PAPER PRESENTATION
ON THE TOPIC OF
SCOPE AND AMBIT OF RELIEF OF DECLARATION
U/Sec.34 of Specific Relief Act.

Presented by
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(Before the District Level Workshop NO.3 for Judicial Officers, Ananthapuramu district)

Introduction:

Declaratory relief is a form of equitable relief. This has been incorporated in the statute under chapter 6 of the Specific Relief of the 1963. Specifically, Sec.34 provides for the declaratory relief in form of status or right. In simple it is the judicial ascertainment of a legal right or any legal character of party to civil procedure without any consequential relief. The old section 42 was identical with the present section.

Purpose of the section 34:

The object of the Section is really to perpetuate and strengthen the testimony regarding the title of the plaintiff. The policy of the legislature is to dispel the cloud upon the title or legal character of plaintiff which is entitled with the aid of the court. The object of the proviso to the Section is to prevent a multiplicity for preventing a person from getting a mere
declaration of a right in one suit and then seeking in another suit the remedy, which have been obtained in the first suit itself.

The declaratory decree is a relief which can only be granted where there is no specific performance and no award of compensation. The **object of the declaratory decree** is to protect the legal character and legal right from the adverse consequence and peacefully enjoyed by the party and to protect the peace and order when the adverse possession is noticed.

The relief of declaration is a **discretionary relief**. The plaintiff cannot claim the relief as of right as it has to be granted according to sound principles of law. While exercising the discretionary power, the Court must keep in its mind the well settled principles of justice and fair play. Proviso to Sec.34 makes it clear that a suit for bear declaration can be maintained only when the plaintiff is not in a possession to ask for consequential relief. The remedy U/Sec.34 of the Act is a discretionary remedy subject to the proviso mentioned therein.

The jurisdiction to give declaratory judgment should be exercised sparingly with great care and jealously with extreme caution in **C.Nariyan Mittar Vs. Kishan Soondry Dasee, the judicial Committee** observed that it is not a matter of absolute right to obtain a declaratory decree. It is discretionary with the Court to grant it or not, and in every case the Court must exercise a sound judgment as to whether it is reasonable or not,
under all the circumstances of the case to grant the relief prayed for.

Coming to Sec.34 which speaks about discretion of Court as to declaration of status or rights, it reads as follows:

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:

Provided that 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.

Explanation—A trustee of property is a “person interested to deny” a title adverse to the title of someone who is not in existence, and for whom, if in existence, he would be a trustee.

The words “legal character” U/Sec.34 of the Act is not have the same meaning as the words in civil nature U/Sec.9 of CPC.

Meaning of Legal Character:-

A man’s legal character is the same thing as a man’s status in general. As per Salmond’s jurisprudence in its comprehensive status includes his whole position in the law i.e., the sum total of his legal rights, duties, liabilities or other legal relations whether
proprietary or personal are any particular group of them separately considered. The legal character or right which the plaintiff’s claims and the which is denied are threatened by the other side must exists **at the time of the suit** and should not be coming to existence at some future time the same was held in **AIR 1944 Lahor 110 Ahamad Yar Khar Vs Haji Khan.**

**Conditions:-**

In order to claim a declaratory relief the plaintiff has to comply the following conditions.

1) There must exist a legal vested right or legal character with the plaintiff.

2) Such right or character has been denied by the defendant or the defendant has some interest in denying such right or character.

Even if the conditions have been satisfied it does not impose mandate upon the Court to grant such relief as it is a discretionary relief. The persons seeking the declaratory decree must not be seeking an executory decree.

The declaratory decree cannot be granted under the following circumstances.

1) The relief is liable to be frustrated by Authorities

2) It leads an Un Justice to the adverse party.

3) It veils the suitor with undeserving advantage over the adverse party.

4) It inflicts to an un-just laws to the adverse party.
The same was held in "AIR 1973 Allahabad 158".

**Coming to Proviso:** - Under the proviso to this section it is made clear that no court shall make any declaration where the plaintiff being able to seek further relief that a mere declaration of title omits to do so. The proviso is applicable to declaratory suits only and **not to suits for specific performance etc** (Ramsingh vs. Baboolal, AIR 1954 Bhopal). The object of the proviso is to avoid multiplicity of suits by preventing a person from getting mere declaration of right in one suit and then seeking in another suit the remedy without which the declaration would be useless (John Guruprakasam vs. Yovel Nesan, AIR 1979 Ker 96). The plaint as a whole must be considered to decide whether the plaintiff had prayed for consequential relief or not (Union of India vs. Pearl Hosiery Mills, AIR 1961 Punj. 281). In Anirudha Padhan vs. Chhai Padan and others (AIR 1981 Orissa 74)

"The proviso to the section forbids a suit for a mere declaration, without further relief. The object of the proviso is to avoid multiplicity of suits and to prevent a person from getting a mere declaration of his rights in one suit and to resort to another for another remedy which is already available to him. Another object of the proviso is to protect the revenue from having a suit brought without the proper advalorem Court fee having been paid, Court fee for a mere declaration is a nominal fee whereas if consequential relief is asked for it would be advalorem”.

8. **Further relief:** --
"Further relief" under the proviso of this section is a relief from the same cause of action on the basis of which the plaintiff had instituted his suit. If a relief is remote and not so related to such a cause of action, such relief cannot be termed as further relief within the meaning of this section (Chellammal vs. Aiya Perumal, AIR 1937 Mad. 495). In Anirudha Padan vs. Chhai Padhan & others on the aspect of further relief in the proviso His Lordship P.K. Mohanti J. observed.

"From a reading of the proviso along with the main section it is clear that the further relief contemplated in the proviso is a relief which was available to the plaintiffs at the time of institution of the suit and which he committed to ask for. The further relief must be a relief in relation to the legal right as to property which the plaintiff is entitled to and it must also be a relief appropriate to and necessarily consequent on the right asserted”.

**Duty of Court:**- Jenkins, C.J., observes in Deokali Koer vs. Kedar Nath (I.L.R. 39 Cal. 704 at 707, 709):-

" It is common fashion to attempt an evasion of Court fees by casting the prayers of the plaint into a declaratory shape. Where the evasion is successful it cannot be touched, but the device does not merit encouragement or favour."

"The Court in which a declaratory suit is filed must not be misled by mere forms but must look throughout the form at the real substance of the plaintiff’s claim and, after careful scrutiny, must satisfy itself that the reliefs claimed are such as are contemplated and provided for by Section 34 of the Act (Mohammed Abdul Kader vs. Finlay Fleming & Co., 111 I.C. 136 : I.L.R. 6 Rang 291.)"
Consequential relief: Court-fees:-- Under section 7 (iv)(c) of the Court fees Act the plaintiff can put an arbitrary valuation upon the relief claimed by him when the relief is consequential to a declaratory relief. (Emperor vs. Ralla Ram, AIR 1946 Lah. 94 : 24 I.C 4 (FB.))

What is consequential relief within the meaning of Section 7 (iv)(c), Court fees Act, would be “further relief” for the purpose of section 42 of the Specific Relief Act, but “further relief” within the meaning of Section 42 need not necessarily be “consequential” relief under the Court-fees Act (Deakhan Ram vs. Ram Nanda Singh, AIR 1961 Pat. 425 at 431).

Cause of action:-- The cause of action for a declaratory suit, based on denial of title, does not arise until the plaintiff has knowledge of the denial (Muruga Chetty vs. Rajaswami 29 M.L.J. 574.)

Limitation period in suit for declaration:--

Article 113, Limitation Act 1963 provided limitations for declaratory suits is three years from the date when the right to sue accrues.

Generally, the right to sue accrues only when the cause of action arises, that is the right to prosecute to obtain relief by legal means.

The Limitation Act, 1963, has expressly provided for the following declaratory reliefs: Article 56 – Forged instruments; Article 57 – As to invalidity of adoptions; Article 108 – Alienations by Hindu and Muslim females; Article 58 – For other declaratory reliefs. A declaratory suit without a prayer for possession is governed by Article 113 (old Article 120) (Pieree Leslie & Co. Ltd. vs. Wapshare, AIR 1969 SC 843).
Discretion when to be exercised in favour of plaintiff:

If the declaration sought is useful and is sufficient to put a stop to the disputes between the parties the Court should grant the plaintiff relief by way of declaration (Noor Jehan Vs. Eugena Tiscenko, AIR 1942 Calcutta 325). It would not be a proper case for the exercise of discretion to declare that a marriage is void if the parties are domiciled outside India, for under International Law the proper Court to decide such questions is the Court within whose jurisdiction the domicile of the parties lies. (Khushi Ram Vs. Nandlal, AIR 1933 Lahore 866).

