in the Pawnee or Hirer during the continuance of the Bailment and it is only the Bailee (Pawnee or Hirer) who can maintain a suit for the recovery of possession.

3. Lien is an illustration of a right to possession arising out of the act of the owner.—

(1) Lien is a right to possession of a thing which arises out of debt due by the owner.

(2) The right to possession of the owner is thus temporarily vested in another.

4. All that is necessary to maintain a suit is a right to present possession.—

(i) The right of present possession may arise out of ownership or may not.

(ii) Right to present possession may be special or temporary.

(II) RIGHT TO POSSESSION OTHERWISE THAN BY THE ACT OF THE OWNER.—

(1) The founder of lost goods has a right to possession.

(2) It is not the result of the act of the owner.

(3) But it is good against all the world except the true owner.

II. Against whom can such a suit be maintained

1. A suit under Section 10 can be maintained against any one and can be maintained even against the true owner.

2. All that is necessary is that the Plaintiff must be entitled to possession.

Section 11. Moveable Property

1. Q. 1.—Who can maintain a suit under Section 11.

A.—The person entitled to *immediate possession*.

2. Q. 2.—Against whom can such a suit be maintained ?

A.—Against any person if he is not owner.

The Defendant must not be the owner. If he is, then Section 10 would apply.

3. Q. 3.—In what case will there be specific relief by way of recovery of possession ?

A.—(i) Where the person who holds the thing is the agent or trustee of the claimant.

(ii) Where compensation for money would not be adequate compensation to the claimant for the loss.

(iii) Where it is extremely difficult to ascertain actual damage caused by its loss.

(iv) Where the possession of the person is the result of a wrongful transfer from the claimant.

Specific Relief regarding Possession of Property

They are dealt with in Sections 8—11.

Section 8. Recovery of specific immovable property by a person entitled to the possession thereof.

Section 9. Recovery of possession of specific immovable property by a person who is dispossessed.

Section 10. Recovery of possession of specific movable property by a person *entitled to its possession*. (1) By reason of ownership (2) By reason of temporary or special rights (Trustee) Bailment Pawn.

Section 11. Recovery of possession of Specific immovable property by a person who is entitled to its *immediate possession*.

This applies when the person having possession is not owner

What is meant by possession in Law ?

Legal possession is a compound of two ingredients: *Corpus* and *animus domini*.

Note:—

(i) Legal Possession does not involve the element of title or right. Legal Possession is wholly independent of right or title. Legal Possession may be *lawful* or *unlawful*.

If a possessor acquired his *de facto* possession by a means of acquisition recognized by the Law (*Justis fitulus*) he has a lawful possession ; if he did not so acquire it (as in the case of a thief) he has legal possession, but it is an unlawful one.

(ii) *Legal Possession* confers more than a personal right to be protected against wrong-doers : it confers a qualified *right* to possess, a right in the nature of property, which is valid against every one, who cannot show a prior and better title.

There are two elements in legal possession.

(i) *Corpus*, i.e. the physical relation.

(ii) *Animus*, i.e. the mental relation.

Corpus or physical relation does not mean physical contact only. It also includes physical contact resumable at pleasure.

The essence of corpus is the power, to exclude others from the use of a thing, i.e. an effective occupation or control according to the nature of the thing possessed.

Animus is the intention of exercising such power of dealing with a thing at pleasure and excluding others—*animus domini*.

Three forms of animus

The mental attitude of the physical possessor in regard to the object of his possession may assume three degrees.—

First.—His intention may be merely to protect the thing. There is no assertion of right—Servant's possession of masters goods.

Second.—Intention to control for certain limited purposes —e.g. tenant—intention to exclude every one except the owner.

Thirdly.—Intention amounting to a denial of the right of every other person—This is the real *animus domini*.

Distinction between Possession and Trespass

1. What the plaintiff is to prove in such cases is possession of the disputed property and not mere isolated acts of trespass over that property. He must prove—

(i) That he exercised acts which amounted to dominion, the nature of these acts of dominion varies with the nature of the property.

(ii) That the act of dominion was exclusive.

2. If the occupation of the plff., as indicated by those acts, has been peaceable and uninterrupted and has extended over a sufficient length of time, the inference may properly be drawn that the plaintiff was in possession.

Objects of Section 8 and 9.

(i) Section 8 of the Act provides that the person entitled to the possession of specific immovable property may recover it in the manner prescribed by the C. P. C, i.e., by a suit for ejectment on the *basis of title*.

(ii) Section 9 gives a summary remedy to a person, who has, without his consent been dispossessed of immovable property otherwise than *in due course of Law* for recovery of possession without *establishing title*.

Section 9.

This Section deals with the subject of unlawful dispossession, and gives to the person dispossessed the alternative of two remedies.—

(i) He may simply prove the fact of his unlawful dispossession, in a suit instituted by him within six months thereof, recover possession of the property. The question of his *title* to the property is quite immaterial.

(ii) He may recover possession by relying on his title in a suit brought by him for that purpose. Here his success depends upon his proof of title.

The former remedy is called remedy by way of a possessory suit and is enacted in Section 9. The latter is the ordinary remedy of a suit based on title and is embodied in Section 8.

Nature and object of Section 9.

(i) To prevent people from taking the law into their own hands, however good their title may be.

(ii) To prevent the shifting of the *burden of proof* owing to dispossession—Possession being *prima facie* evidence of title.

Anterior possession *per se* constitutes a perfect title to property as between the *dispossessed* and the *dispossessor*, in a suit under Section 9, i.e. within six months of the dispossession.

