

UNIT – V

The Specific Relief Act

Sections 9–16 • 21 • 24 • 36–42

Specific Relief Act, 1963

Modern Legal Education Series

What We Will Cover

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What specific relief means and its character

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Temporary • Perpetual • Mandatory • Preventive

What is Specific Relief?

Specific Relief means relief in the form of doing or prohibiting something, as opposed to awarding monetary compensation (damages). It aims to give the exact performance or protection that the party is entitled to under the law.

Equitable Origin

Specific relief is rooted in equity. It is granted when damages are not an adequate remedy.

Discretionary

Courts have discretion. It is not claimed as a matter of right in every case.

Positive & Negative

Can compel performance (positive) or restrain an act (preventive/injunction).

Movable & Immovable Property

Covered by Sections 5–8

Immovable Property

Section 5 – Person entitled to possession of specific immovable property may recover it in the manner provided by the CPC.

Section 6 – Suit by person dispossessed without consent (and not by due process). Must be filed within 6 months. No title need be proved — only previous possession.

Movable Property

Section 7 – Person entitled to possession of specific movable property may recover it in the manner provided by the CPC.

Section 8 – Liability of person in possession (not as owner) to deliver specific movable property when the thing is held by him as agent/trustee, or when compensation in money is not adequate, or when it is extremely difficult to ascertain damage.

When Granted and When Not Granted

Covered by Sections 9–16 & 21

When Granted

- Damages are not an adequate remedy
- Subject matter is unique (land, rare goods, shares in private company)
- Contract is valid, certain and enforceable
- Plaintiff has performed or is ready & willing to perform (Sec 16)
- Mutuality of remedy exists

When Not Granted

- Damages are adequate (money can compensate)
- Contract depends on personal skill / volition
- Continuous duty which court cannot supervise
- Contract is uncertain or incomplete
- Plaintiff has acted unfairly or delayed (laches)
- Against a minor or person of unsound mind

Parties to Specific Performance

Who may obtain

- Party to the contract
- Representative-in-interest
- Beneficiary under a trust (in some cases)
- Person claiming title through a party (with exceptions)

Against whom

- Party to the contract
- Persons claiming under a party (with notice)
- Subsequent transferee with notice
- Not against bona fide purchaser without notice for value

Section 16 – Personal Bars

Plaintiff must prove he has performed or is ready and willing to perform the essential terms of the contract which are to be performed by him.

Section 24

Liquidation of damages is not a bar to specific performance unless the contract shows intention that damages are the only remedy.

Power of Court to Grant Relief

Specific performance is a **discretionary remedy**. Even if all conditions are satisfied, the court may refuse relief if it would be inequitable, harsh, or against the ends of justice. The discretion is judicial, not arbitrary.

Factors Favouring Grant

Unique subject matter, inadequacy of damages, plaintiff's readiness and willingness, clean hands.

Factors Against Grant

Hardship to defendant, unfair advantage to plaintiff, delay/laches, lack of mutuality, continuous supervision needed.

Section 20 (old) / Current Law

Court shall not refuse merely because the contract is not specifically enforceable at the instance of the other party (mutuality relaxed).

Instruments & Documents

Rectification

Section 26

When through fraud or mutual mistake the instrument does not express the real intention of parties, the court may rectify it.

Key Points:

- Mutual mistake or fraud required
- Real intention must be proved
- Rectification makes the instrument conform to true agreement
- Can be claimed in a suit for specific performance as well

Cancellation

Sections 31–33

Any person against whom a written instrument is void or voidable may sue to have it cancelled.

Key Points:

- Instrument must be void or voidable
- Plaintiff must have reasonable apprehension of injury
- Court may require the party who benefits to make compensation
- Partial cancellation possible in some cases

Section 34 – 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. The court may make a declaration in his favour.

Purpose

To remove cloud on title or status and prevent future litigation.

Essential

Plaintiff must have a present existing interest. Mere future or contingent interest is not enough.

Discretionary

Court may refuse declaration if plaintiff could seek further consequential relief but does not.

Examples

Declaration of ownership, legitimacy, marital status, right to office, etc.

Preventive Relief – Types of Injunctions

Covered by Sections 36–42

Temporary Injunction

Granted during the pendency of a suit to preserve status quo. Governed mainly by Order 39 CPC + Sec 37.

Perpetual Injunction

Final relief granted by decree. Restrains the defendant forever from doing an act (Sec 38).

Mandatory Injunction

Compels the defendant to do a positive act to restore the status quo or undo a wrongful act (Sec 39).

Preventive Relief

Injunctions are a form of preventive relief. They prevent the breach of an obligation existing in favour of the plaintiff.

Guiding Principles

When Granted

- Plaintiff has a clear legal right
- There is a threat of breach of that right
- Damages would not be adequate remedy
- Balance of convenience favours the plaintiff
- Irreparable injury is likely
- For perpetual injunction – obligation must exist in favour of plaintiff (Sec 38)

When Refused (Sec 41)

- To restrain criminal proceedings
- To stay judicial proceedings (except in limited cases)
- To prevent breach of contract which is not specifically enforceable
- When plaintiff has no personal interest
- When equally efficacious relief is available
- When conduct of plaintiff is unfair

KEY TAKEAWAYS

Summary of Unit-V

01

Specific Relief is Equitable

It is discretionary and granted when damages are inadequate.

02

Recovery of Possession

Secs 5–8 provide special remedies for movable and immovable property.

03

Specific Performance

Granted for unique subject matter when plaintiff is ready & willing (Sec 16).

04

Rectification & Cancellation

Tools to correct or nullify instruments that do not reflect true intention or are void/voidable.

05

Injunctions

Temporary, Perpetual and Mandatory – powerful preventive and restorative remedies (Secs 36–42).

Thank You

“Specific relief aims to give the exact thing the party is entitled to.”

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