Discretion when to be exercised against Plaintiff’s:

1) When the declaration is in the nature of brutum fulmen (Reshma Dubaln Vs. Ram Dawn Tewarl, AIR 1928 Allahabad 309)

2) When the suit is of a speculative nature (Kushi Ram Vs. Nandlal, AIR 1933 Lahore 866)


4) When the denial of the plaintiff’s right is not likely to cause material injury to the plaintiff (Ahmad Yar Khan Vs.
Haji Khan, AIR 1944 Lahore 110 at 112, Shib Lal Vs. Hira Lal, ILR 1 Allahabad 622)

5) When persons interested in the property are not impleaded (Maharajah of Benaras Vs. Ramji, ILR 27 Allahabad 138).

6) When the interest of the plaintiff is too remote (Bhujendra Bhusan Vs. Trigunanath, ILR 8 Calcutta 761). Or the right is claimed in anticipation of a contingency which may never arise (Faryad Fatima Bibi Vs. Mujahid Abbas, AIR 1934 Allahabad 1064).

7) When the plaintiff seeks a negative declaration as to the absence of a right in the defendant (Ganesh Las Vs. Amwar Khan, AIR 1933 Allahabad 495).

8) When the plaintiff has made unfounded allegations (Lakshmi Narasimha Vs. Ramalingam, AIR 1920, Madras).

9) When the plaintiff’s application to be recognized as the legal representative of the judgment-debtor was dismissed after enquiry and he files a declaratory suit that he is such legal representative (Jal Narain Vs. Ram Deo, ILR 8 Lucknow 477).

10) When there is no real denial by the defendant of the plaintiff’s claim (Sachindra Kumar Vs. Nabendra Kishore, AIR 1934 Calcutta 155).

11) When the plaintiff has deliberately pursued another remedy though unsuccessfully or has unduly delayed the filing of the suit for relief under Sec. 34 of the Specific Relief Act
Burden of proof:

It is upon the plaintiff to prove his case the burden is on the seeker of title the same was held it S.Mada Swamy Thewar Vs. A.M.Arjuna Raja, AIR 2000 Madras 465.

Who may sue and who may be sued:

Any person who has been denied of the legal character and not necessarily the legal right may sue against the person denying. In K.P.Ramakrishna Pattar Vs. K.P. Narayana Pattar.

Concept:-

The concept of declaratory reliefs could be better understood by the following case laws rendered by the Hon’ble Supreme Court of India.

In one of the earliest cases of Supreme General Films Exchange Ltd., Vs. His Highness Maharaja Sir Brijnath Singhji Deo of Maihar & Others (1975 2 SCC 530), the scope of the provision was discussed and that whether the plaintiff has the legal character and right to claim the declaration under the Specific Relief Act. The Court held that the provision gives a statutory recognition to such relief and subject it to limitation, however, it does not deem to exhaust every kind of declaratory
relief falling outside the ambit of the provision. The circumstances under this section are a matter of discretion of the courts depending upon the facts and circumstances of the case. It is not a doubt that a stranger whose interest has not been affected cannot obtain a decree for declaration.

In yet another case of Vinay Krishna Vs. Keshav Chandra & Another (1993 Supp (3) SCC 129), the court discussed the proviso which lays down the applicability of bar under the said provision. The court held that once the bar under section becomes operative, no relief could be granted with reference to rejection.

In Venkataraja & Others Vs. Vidyane Doureradjaperuma (2014 14 SCC 502), the court has discussed the maintainability of declaratory suit without consequential relief. The court held that the purpose of the proviso to Section 34 is to avoid the multiplicity of the proceedings. A mere declaratory decree remains as non-executable in most cases and since the plaintiff did not amend the pleadings despite the objections in the written statement; it also defeated the purpose of Order 2 Rule 2 and hence was not found maintainable.

The Proviso Sec.34 makes it clear that a suit for bear declaration can be maintained only when the plaintiff is not in a position to ask for consequential relief. Sec.34 has no
application to a suit brought U/Or21 R.63 CPC, for setting aside a summary orders.

Declaratory relief on interlocutory application:-

Sec.34 is applicable only to suits and not to applications. Such a relief is inappropriate because in its very nature declaratory relief is final (Meade vs. London Borough of Haringey. (1979) 2 All E.R. 1026).

Effect of death of defendant:- The declaratory relief may be moulded in the light of subsequent events when the defendant is dead (Sri Mahalinga Thambiran vs. H.H. Kasivasi Arulnndi Thambiran. (1974) 1 SCJ 580).

Suits barred by Special Statutes:- A suit for declaratory relief is not maintainable where certain provisions of a statute operate as a bar (Raja Rampal Singh vs. Balbhadhur Singh, 6 CWN 849.) A suit for such relief can be maintained in a case where a special Tribunal constituted under a statute acts in violation of the principles of natural justice (Secy of State vs. Mask, AIR 1940 PC 105) or in a case where the decision of such a Tribunal is without jurisdiction (Rama Rao vs. Gopala Krishna Murthy, AIR 1957 AP 894).

Subsequent events: Whether relief can be moulded on basis of:- It is open to a Court of justice to take notice of events taking place subsequent to the institution of a suit and to mould its decree according to the circumstances as they stand at
the time when the decree is made \textit{(Annapurna Dasi vs. Sarat Chandra, AIR 1942 Cal. 394)}. The proviso to Section 34, however, refers to the position of the plaintiff at the commencement of the suit \textit{(Govinda vs. Perumdevi, I.L.R. 12 Mad. 136)}. Subsequent events cannot attract the operation of the proviso to Section 34 of the Act \textit{(Surendra Narayan vs. Bhatrabendra, AIR 1950 Cal. 386)}. “Able to seek further relief” in Section 34 means “able to seek it at the date of the suit” \textit{(Srimati Sabitri vs. Mrs. F.A. Savi, I.L.R. 12 Pat. 359)}.

**Effect of declaration**: As per section 35 of the Act, a declaration made under this Chapter is binding 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.

**Conclusion**

The relief of declaration is an equitable and discretionary relief. The person cannot claim this relief as of right. Section 34 of the Specific Relief Act speaks about the discretion of the Court with regard to declaration of status or right of a person which he is entitled to any legal character or right. Proviso (2) to section 34 prevents the multiplicity of filing suits for preventing a person from getting a mere declaration of a right in one suit and then seeking other relief in another suit, which he ought to have obtained in the first suit itself.
Declaratory decree protects the right and legal character of a person from the adverse consequence. The Court should be cautious while collecting the Court fee and using discretion and granting the relief in declaratory suits as discussed above. Section 34 of the Act is not an exhaustive. It is binding on the parties and the persons claiming through them.

My endeavour in presenting the paper is to have an overall idea about the declaratory suits u/s.34 of Specific Relief Act before listening this topic by our Honoured guest lecture. I made my sincere efforts to give an idea about the topic. My paper is not exhaustive as the scope of this topic is very wide and covers so many aspects. There are so many case laws under this section on several aspects. But I have not covered all those aspects as one can search the relevant case law for their relevant necessary aspect. Hence I may be pardoned for not giving the exhaustive subject over this topic due to paucity of time and pressure of work.

Thanks to one and all for giving me this opportunity.

****THE END****

By

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1. Adverse Possession is one of the most contentious methods of acquiring property. Adverse Possession is defined as a method of gaining legal title to real property by the actual, open, hostile and continuous possession of it to the exclusion of its true owner for the period prescribed by law. Adverse possession concerns rights acquired over land through exclusive use and possession adverse to the ownership rights of another person. In its most basic sense, ‘adverse possession’ is a legal doctrine that allows a person to acquire legal ownership of property that he treats as his own if he does so for a long enough period of time, even though the property is not his own. In other words, a person who uses another person’s property, without permission, for a long enough period of time, can acquire legal ownership of that property. All in all, adverse possession means possession inconsistent if the title of the owner and has an element of deny of the owners title in one form or another.