Question.—What is the effect of anterior possession in a suit for possession by a person, who is dispossessed after 6 months have elapsed and a suit under Section 9 is barred ?

The following propositions have been judicially established :—

(i) Possession for a period of sixty years and upwards is sufficient to create a title in the possessor which no one can question.—8 D.R. 386.

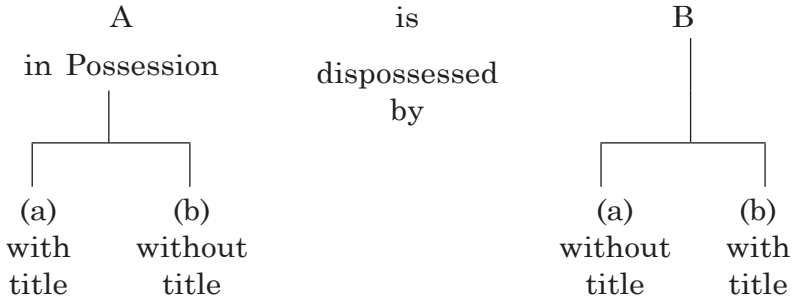
(ii) Adverse possession for 12 years under article 142 is itself title even against the rightful owner himself.

Consequently, where in a suit for possession, a plea of adverse possession during the prescribed period of limitation is set up by the Defdt. the question of limitation becomes a question of title, and the Piff. must furnish *prima facie* proof of subsisting title at the date of his suit, before the Defdt. is required to establish his adverse possession.

(iii) Prior possession, however short, is itself a title against a *mere wrong-doer* and a bare plea of anterior possession, and dispossession, is in fact a good ground for recovery of possession,

- (1) Where the dispossessor can prove no title, or
- (2) Where neither party can prove a title.

Statement of the Position



I. Suit brought within 6 months.—

(a) and (a)	A can recover possession under Section 9
(b) and (b)	irrespective of title.
(b) and (a)	

II. In a suit brought after six months.—

(a) and (a)	A can recover, because the title is in A.
(b) and (b)	A cannot recover, because the title is in B.
(b) and (a)	A can recover, because of A's anterior possession.

Entitled to Possession

A right to possession exists either.—

- (i) as a part of ownership or
- (ii) independently of ownership, as a temporary or special right.

These special rights arise either.—

- (i) by the act of the owner or,
- (ii) otherwise than by the act of the owner.

I. By act of the owner

(1) Bailment and (2) Lien

Bailment is (1) simple and (2) special of Pawn and *Hire*

(i) *Simple Bailments* e.g. loan, custody, carriage and agency.

In simple Bailments, the Bailor has a *right to Possession* and the Bailee has legal possession.

A is Bailor and B is Bailee. Both can recover possession against C. A can recover possession as against B.

(ii) *Special Bailment*.— Pawn and Hire

Bailor has no right to possession during the continuance of the bailment and he only can recover possession.

Lien. Arises out of debt—the Vendor having the right to possession of the thing sold, until the purchaser has paid the purchase money.

II. Right to possession otherwise than by act of owner

Finder of lost goods—entitled to possession as against all the world except the owner.

PART II

DIVISION II

Performance of Contract

Specific Performance of a Contract is “its actual execution according to its stipulations and terms; and is contrasted with damages or compensation for the non-execution of the contract.

It is a species of Specific Relief, afforded by ordering a party to *do* the very act which he is under an obligation *ex-contractor* to do.

Specific Performance of a Contract

Sections 12 and 21 deal with Specific Performance of a Contract.

Section 21.—Defines contracts which *cannot* be specifically enforced.

Section 12.—Defines contracts which *may* be specifically enforced.

Section 21.—There are eight sorts of contracts which *are not* specifically enforceable.—

- (i) Contracts for the non-performance of which money compensation is an adequate relief.
- (ii) Contracts (i) running into minute details.
 (ii) dependent on personal qualifications or volition of parties.
 (iii) is such that Court cannot enforce Specific Performance of its material terms.
- (iii) Contracts the terms of which the Court cannot find with reasonable certainty—e.g. necessary appliances.
- (iv) Contracts which in its nature is revocable e.g. Partnership without duration.
- (v) Contracts by trustees in excess of their powers, or in breach of their trust.

- (vi) Contracts by company in excess of its powers.
 - (vii) Contracts the performance of which involves the performance of a continuous duty extending over a longer period than 3 years from its date.
 - (viii) Contracts material part of the subject-matter supposed by both to exist has ceased to exist.
 - (ix) Contracts to refer a controversy to arbitration.
- Note.* Practically Specific Performance because no right of suit is given.

Specific Performance of Contracts

Section 12

1. There are four cases in which Specific Performance may be enforced.

- (i) Where act promised is in performance of a trust.
- (ii) Where there is no standard to ascertain actual damage.
- (iii) Damages, no adequate relief.
- (iv) Compensation for non-performance cannot be got.

Contract

The first question to be determined by the Court in a suit for Specific Performance of an agreement is, whether the agreement in question is a contract or not. Section 4 (a) — right to relief unless agreement is a contract.

The following agreements are not contracts because they are not enforceable and are therefore excluded:—

- (i) Incomplete agreements—Parties not gone beyond the stage of negotiations;
- (ii) Agreements which are void.
- (iii) Contingent agreement—until the contingency has applied . . . should be “arisen”.

Voidable contracts are not excluded.

There must always be a contract before the Court which has been unperformed.

Mutuality—The remedy by way of specific performance is *mutual*, i.e., the vendor may bring his action in all cases where the purchaser can be sure for specific performance.