

পঞ্চদশ অধ্যায় :

বিবিধ

THE SPECIFIC RELIEF ACT, 1877

Act. No. 1 of 1877PART-II
SPECIFIC RELIEF

CHAPTER-I

RECOVERING POSSESSION OF PROPERTY

8. Recovery of specific immovable property.- A person entitled to the possession of specific immovable property may recover it in the manner prescribed by the Code of Civil Procedure.

9. Suit by person dispossessed of immovable property.- 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.

Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.

No suit under this section shall be brought against the Government.

No appeal shall lie from any order or decree passed in any suit instituted under this section, or shall any review of any such order or decree be allowed.

52. Preventive relief how granted.- Preventive relief is granted at the discretion of the Court by injunction, temporary or perpetual.

53. Temporary injunctions.- Temporary injunctions are such as are to continue until a specified time, or until the further order of the Court. They may be granted at any period of a suit, and are regulated by the Code of Civil Procedure.

Perpetual injunctions.- 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.

54. Perpetual injunctions when granted.- Subject to the other provisions contained in, or referred to by, this Chapter, a perpetual injunction may be granted to prevent the breach of an obligation existing in favour of the applicant, whether expressly or by implication.

When such obligation arises from contract, the Court shall be guided by the rules and provisions contained in Chapter II of this Act.

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 standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;
- (c) where the invasion is such that pecuniary compensation would not afford adequate relief;
- (d) where it is probable that pecuniary compensation cannot be got for the invasion;
- (e) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

Explanation.- For the purpose of this section a trade-mark is property.

Illustrations

(a) A lets certain lands to B and B contracts not to dig sand or gravel there-out. A may sue for an injunction to restrain B from digging in violation of his contract.

(b) A trustee threatens a breach of trust. His co-trustees, if any, should, and the beneficial owners may, sue for an injunction to prevent the breach.

(c) The directors of a public company are about to pay a dividend out of capital or borrowed money. Any of the shareholders may sue for an injunction to restrain them.

(d) The directors of a fire and life-insurance company are about to engage in marine insurances. Any of the shareholders may sue for an injunction to restrain them.

(e) A, an executor, through misconduct or insolvency, is bringing the property of the deceased into danger. The Court may grant an injunction to restrain him from getting in the assets.

(f) A, a trustee for B, is about to make an imprudent sale of a small part of the trust-property. B may sue for an injunction to restrain the sale, even though compensation in money would have afforded him adequate relief.

(g) A makes a settlement (not founded on marriage or other valuable consideration) of an estate on B and his children. A then contracts to sell the estate to C. B or any of his children may sue for an injunction to restrain the sale.

(h) In the course of A's employment as a vakil, certain papers belonging to his client, B, come into his possession. A threatens to make these papers public, or to communicate their contents to a stranger. B may sue for an injunction to restrain A from so doing.

(i) A is B's medical adviser. He demands money of B which B declines to pay. A then threatens to make known to effect of B's communications to him as a patient. This is contrary to A's duty and B may sue for an injunction to restrain him from so doing.

(j) A, the owner of two adjoining houses, lets one to B and afterwards lets the other to C. A and C begin to make such alterations in the house let to C as will prevent the comfortable enjoyment of the house let to B. B may sue for an injunction to restrain them from so doing.

(k) A lets certain arable lands to B for purposes of husbandry, but without any express contract as to the mode of cultivation. Contrary to the mode of cultivation customary in the district, B threatens to sow the lands with seed injurious thereto and requiring many years to eradicate. A may sue for an injunction to restrain B from sowing the lands in contravention of his implied contract to use them in a husband like manner.

(l) A, B and C are partners, the partnership being determinable at will. A threatens to do an act tending to the destruction of the partnership-property. B and C may, without seeking a dissolution to the partnership, sue for an injunction to restrain A from doing the act.

(m) A, a Hindu widow in possession of her deceased husband's property, commits destruction of the property without any cause sufficient to justify her in so doing. The heir-expectant may sue for an injunction to restrain her.

(n) A, B and C are member of an undivided Hindu family. A cuts timber growing on the family-property, and threatens to destroy part of the family-house and to sell some of the family-utensils. B and C may sue for an injunction to restrain him.

(o) A, the owner of certain houses in Chittagong, becomes insolvent. B buys them from the Official Assignee and enters into possession. A persists in trespassing on and damaging the houses, and B is thereby compelled, at considerable

expense, to employ men to protect the possession. B may sue for an injunction to restrain further act of trespass.

(p) The inhabitants of a village claim a right of way over A's land. In a suit against several of them A obtains a declaratory decree that his land is subject to no such right. Afterwards each of the other villagers sues A for obstructing his alleged right of way over the land. A may sue for an injunction to restrain them.

(q) A, in an administration-suit to which a creditor, B is not a party, obtains a decree for the administration of C's assets. B proceeds against C's estate for his debt. A may sue for an injunction to restrain B.

(r) A and B are in possession of contiguous lands and of the mines underneath them. A works his mine so as to extend under B's mine and threatens to remove certain pillars which help to support B's mine. B may sue for an injunction to restrain him from so doing.

(s) A rings bells or makes some other unnecessary noise so near a house as to interfere materially and unreasonably with the physical comfort of the occupier, B. B may sue for an injunction restraining A from making the noise.