2. Adverse Possession has its roots in Medieval England where there was no central registration system. In south Australia, occupation can lead to a registrable title if the occupier satisfies the Limitation of Actions Act 1936 (SA) and registered persons make no objection after reasonable efforts are made to contact them. Boundary disputes were historically settled through Adverse possession. The doctrine of adverse possession was historically useful as a legal remedy, it has since been made redundant by legislation. This legislation balances the conflicting rights of parties better than the common law doctrine. Adverse possession encourages the wrongful possession of land in the hopes of eventually obtaining an unassailable interest in it. The United States Supreme Court has concluded, “that statutes of limitation find their justification in necessity and convenience rather than logic. Does Adverse possession is arbitrary and not differentiate between just and unjust claims”. possession finds its Adverse foundation through principles established by common Law and through the limitations defence in
statutes. (b) The doctrine is allowing legal owners of land to be ejected with the blessing of the State. One of the main reasons for allowing the doctrine to continue was because it, “Lifts the curse of dubious title which at present sterilises land held by squatters...that the squatter should at the end of the limitation period, be given a viable and merchantable title”. Another reason why adverse possession is still very relevant today can be found in the equitable maximum, “Vigilantibus non dormientibus, jura subveniunt.” Land owners have a duty to make the most of our must vital resource ‘land’ and if they fail or neglect this duty, then it is only right that a squatter who steps in and performs this duty be given possession of the land.

3. The principle on which the Limitation Act is based is that ‘limitation extinguishes the remedy, but not the right’. This means that in case of an adverse possession, the original owner may have the title over the property but he loses the right to claim such right through a court of law. The time period is calculated from the date the claimant is in possession of the property of the owner. The possession should be continuous, unbroken and uninterrupted for the entire duration. The claimant must have the sole possession of the property. However, the limitation period does not include the one during which there is pending litigation between the owner and the claimant. However, there are also certain exceptions to this rule. If the owner of the property is a minor, or of unsound mind, or serving in the armed forces, the property occupant cannot claim adverse possession. The Limitation Act, 1963, is a key piece of legislation, elaborating on adverse possession. The Act prescribes a period – 12 years for private properties under Article 64 and 65 and 30 years for government-owned ones under Art 112 within which one has to stake claim on his property. Any delay may lead to disputes in the future.

4. **Essential requirements to be proved for claiming adverse possession:**

   ➔ **Hostile possession:** The intention of the possessor of the property must be to acquire rights through means of adverse possession. These rights are acquired at the expense of the rights of the original owner. There must be an express or implied denial of
the owner's title by the possessor. Constructing a boundary wall around the property can be means of asserting this possession.

**Public knowledge:** The public at large must be aware about the possession of the claimant. This condition is put in place so that the actual owner has adequate means to know that someone is in possession of his property and gets reasonable time to act. However, one is not bound to inform the original owner about it.

**Actual possession:** There must be actual possession throughout the period of limitation. Physical acts like harvesting crops, repairing the building, planting trees, erection of shed, etc, could be means through which actual possession can be determined. The possessor could not claim possession over the property without being physically possessing it.

**Continuity:** The possessor must be in peaceful, unbroken, uninterrupted and continuous possession of the property. Any break in the possession will extinguish his rights.

**Exclusivity:** The possessor must be in sole possession of the property. The possession cannot be shared by different entities or persons for the claimed time duration.

a) A person claiming adverse possession has to show the following before the court:

1. The date of possession
2. The nature of the possession
3. The possession was known to public
4. The duration of the possession
5. The continuity of the possession

b) In a decision reported in “Karnataka Board of Wakf Vs. The Government of India and others” in April, 2004 Hon’ble Supreme Court clarified the features of adverse possession. It is held – In higher Law an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won’t affect his title. But the position will be altered when
another person takes possession of the property and asserts rights over it and the person having title omits or neglects to take legal action against such person for years”.

(c) The essential requisites to establish adverse possession are that it should not have been done by force, stealth or under authorized permission (lease or rent) of the owner. The rationale is broadly that the title should not be in doubt for long, and the society will benefit from someone else making use of the land or the house.

(d) The Law of Adverse Possession was thoroughly discussed in a decision reported in “Veerasekharan and another vs. Devarasu” (2008) 7 MLJ 275, by quoting rulings of Hon’ble Supreme Court. It was considered in, “D.Arunachalam V.P.Ekambaram” by Hon’ble High Court of Madras in its Judgment dated 31.10.2011.

(e) In, “State of Haryana Vs Mukesh Kumar & others “ (2011) 10 SCC 404, Hon’ble Supreme Court decided in favour of the actual owner of the property and said that the law of adverse possession was archaic and should be seriously looked into. It added that in adverse possession, a trespasser who is actually guilty was able to gain legal title over the property. The court found the legal system rewarding an illegal act baffling. Article 65 of the Limitation Act prescribe period of limitation for suits for possession of immovable property based on title, 12 years from the date when the possession of the defendant becomes adverse to the plaintiff. Suit for possession will thus be dismissed, if the defendant successfully proves adverse possession for 12 years.

5. Extinguishment of ownership on proof of adverse possession and its effect.

The pursuit for an answer leads to section 27 of the Limitation Act 1963 which provides that determination of the period prescribed to any person for instituting a suit to possess property, his right to such property shall be extinguished.

(a) The privy council in “Perry Vs Clissold and others” (1907) A.C.73 considering the effect of adverse possession vis-a-vis the original and the
possessor held: “If the rightful owner does not come forward and assert his title by process of law with period prescribed by the provisions of the statute of Limitations applicable to the can right to forever extinguished, and the possessory owner acquires an absolute title”. The dictum of this case was approved in “Nair Service Society Vs. K.C. Alexdandar” AIR 1968 SC 1168.

(b) In a later decision, considering the effect of adverse possession in the light of S.28 of repealed Indian Limitation Act 1908 (corresponding to present section 27 of Indian Limitation Act, 1963) the Privy council laid down in “Mohunt Bhagawan Ramanuj Vs Ramakrishna Boss” in A.I.R.1922 PC.184. Under S.28 of the Indian Limitation Act, it is expressly provided that at the expiration, the period prescribed by the Act for limitation of suits, not only the remedy is barred and right is gone. That is quite clear. That being so, the statute has operated to revoke the state that was originally vested in the plaintiff, and to confer a statutory estate up defendants”.

(c) In another case, where the plaintiff held the property adversely for upwards of 12 years, Privy council in “Lala Hema Chand Vs Lala Pearey Lal” AIR 1942 PC 64 took a view that plaintiff had acquired title by prescription and the defendants right of got extinguished.

(d) Acknowledging the effect of Adverse possession, the Supreme court in “P.T. Muni Chikkanna Reddy Vs Revamma” (2007) 6 SCC 59 stated “ Modern statutes of limitation operate, as a rule, not only to cut off one’s right to bring action for the recovery of property that has been in the adverse possession of another specified time, but also to vest the possessor with title. The intention of such statute to punish one who neglects to assert rights, but to protect those who have maintained possession of the property for the time specified by the statute under claim of right or colour of title.

6. Plea of Adverse Possession cannot form basis of claim for Title.
(a) Hon’ble Supreme court in “Gurudwara Shahib Vs Grama Panchayat Village Sirthala” (2014) 1 SCC 669 took a contrary view and held that plaintiff could not take up plea of adverse possession to seek declaration of ownership. It held that: “Even if the plaintiff is found to be in adverse possession, it cannot seek a declaration effect that such adverse possession has matured into ownership. Only if proceedings are against the appellant and the appellant is arrayed as defendant that it can use this adverse possession as a shield/defence.

(b) The Hon’ble Supreme Court in “Gurucharan singh and others Vs Gurudev Singh” Judgment dated 6.3.2017 noticed conflicting decisions. It remanded the matter, special leave to appeal CC.17445/2014 dated 10.11.2014 to the Pubjab & Haryana High Court with a direction to decide whether the suit filed plaintiffs declaring them to be owners of the property in dispute on the basis of adverse possession, is maintainable.

7. **Adverse Possession - Simple & Permissive possession.**

The non-use of the property by the owner even for a long time may affect the title of the owner under certain circumstances – The acquisition of title by adverse possession springs into action essentially by default or inaction of the owner - There is a lot of difference between simple possession and adverse possession - Every possession is not adverse possession - The defendants will not acquire adverse possession by simply remaining in permissive possession for howsoever long it may be - There is no absolute requirement to deem the mere possession of the suit property by the defendants to amount to adverse possession over the suit property - This would be in clear violation of the basic rights of the actual owner of the property.

a) Under Limitation Act, Articles 64 and 65, Once a party proves its title, the onus of proof would be on the other party to prove the claim of title by adverse possession - Since the contesting defendants have raised a plea of adverse possession, the burden is on them to prove affirmatively that the bar of limitation prescribed under Article 65 of the Schedule of the Limitation Act, 1963, viz., 12
years, is applicable in the matter to file a suit for possession of immovable property based on title - The limitation of 12 years begins when the possession of the defendants would become adverse to that of the plaintiffs - Thus, it is incumbent on the plaintiffs to file a suit for possession within 12 years from 11 when the possession of the defendants becomes adverse to the plaintiffs. (2018) 2 SCCJ 1420.

(b) In “Roop Singh Vs. Renu Singh”, Judgment dt.28.3.2000 Hon’ble Supreme Court considered Permissive possession. Mere Possession for a long time does not result in converting permissive possession into adverse possession “(Thakur Singh (Dead) L.Rs. Vs. Arvind Kumar” (1994) 6 SCC 591.

(c) Further, license is personal between the Granter-licensor and the Grantee licensee - It is not transferable, much less heritable right - The permissive possession extinguished on the demise of licencee - Easements Act, 1882 (5 of 1882) S. 52.

8. Adverse Possession whether Pure Question of Law.

(a) Plea of Adverse Possession is not a pure question of law rather it is a blended question of fact and law and the person who is claiming adverse possession must show firstly that on what date he came into possession; secondly what was the nature of his possession; thirdly whether the factum of possession was known to the other party; fourthly how long his possession has continued; and fifthly his possession was open, undisturbed, hostile to the very knowledge of the opposite party. Suit for declaration claiming ownership on the basis of adverse possession is not maintainable as the plea of adverse possession is available only as a defence.

(b) The Hon’ble Supreme Court In a caveat by ruling in it’s Judgment dated 22.4.2017 has observed that squatter must necessarily first admit ownership of the true owner over the 12 property and make the true owner a party to the suit before a court. It is said - If a person
does not protest some one illegally occupying his property for 12 years, then the squatter would get over that property.

(c) Possession however longer it may be, it does not necessarily be that it is adverse. “T.Anjanappa and others Vs Somalingappa and other” (2006) 7 SCC 570 and “Chetti Konetirao and others Vs Palla Venkata Subba Rao” (2010) 14 SCC 316.

(d) In “Malikarjunayya Vs Anjayya” Judgment dated 26.4.2019 The Hon’ble Supreme court has observed that open, Hostile, exclusive and within the assertion of ownership and right over the property to the knowledge of true owner are required to prove the case of adverse possession.

9) Exceptions to claim of Adverse Possession.

There are few cases where the claim of adverse possession won’t be accepted by the Court of Law.

(a) Co-owner in exclusive possession cannot render his possession adverse to the other co-owner, but if a co owner fails to asserts his right for considerable length of time his right may lapse by lapse of time.

(b) Co-sharers - It can arise under the circumstance when the possession is under an agreement. occupant and trespassers, mere not constitute adverse Regarding Permissive possession of trespasser will possession unless accompanied by assertion of hostile title.

(c) In “Gopalakrishna (died) by LRs Vs Narayana Gowda (died) by LRs” judgment dated 3.4.2019 the Hon’ble Supreme Court considered Spes Succession and claim of Reversioners under Hindu Law and Limitation regarding earlier proceedings conducted by parties up to High Court in a suit for possession.

10. CONCLUSION:-
Sec 34 of specific relief Act contemplates certain conditions to be fulfilled by a plaintiff to have declaration of his right, in property or right of property and entitlement to any legal character. It was considered in “State of MP Vs Khan Bahudur Bhiwandiwala and Company” AIR 1971 MP 65. Legal character means a possession regularized by Law. The distinction between ‘right to property’ and a ‘right in property’ was distinguished in “Moharala Pitchayya Vs Krishnayya” AIR 1943 Madras 497.

(a) “Animus Possidendi” is one of ingredients of adverse possession. It must start of wrongful dispossession of rightful owner and be actual, visible, exclusive, hostile and continued over statutory period. Once a party proves its title, the onus of proof would be on the other party to prove the claim of title by adverse possession. Thus it is incumbent on the plaintiffs to file a suit, suit for possession within 12 years, from when the possession of the defendants becomes adverse to the plaintiffs. The Plea of Adverse Possession is only shield and not a sword. The sum up, adverse possessions simple but effective nature allows it to remain vitally important to underpinning land and conveyancing law for the foreseeable future.

(b) Hon’ble Supreme Court in “Hamaji Waghaji ... “ Case (2009) 16 SCC 517 and in “State of Haryana Vs. Mukesh Kumar” 2011 (10) SCC 404, directed the Government to take fresh look on Law of Adverse Possession considering rights of true owner. In “Dagadi bai Vs. Addas”, Hon’ble Supreme court on 29.05.2019 gave directions to make Law of Adverse Possession, tougher.
PERPETUAL INJUNCTION – WHEN GRANTED, WHEN REFUSED

Paper submitted by
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Sub Topics:

- Concept of Perpetual Injunction
- Distinction between Interlocutory and Perpetual Injunctions
- Perpetual Injunction - When granted
- Perpetual Injunction - When Refused
- Difference between Secs.34, 37 & 38
- Important Case-law on Injunctions
- Conclusion

CONCEPT OF PERPETUAL INJUNCTION

An injunction is an equitable remedy in the form of a court order that compels a party to do or refrain from doing specific acts. It is a court order which restrains one of the parties to a suit in equity from doing or permitting others who are under his control to do an act which is unjust to the other party. An injunction clearly forbids a certain type of conduct.

It is a remedy that originated in the English courts of equity. Like other equitable remedies, it has traditionally been given when a wrong cannot be effectively remedied by an award of money damages. The Injunction is a Chancery remedy developed by Henry, the VI. The Chancellor set aside a certain bond by the Plaintiff as one not binding on him. In India, the Specific Relief Act 1963 provides a large number of remedial aspects of Law. The Specific Relief Act 1963 came in force in the replacement of
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earlier Act of 1877. Injunctions are intended to make whole again someone whose rights have been violated. Nevertheless, while deciding whether to grant an injunction, courts also take into account the interests of non-parties (that is, the public interest). When deciding whether to give an injunction, and deciding what its scope should be, courts give special attention to questions of fairness and good faith.

One manifestation of this is that injunctions are subject to equitable defenses, such as laches and unclean hands. Injunctions are given in many different kinds of cases. They can prohibit future violations of the law, such as trespass to real property, infringement of a patent etc. Taking in to consideration the duration and the stage, they can be classified into Temporary injunctions and Perpetual injunctions. Otherwise, an injunction that requires conduct is called a "mandatory injunction." An injunction that prohibits conduct is called a "prohibitory injunction. Many injunctions are both—that is, they have both mandatory and prohibitory components, because they require some conduct and forbid other conduct. When an injunction is given, it can be enforced with equitable enforcement mechanisms such as contempt. It can also be modified or dissolved (upon a proper motion to the court) if circumstances change in the future. These features of the injunction allow a court granting one to manage the behavior of the parties.

In Indian legal system the law of injunctions is mainly governed by Order XXXIX CPC and section 36 to 42 of the Specific Relief Act 1963. Section 94(c) of the Civil Procedure Code also gives supplemental provision
for grant of temporary injunction. It is also settled that there is no bar in
granting injunction or supplementary orders under Section 151 of the Civil
Procedure Code for compliance of injunction in just cases. The later provision
of inherent powers increases the scope of civil courts for granting
injunctions.

**WHAT IS PERPETUAL INJUNCTION ?**

As is clear from the Sub-section (2) of Sec.37 of Specific Relief
Act 1963, a Perpetual Injunction can only be granted by the Decree made at
the hearing and upon the merit 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 right of the Plaintiff.