(t) A pollutes the air with smoke so as to interfere materially with the physical comfort of B and C, who carry on business in a neighbouring house. B and C may sue for an injunction to restrain the pollution.

(u) A infringes B's patent. If the Court is satisfied that the patent is valid and has been infringed, B may obtain any injunction to restrain the infringement.

(v) A pirates B's copyright. B may obtain an injunction to restrain the piracy, unless the work of which copyright is claimed is libellous or obscene.

(w) A improperly uses the trade-mark of B. B may obtain an injunction to restrain the user, provided that B's use of the trademark is honest.

(x) A, a trademan, holds out Bas his partner against the wish and without the authority of B. B may sue for an injunction to restrain A from so doing.

(y) A, a very eminent man, writes letters on family topics to B. After the death of A and B, C, who is B's residuary legatee, proposes to make money by publishing A's letters. D, who is A's executor, has a property, in the letters, and may, sue for an injunction to restrain C from publishing them.

(z) A carries on a manufactory and B is his assistant. In the course of his business, A imparts to B a secret process of value. B afterwards demands money

of A, threatening, in case of refusal, to disclose the process to C, a rival manufacturer. A may sue for an injunction to restrain, B from disclosing the process.

55. Mandatory injunction.- 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.

Illustrations

(a) A, by new buildings, obstructs lights to the access and use of which B has acquired a right under the Limitation Act, 1908 part IV. B may obtain an injunction, not only to restrain A from going on with the buildings, but also to pull down so much of them as obstructs B's lights.

(b) A builds a house with eaves projecting over B's land. B may sue for an injunction to pull down so much of the eaves as so project.

(c) In the case put as illustration (i) to Section 54, the Court may also order all written communications made by B, as patient to A, as medical adviser, to be destroyed.

(d) In the case put as illustration (y) to section 54, the Court may also order A's letters to be destroyed.

(e) A threatens to publish statement concerning B which would be punishable under Chapter XXI of the Penal Code XLV of 1860. The Court may grant an injunction to restrain the publication, even though it may be shown not to be injurious to B's property.

(f) A, being B's medical adviser, threatens to publish B's written communications with him, showing that B has led an immoral life. B may obtain an injunction to restrain the publication.

(g) In the cases put as illustrations (v) and (w) to section 54 and in illustrations (e) and (f) to this section, the Court may also order the copies produced by piracy and the trade-marks statements and communications, therein respectively mentioned, to be given up or destroyed.

56. Injunction when to refuse.- An injunction cannot be granted-

(a) to stay 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 proceeding;

- (b) to stay proceedings in a Court not subordinate to that from which the injunction is sought;
- (c) to restrain persons from applying to any legislative body;
- (d) to interfere with the public duties of any department of the Government, or with the sovereign acts of Foreign Government;
- (e) to stay proceedings in any criminal matter;
- (f) to prevent the breach of a contract the performance of which would not be specifically enforced;
- (g) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;
- (h) to prevent a continuing breach in which the applicant has acquiesced;
- (i) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;
- (j) when the conduct of the applicant or his agents has been such as to disentitle him to the assistance of the Court;
- (k) where the applicant has no personal interest in the matter.

Illustrations

(a) A seeks an injunction to restrain his partner, B, from receiving the partnership-debts and effects. It appears that A had improperly possessed himself of the books of the firm and refused B's access to them. The Court will refuse the injunction.

(b) A manufactures and sells crucibles, designating them as "Patent plambago crucibles", though, in fact, they have never been patented. B pirates the designation. A cannot obtain an injunction to restrain the piracy.

(c) A sells an article called "Mexican Balm", stating that it is compounded of divers rare essences, and has sovereign medical qualities, B commences to sell a similar article to which he gives a name and description such as to lead people into the belief that they are buying A's Mexican Balm. A sues B for an injunction to restrain the sale. B shows that A's Mexican Balm consists of nothing but scented hog's lard. A's use of his description is not an honest one, he cannot obtain an injunction.

57. Injunction to perform negative agreement.- Notwithstanding Section 56 clause (f), 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 applicant has not failed to perform the contract so far as it is binding on him.

Illustrations

(a) A contracts to sell to B for taka 1000 the good-will of a certain business unconnected with business-premises, and further agrees not to carry on that business in Chittagong. B pays A taka 1000 but A carries on the business in Chittagong. The Court cannot compel A to send his customer to B, but B may obtain an injunction restraining A from carrying on the business in Chittagong.

(b) A contracts to sell to B the good-will of a business, a then sets up a similar business close by B's shop and solicits his old-customers to deal with him. This is contrary to his implied contract, and B may obtain an injunction to restrain A from soliciting the customers, and from doing any act whereby their good-will may be withdrawn from B.

(c) A contracts with B to sing for twelve months at B's theatre and not to sing in public elsewhere. B cannot obtain specific performance of the contract to sing, but he is entitled to an injunction restraining A from singing at any other place of public entertainment.

(d) B contracts with A that he will serve him faithfully for twelve months as a clerk. A is not entitled to a decree for specific performance of the contract. But he is entitled to an injunction restraining B from serving a rival house as clerk.

(e) A contracts with B that, in consideration of taka 1000 to be paid to him by B, on a day fixed, he will not set up a certain business within a specified distance. B fails to pay the money. A cannot be restrained from carrying on the business within the specified distance.