Sec.38 of Specific Relief Act further says that the
circumstances where the Perpetual Injunction may be granted in favour of
the Plaintiff to prevent the breach of an obligation existing in his favour,
whether expressly or by implication. In contractual matters, when such
obligation arises, the Court has to seek guidance by the Rules and Provisions
contained in Chapter-II of the Specific Relief Act with Specific
Performance of Contracts.

In *Anathula Sudhakar – Vs – P.Butchi Reddy*, the Hon'ble
Supreme Court has extensively discussed as to When a mere suit for
Perpetual Injunction will lie and When it is necessary to file a Suit for
Declaration and/or Possession with Injunction as a Consequential Relief. It
was held as under :-

2. 2008 LawSuit (SC) 1186 = AIR 2008 SC 2033
Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.

Where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession, cannot seek the relief of injunction simpliciter, without claiming the relief of possession.

Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction.

**DIFFERENCE BETWEEN INTERLOCUTORY AND PERPETUAL INJUNCTION**

As regards the time of their operation injunctions are either temporary (interlocutory or interim) or Perpetual. A Temporary Injunction,
as the Court has already observed, is Provisional in its nature, continuing until a specific time or until the further order of the Court and does not conclude a right. Its object is to maintain things in *status quo* until the questions at issue are decided by the Court. It may be granted at any stage of the Suit and to obtain it, the Plaintiff has to make out *Prima facie case, balance of convenience and irreparable loss*.

A Perpetual Injunction, on the other hand, can only be granted by a decree made at the hearing and upon merits of the Suit. Its object is to see that the Defendant is Perpetually enjoined perpetually enjoined from the assertion of a right or from the commission of an act which would be contrary to the right of the Plaintiff as finally established before the Court. It is a Decree which concludes a right\(^3\).

**PERPETUAL INJUNCTION - WHEN GRANTED**

Section 38 of the Specific Relief Act 1963 provides for grant of Perpetual Injunction to prevent the breach of an obligation existing in favour of the Plaintiff whether express or implied. In *Ram Kissen Joydoyal - Vs - Pooran Mull*\(^4\), the Scope of Sec.54 of the Specific Relief Act 1877 corresponding to Sec.38 of Specific Relief Act 1963 was explained as follows:

"This is fairly clear from the opening and controlling paragraph of the section, which provides that in order to entitle a litigant to a perpetual injunction, he must establish that the injunction is required to prevent a breach of an obligation. The term obligation is defined in Section 3 to include every duty enforceable by law, so that when a legal duty is imposed on one

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\(^3\) GCV Subba Rao's Law of Specific Relief, 2004 Edition - Page 1386  
\(^4\) AIR 1920 (Cal) 239
person in respect to another, that other is invested with the corresponding legal right. The first paragraph of the section thus establishes the broad and general rule that given the breach of an existing legal right which is vested in the applicant, the breach thereof may be restrained by injunction. This is an elementary principle, for as Lord Kingsdownri said in Imperial Gas Light and Coke CO. v. Broadbent (1859) 7 H.L.C. 600 at p. 612 : 29 L.J.Ch. 377 : 5 Jur. (N.S.) 1319 : 11 E.R. 239 : 115 R.R. 295 when a plaintiff applies for an injunction to restrain a violation of an alleged right, if the existence of the right be disputed, he must establish that right before he gets the injunction to prevent the recurrence of its violation."

A Perpetual Injunction can only be granted when --

◆ Some established right has been invaded and

◆ when damage has accrued or must necessarily accrue from the act or omission complained of. There must have been (1) a material injury to a clear legal right ; and (2) damages must not be a sufficient compensation\(^5\)

Therefore, the position is that when the Plaintiff seeks the Relief of Injunction to protect a right by prescription claimed by him, what he does is to invite the Court to uphold his claim or right and to prevent interference with the exercise of that right.

\(^5\) Woodroffe, the Law relating to Injunctions in British India (2\(^{nd}\) Edition – Page 130)
To grant Perpetual Injunction, the existence of a right in the Plaintiffs and its threatened violation to the Plaintiffs right would have to be found. It is, therefore, clear that every suit for a Perpetual Injunction must involve a determination or declaration to the above effect, or put it differently, such a declaration would be necessarily involved or implied in the case of every decree for Perpetual Injunction.

Under normal parlance, while granting Perpetual Injunction, the Court has to see the nature of the right being invaded, whether the compensation would be adequate remedy for its redressal, there is no standard for ascertaining the actual damage caused by such invasion, the Plaintiff would not have been guilty of delay and latches and his conduct is not unfair. Aspect of comparative hardship also assumes significance.

Points to consider to grant Injunction:

In a suit for Declaration and Perpetual Injunction, the Plaintiff, at first instance, has to establish his legal right. If the Plaintiff succeeds in establishing his legal right and if such legal right is infringed or violated, then Perpetual Injunction can be granted to him. Perpetual Injunction can be granted by the Decree made at the hearing and upon the merits of the Suit which concludes a right forever. Thus, unless the rights of all persons who have joint right, title and interest are brought on record no violation of right of all persons can be determined. So, it is very simple that all the joint owners must be on record. Where there is a joint right it may be necessary for all persons jointly interested to be joined as parties and if they are not joined, the suit will be bad for mis-joinder.
In a Suit for Perpetual Injunction basing on the Possession, the Plaintiff has to establish his lawful Possession over the Property as on the date of filing of the Suit. Where the Property is a building or building with appurtenant land, there may not be much difficulty in establishing the possession. The Plaintiff may prove physical or lawful possession, either of himself or by him through his family members or agents or lesses or licenses. Even in respect of a land without structures, possession may be established with reference to actual use and cultivation. The question of title is not in issue in such suit, though it may arise incidentally or collateral.

**PERPETUAL INJUNCTION - WHEN REFUSED**

Section 41 of the Specific Relief Act, 1963, provides various contingencies in sub section (a) to (j) in which the injunction cannot be granted. Section 41 of the Act deals with when injunction cannot be granted,

(a) to restrain any person from prosecuting a judicial proceedings unless such a restrain is necessary to prevent a multiplicity of the proceedings,

(b) to restrain any person from instituting or prosecuting any proceeding in a Court not subordinate to that from which the injunction is sought,

(c) to restrain any person from applying to any legislative body,

(d) to restrain any person from instituting or prosecuting any proceedings in criminal matter,
(e) to prevent the breach of a contract the performance of which would not be specifically enforced,

(f) to prevent on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance,

(g) to prevent a continuing breach in which the plaintiff has acquiesced,

(h) when equally efficacious relief can certainly be obtained by any other mutual mode of proceedings except in case of breach of trust,

(i) when the conduct of the plaintiff or his agent has been such as to disentitle him to the assistant to the Court,

(j) when the plaintiff has not personal interest in the matter.

In AC Muthaiah – Vs – Board of Control of Cricket in India and another, the Hon’ble Supreme Court has explained as to When the Injunction can be refused.

**DIFFERENCE BETWEEN SECS. 34, 37 & 38:**

According to Sec.34 of the Specific Relief Act 1973, a Person can file a Suit for Declaration as to any legal character, or as to any right to the Property. This is a Discretionary relief. Sec.34 Proviso says that the Court shall not make any such declaration where the Plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

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6  2011 LawSuit (SC) 427 = 2011 (6) SCC 617
Sec.37 of the Act provides Injunctions. Sub-section (2) of Sec.37 says that a Perpetual Injunction can only be granted by the Decree made at the hearing and upon the merit 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 right of the Plaintiff.

Sec.38 provides when Perpetual Injunction can be granted.

The Difference between Sec.34 on one hand and Sec.37 & 38 on the other hand is that the Court may not grant a declaration where the matter is capable of consequential relief. But, there is no such restriction on injunctions and the Court may grant an injunction as a substantive relief without any prayer for declaration, although in many cases a declaration, may be implicit in the grant of Perpetual Injunction.

**CASE-LAW ON INJUNCTIONS**

**Possession must be established**:

In Balkrishna Dattatreya Galande – Vs – Balkrishna Rambharose Gupta and another, it was held by the Hon’ble Supreme Court that

In a suit filed under Sec.38 of the Specific Relief Act, Permanent Injunction can be granted only to a person who is in actual possession of the Property. The Plaintiff has to prove actual possession for grant of Permanent Injunction.

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7 2019 LawSuit (SC) 140 = 2019(2) ALT 7 (SC)
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Need not record finding as to title:

In Sudhakar Reddy - Vs - Lakshmamma\(^8\), our Hon’ble High Court of AP held that

“In a suit for Perpetual Injunction, the finding on title cannot be recorded unless there are necessary pleadings and appropriate issue regarding title is framed.”

Burden is on the Plaintiff:

In Dolla Subba Rao and another Vs. Eeda Amrutha Rao & others\(^9\), it was held that -

“In a suit for Injunction, the burden of proof is upon the Plaintiff to establish his possession over the suit schedule property. He cannot rely upon the weakness of the case of the Defendant”.

Prima facie title to be looked into:

In Emam Jagan Mohan Reddy - Vs - Keesari Padma\(^10\), it was observed that -

“In a suit for perpetual injunction, prima-facie title and possession of the Plaintiff is to be looked into.”

\(^8\) 2014 LawSuit (AP) 369 = 2014(4) ALT 647 AP
\(^9\) 2017 LawSuit (Hyd) 618 = 2017(5) ALT 245 HC
\(^10\) 2014 LawSuit (Hyd) 75 = 2014(3) ALT 217 HC
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Injunction shall not be granted against co-owner:

In Premji Ratansey Shah – Vs – Union of India\(^\text{11}\), it was held that

It is equally settled law that injunction would not be issued against tile true owner. Therefore, the courts below have rightly rejected the relief of declaration and injunction in favour of the petitioners who have no interest in the property. Even assuming that they had any possession, their possession is wholly unlawful possession of a trespasser and an injunction cannot be issued in favour of a trespasser or a person who gained unlawful possession, as against the owner. Pretext of dispute of identity of the land should not be an excuse to claim injunction against true owner.

Meaning of Settled Possession:

In Poona Ram – Vs – Moti Ram (Died) Through LRs & Others\(^\text{12}\), the Division Bench of Hon'ble Supreme Court comprising Hon'ble Sri Justice NV Ramana and Hon'ble Sri Justice Mohan M.Shantanagoudar, explained the Meaning of Settled Possession in brief, as under:

"A person who asserts possessory title over a particular property will have to show that he is under settled or established possession of the said property. But merely stray or intermittent acts of trespass do not give such a right against the true owner. Settled possession means such possession over the property which has existed for a sufficiently long period of time, and has been acquiesced to by the true owner. A casual act of

\(^{11}\) 1994 LawSuit (SC) 639 = AIR 1994 SC 376
\(^{12}\) 2019 LawSuit (SC) 93 = AIR 2019 SC 813
possession does not have the effect of interrupting the possession of the rightful owner. A stray act of trespass, or a possession which has not matured into settled possession, can be obstructed or removed by the true owner even by using necessary force. Settled possession must be (i) effective, (ii) undisturbed, and (iii) to the knowledge of the owner or without any attempt at concealment by the trespasser. There cannot be a straitjacket formula to determine settled possession. Occupation of a property by a person as an agent or a servant acting at the instance of the owner will not amount to actual legal possession. The possession should contain an element of animus possidendi. The nature of possession of the trespasser is to be decided based on the facts and circumstances of each case."

Relief of Specific Performance and Perpetual Injunction must not be in one cause

In Sucha Singh Sodhi (died) Through LRs – Vs – Baldev Raj Walia & Another13, it was held that

"Plaintiff could not claim the relief of specific performance of agreement against the defendants along with the relief of permanent injunction in the previous suit"

It was further observed that the cause of action to claim a relief of Permanent injunction and the cause of action to claim a relief of Specific Performance of Agreement are independent and one cannot include the other and vice versa. Thus, a Plaintiff cannot claim a relief of Specific performance

13 2018 LawSuit (SC) 333 = AIR 2018 SC 2241
of agreement against the defendant on a cause of action on which he has claimed a relief of permanent injunction.

With reference to the facts of the instant case, the Supreme Court stated that when both the reliefs claimed i.e. permanent injunction and specific performance of agreement are not identical, when the causes of action to sue are separate, when the factual ingredients necessary to constitute the respective causes of action for both the reliefs/claims are different and lastly, when both the reliefs/claims are governed by separate articles of the Limitation Act, then it is not possible to claim both the reliefs together on one cause of action.

SOME BASIC RULES OF INJUNCTIONS:

1) An injunction is an equitable remedy;

2) The party, who seeks equitable relief, must come with clean hands

3) A perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation in his favour.

4) The possession must be lawful possession (AIR 1977 Orissa 152)

5) Where there is an efficacious relief, no injunction should be granted. (AIR 1980 P&H 351)

6) Juridical possession is also a valid ground to grant injunction. (AIR 1986 Kar 194)

7) Question of title may be incidentally gone into, while granting an injunction (AIR 1981 SC 1183)
8) Injunction cannot be granted in case of illegal agreement (ILR 1 Bom 550, Bhikaji vs Bapu Saju)

9) No injunction shall be granted in case of an agreement with minor. (See secs. 11 and 12 of Indian Contract Act.)

10) Some time symbolic delivery is sufficient to sustain an action for injunction (AIR 1977 Orissa 152)

11) Injunction in case of nuisance (AIR 1937 Madras 21, Syed Pitchai vs Devaji Rao)

12) Injunction in case of easementary right (AIR 1974 Orissa 89, Dhannala vs Chittar Singh)

CONCLUSION:

It is settled legal position that the Relief of Perpetual Injunction is a Quia-timet relief. The Plaintiff has to prove his case to the satisfaction of the Court and he cannot succeed on the weakness of the case of the Defendant. Injunction means 'It is an order of Court by which an individual is required to perform, or is restrained from performing, a particular act. It is judicial process. The courts exercise their power to issue injunctions judiciously, and only when necessity exists. Whether or not an injunction will be granted varies with the facts of each case.

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WORKSHOP – III

TOPIC

PRINCIPLES OF MANDATORY INJUNCTION

Paper presented by

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TOPICS

1. Introduction
2. Mandatory Injunctions
3. Essential elements for grant of Mandatory Injunctions
4. Special considerations for grant of permanent mandatory injunctions
5. Situations where mandatory injunction is granted and how to deal with them
6. How to assess the damages
7. When Mandatory injunction is not granted
8. Temporary Mandatory Injunction
9. Conclusion
PRINCIPLES OF MANDATORY INJUNCTION

INTRODUCTION

➢ An Injunction is a judicial process whereby a person is required to do or refrain from doing a particular thing. The courts in India have to deal with the applications for injunctions under the provisions of the Specific Relief Act and the Civil Procedure Code.

➢ There are different forms of injunctive reliefs.

➢ Generally speaking, an injunction can be prohibitive or mandatory, permanent, interim or interlocutory.

➢ A prohibitive (or prohibitory) injunction is an order that restrains the defendant from committing a specified act. It is the most common form of injunction.

➢ A mandatory injunction is an order that requires the defendant to act positively.

➢ A permanent injunction is permanent relief granted after a final adjudication of the parties' legal rights. Such final relief can be prohibitive or mandatory in nature.

➢ An interim injunction is a pre-trial form of relief. It can be made ex parte or on notice. If it is made ex parte, the order is typically for a brief period of time. If it is made on notice until the conclusion of the trial or some other determination of the action.

➢ Both permanent and interim injunctions may be prohibitive injunctions or mandatory injunctions.
MANDATORY INJUNCTION

- The term ‘mandatory injunction’ is not defined in the Specific Relief Act or elsewhere.

- According to Solmon, mandatory injunction is an order requiring the defendant to do some positive act for the purpose of putting an end to a wrongful state of things created by him or otherwise in fulfillment of his legal obligation.

- To prevent the breach of an obligations, when 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. This is termed as mandatory injunction in Section 39 of the Specific Relief Act. 1963, hereinafter referred to as "the Act".

- The object of mandatory injunction is to maintain status quo and not to establish a new state of things different from the state of thing that existed on the date of filing the suit.
ESSENTIAL ELEMENTS FOR GRANT OF MANDATORY INJUNCTION

In granting mandatory injunction the two conditions must be taken into consideration under Section 39 of the Specific Relief Act. They are

1. **Prevention of breach of obligation**

   - There must be an obligation on the part of defendant.
   
   - The obligation referred to in this section refers to legal obligation and not to moral obligation. Under section 2(a) of the Specific Relief Act 1963, obligations includes every duty enforceable by law and by the definition itself, the obligation does not confine merely to a contractual one. Hence it can be said that a mandatory injunction can be granted not only in the cases of specify breach of contract, but also for breach of every obligation, which is enforceable by law.

   - The obligation must be to perform certain acts.

   - Such breach of obligation must be committed by the defendant and alleged by the plaintiff

   - To prevent the breach of an obligation, performance of such acts must be necessary

2. **Relief must be enforceable by Court**:

   A mandatory injunction can be granted where the court can enforce it. Where the injunction is not enforceable, the court would not grant it.

   **For example**:- A mandatory injunction directing a person to undertake the repairs and work of improvement involving engineering skill and expenses cannot be granted as the court is not capable of enforcing it.
Power to grant mandatory injunction is to be exercised in very exceptional and rare circumstances, subject to the conditions laid down in Section 39, which requires the relief can be granted, where breach of an obligation is capable of specific performance by the court.

Grant of mandatory injunction is an equitable relief and it has to be issued in aid of equity, justice and facts of the case depending on the circumstances and facts of each particular case.
SPECIAL CONSIDERATIONS WITH REGARD TO PERMANENT MANDATORY INJUNCTION

- The considerations which apply to grant the mandatory injunction are somewhat different from considerations which govern the grant of prohibitory injunctions though, the general principles for grant of both types of injunctions are essentially the same.

- Since a permanent mandatory injunction requires the defendant to take positive steps, such as undertaking some work to restore any damage caused by the defendant, or continuing to perform certain obligations, courts usually proceed more cautiously when dealing with a request for a mandatory injunction.

- Courts will often consider the following factors when determining whether a permanent mandatory injunction constitutes an appropriate remedy or not

  - The court has to weigh the amount or substantial mischief done or threatened to be done to the plaintiff and compare with that, when the injunction if granted would be inflicted on the defendant.

  - The defendant’s blameworthiness with respect to the current state of affairs. If the defendant deliberately acted in disregard of the plaintiff’s rights, the court will be more likely to grant a mandatory injunction, even if the defendant will have to incur significant costs to comply with the order.

  - Whether it is possible to express the defendant's positive obligations under the mandatory injunction in language that is sufficiently precise so as to allow the defendant to know exactly what has to be done to comply with the order.

  - Whether, in light of all the circumstances, granting a mandatory injunction would be oppressive to the defendant.

  - The need for ongoing judicial supervision.

Courts do not usually supervise performance, and ongoing supervision by the court can often lead to re-litigation and the expenditure of judicial resources. However, courts have accepted to make orders requiring supervision where necessary, especially in cases involving the enforcement of complex obligations, and have developed techniques to minimize the burden on the court.
Section 40 of Specific Relief Act provides that the 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.

However, no relief for damages shall be granted under this section unless the plaintiff has claimed such relief in his plaint, but at any stage of the proceedings, the plaintiff is allowed to amend the plaint for the relief of damages.

In granting a mandatory injunction, the court did not mean that the man injured could not be compensated by damages, but that the case was one in which it was difficult to assess damage and if injunction is not granted, practically the defendant would be allowed to deprive the plaintiff of the enjoyment of his property, if he would give him a price for it.

Where, therefore, money could not adequately reinstate the person injured the court said, as in cases of specific performance - "we will put you in the same position as before the injury was done".
SITUATIONS WHERE THE RELIEF OF MANDATORY INJUNCTION IS PRAYED

- A prayer for a mandatory injunction may be made by a plaintiff in different situations. Broadly, it may be in two categories of cases.

- **First category is**, where the defendant has trespassed on the plaintiff's land and put up a construction.

- **The second category is**, where the defendant puts up a construction on his own land, but
  
  i) that construction interferes with certain legal right vesting in the plaintiff
      (or)
  
  ii) interferes with any enjoyment by the plaintiff of his own property.

It may happen that the plaintiff has a right of way over a piece of land and the defendant causes obstruction to the same

 (or)

the plaintiff's ancient right to light and air interfered with by the defendant putting up a construction on his own land.

- In other words, the plaintiff's right to support is sought to be removed or taken by some act on the part of the defendant
  
  (or)

- Some other right of easement which the plaintiff has, is sought to be interfered with by the defendant with his acts.
HOW TO DEAL WITH THE CASES WHERE THE DEFENDANT TRESPASSED INTO THE LAND OF ANOTHER

➢ In cases, where the defendant trespassed into plaintiff’s land, the plaintiff, who is entitled to recover possession of his land, may ask for a mandatory injunction as incidental to the principal relief of ejection.

➢ In such a case, the plaintiff can be given complete relief by a simple decree for possession without there being any mandatory injunction against the defendant at all.

➢ As a matter of fact in such cases it may not be quite appropriate to call the suit as one for mandatory injunction, but on the other hand, that will be a simple suit in ejectment against the trespasser and the mandatory injunction is merely incidental to the principal relief.

➢ The mandatory injunction in such a case is merely for the purpose of giving an opportunity to the trespasser to remove the superstructure put up by him on the land of the plaintiff and if the defendant does not want to avail himself of that opportunity, the plaintiff will not be the loser and in no way the plaintiff's right to the relief can be defeated.

➢ In the case of trespass or encroachment, when the plaintiff sues for possession of his land, it is the view of the Hon'ble Apex Courts that, it is a continuing trespass and the grant of damages in such a case instead of mandatory injunction will amount to legalising wrongful acts and no tort-feasor or wrongdoer is entitled to ask a Court to sanction his wrong. It is nothing but to reward the wrongdoer with the very property in respect of which he committed the wrong, through the judicial process.

➢ When the land in question belongs to the plaintiff, the Court could not compel the plaintiff to part with his legal rights and accept compensation against his will, however reasonable it might appear to be.(Govind Venkaji Kulkarni v. Sadashiv Dharma Bhat and Anr. (1893) I.L.R. 17 Bom. 771)
It was the view of James, L.J., in Goodson v. Richardson (1874) L.R. 9 Ch. Ap. 221 that

Relief by way of compensation in such a case is tantamount to allowing a trespasser to purchase another man's property against that man’s will. On no principle of law or equity is that allowable.

When a case as to discretion of court in awarding damages in lieu of Mandatory Injunction came up before the Hon’ble High Court in N.C. Subbayya Vs. Pattan AbdullaKhan (1956) 69 L.W. (Andhra) 52, his Lordships Hon’ble Sri J. Viswanatha Sastri held that

No man should be compelled to sell his property against his will at a valuation and no person should be encouraged to do a wrongful act or commit a trespass relying on the length of his purse and his ability to pay damages for it.

Therefore, whenever the plaintiff comes to the Court and prays for possession of his property in the occupation of a trespasser, with the incidental relief of mandatory injunction directing the trespasser to demolish the construction put up by him and once the plaintiff has established his right to a decree for possession, there is no question of exercising discretion to the Court as to whether the mandatory injunction should be granted or award of damages alone would be sufficient. In such case, the decree must follow irrespective of any question of hardship to the defendant.

In cases of trespass, neither serious inconvenience to the defendant--trespasser nor the absence of serious injury to the plaintiff is a ground for depriving the latter of his legal right to the property. The Court should ordinarily grant an injunction directing the defendant to remove the encroachment and restore possession of the vacant site to the plaintiff.

Even in cases where the encroached portion is of no value to its owner and he is not enjoying that land, Mandatory injunction should be granted and in this regard it is the observations of Lord Selborene L.C. in Goodson Vs. Richardson (1874) L.R. 9 Ch. Ap. 221 that
Such trespass is a deliberate and unlawful invasion by one man of another man's land for the purpose of a continuing trespass, which is in law, a series of trespasses from time to time, to the gain and profit of the trespasser, without the consent of the owner of the land; and it appears to be a proper subject for injunction.

Therefore, Where a man builds on another man's property against the will of the latter or without his consent, the wrongdoer cannot be heard to say that he has deprived the owner of only a little and that of not much use to the latter. In such cases, the invasion is practically one where pecuniary compensation cannot be regarded as adequate relief. The owner is, in such a case, not only deprived of the property but he is also deprived permanently of such user of it as he is entitled to make. Therefore the damages cannot be estimated in such a case and an award of compensation cannot do justice to the owner who loses the property.
WHEN THE DEFENDANT PUTS UP CONSTRUCTION IN HIS OWN LAND

- In the second category of cases where the defendant puts up any construction or obstruction in his own land, the primary relief which the plaintiff can have in a suit instituted by him is the mandatory injunction directing the defendant to remove the construction/obstruction put up by him. **The prayer for mandatory injunction in such a suit is ancillary, not incidental.** Such suits can be very properly described as suits for mandatory injunction.

- Where the primary relief claimed is a mandatory injunction and the injunction having been originally an equitable relief and subsequently the grant thereof being in the discretion of the Court, the Court has to see whether the plaintiff could be adequately compensated by the award of damages and whether there are other circumstances present in the case to justify the award of damages to the plaintiff instead of granting a mandatory injunction.

- If the Court comes to the conclusion that the injuries suffered by the plaintiff cannot be adequately compensated by the damages, then only court has to grant a mandatory injection so as to give relief to the plaintiff.

- With regard to breach of any covenant, the law of Courts of Chancery in England was also that:

  "Where a breach of an express covenant is committed, either by the original covenant or by an assignee who is bound thereby, and causes substantial damage, the Court has no discretion to award damages in lieu of an injunction." (Halsbury’s Laws of England, Third Edition, Vol. 21, page 358).

- Even in case of nuisance also, the defendant by committing a wrongful act (whether it be a public company for public purposes or a private individual) is not thereby entitled to ask the Court to sanction his doing so by purchasing his neighbour's rights, by assessing damages in that behalf, leaving his neighbour with the nuisance, or his lights dimmed, as the case may be.
In case of breach of Easements and covenants, the Courts are lean towards compensation in the latter class of cases because the wrong is done by the wrongdoer upon his own property. It would not have been a wrong but for the fact that his right of free user as owner happens to be subject to the right acquired by another man for the enjoyment of his property and restricting the absolute right of property of the former. In such a case when anything is done in violation of a right limiting another man's right of ownership, the Court naturally has to consider whether the violation can be compensated by damages.

The Court always protested against the notion that it ought to allow a wrong to continue simply because the wrongdoer is able and willing to pay for the injury he may inflict.

If it is not possible to lay down a rule that in what cases a mandatory injunction may be issued the court has to take into consideration the attending circumstances.

Granting of mandatory injunction is in the discretion of the court. The discretion is available only in suits where the defendant did any act on his own land or on a common property or on a public property interfering with the enjoyment of the plaintiff of his own property, but not in respect of any trespass or encroachment committed by the defendant on the plaintiff's property itself.
HOW THE DAMAGES ARE ASSESSED

- The intent of awarding damages is to grant plaintiffs resources that restores them to the condition prior to the occurrence of the injury. A full restoration might not possible because of the nature of the loss. The plaintiff may have been harmed in terms of damages to personal property, physical injury or the loss of support and opportunities.

- The measure of damages for injury to personal property is the difference between the market value immediately before and after the injury, unless the property is destroyed, in which case it is simply the fair market value of the item. Sometimes, the measure may also be the cost of repair, but the cost of repair cannot exceed the fair market value of the property or the damages may be said to constitute economic waste (in other words, it would be cheaper and make more sense to simply replace the item rather than repair it).

- To guess the damages is not assessing them at all.

- The damages are never sanctioned by the Court at the instance of a tort-feasor.

- The 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.
WHEN MANDATORY INJUNCTION CANNOT BE GRANTED

- Where the agreement is not specifically enforceable relief of mandatory injunction cannot be granted.

- The court would not grant mandatory injunction if the public good secured by its exercise is comparatively much smaller than the loss suffered by the individual.

- Delay is one of the main factor for refusal of an injunction. Ordinarily if there is great delay in bringing out the suit, even though a good case has been made out otherwise for grant of mandatory injunction, delay has to be taken into consideration and the plaintiff is not entitled for mandatory injunction.

- For the day to become a disqualification, the circumstances must amount to waiver or abandonment of the rights sought to be enforced or acquiescence in the act complained of or latches on the part of the claimant after it was done.

- However, if defendant despite protests from plaintiff proceeds with his unlawful activities and behaves in an unfair and high-handed manner the plaintiff is entitled for a mandatory injunction.

- The Madras High Court held that the delay in itself is not sufficient to create an equity in favour of the person spending money on the land and to deprive the owner of his strict rights. *(Ram Rao v. Raja Rao (1864-65) 2 Mad. H.C. Rep. 114.)*

- It is for the court to consider whether there has been unreasonable delay in seeking the relief in the particular circumstances of a case. The discretion a court has to exercise in granting of mandatory injunction is a judicial discretion to be exercised on principles which are capable of enunciation.
Generally no injunction would be granted against private individual for committing mere nuisance in the eye of law unless it was created and persisted on in defiance of local authority and that local authority did not possess sufficient powers to take action.

Where the plaintiff has been guilty of laches amounting to an acquiescence in the act complained of or where the plaintiff has knowingly permitted the defendant to make the construction and incur heavy expenditure without protest or objection, the Court may not, in the exercise of its discretion, grant a mandatory injunction.
TEMPORARY MANDATORY INJUNCTION

Generally Mandatory Injunction ought not to be granted as interim relief. However, as was held in Baldev Raj Vs. Savitri Bai case, it can be issued only in case of extreme hardship and compelling circumstances and mostly in those cases when status quo existing on the date of the institution of the suit is to be restored.

Since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines.

Guidelines to issue Interlocutory Mandatory Injunctions

- Plaintiffs have to establish "a strong prima facie case" at the first stage of the test instead of "a serious issue to be tried" for granting interlocutory Mandatory Injunction, besides necessity and of extreme hardship. The "strong prima facie case" requirement has been interpreted to mean that the plaintiff must not only satisfy the court that there is a serious issue to be tried, but also that it is clearly right and almost certain to be successful at trial.

- It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.

- The balance of convenience must be in favour of the person seeking such relief.

Though the above guidelines are neither exhaustive or complete or absolute rules, and there may be exceptional circumstances needing action, applying them as prerequisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion.
When the defendant having notice of the plaintiff's suit for permanent injunction makes new constructions or alters the factual basis upon which the plaintiff is claiming relief, interlocutory mandatory injunction can be granted.

The relief of interlocutory mandatory injunctions are granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining.

The Hon'ble Supreme Court of India (Dorab Cawasji Warden vs Coomi Sorab Warden & Ors (1990 AIR 867, 1990 SCR (1) 332) laid down that principal dilemma about the grant of interlocutory injunctions, whether prohibitory or mandatory, is that there is a risk that the court may make the 'wrong' decision i.e., in the sense of granting an injunction to a party who fails to establish his right at the trial (or would fail if there was a trial) (or) alternatively, in failing to grant an injunction to a party who succeeds (or would succeed) at trial.

A fundamental principle is therefore that the court should take whichever course appears to carry the lower risk of injustice if it should turn out to have been 'wrong' in the sense as described above. The guidelines for the grant of both kinds of interlocutory injunctions are derived from this principle.

In Deoraj vs. State of Maharashtra and Others the Hon'ble Supreme Court held that Court would grant such an interim relief only if it is satisfied that withholding of it would prick the conscience of the Court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the Court would not be able to vindicate the cause of justice. Therefore, in appropriate case, ad-interim injunction in mandatory form can be granted.
The Hon'ble Supreme Court held as under:

“Situations emerge where the granting of an interim relief would tantamount to granting the final relief itself. And then there may be converse cases where withholding of an interim relief would tantamount to dismissal of the main petition itself; for, by the time the main matter comes up for hearing there would be nothing left to be allowed as relief to the petitioner though all the findings may be in his favour.

In such cases the availability of a very strong prima facie case — of a standard much higher than just prima facie case, the considerations of balance of convenience and irreparable injury forcefully tilting the balance of the case totally in favour of the applicant may persuade the court to grant an interim relief though it amounts to granting the final relief itself. Of course, such would be rare and exceptional cases. ...Obviously such would be rare cases accompanied by compelling circumstances, where the injury complained of is immediate and pressing and would cause extreme hardship. The conduct of the parties shall also have to be seen and the court may put the parties on such terms as may be prudent.”
CONCLUSION :-

The grant of injunction is in nature of equitable relief and the Court has undoubtedly power to impose such terms and conditions as it thinks fit. Such conditions, however, must be reasonable so as not to make it impossible for the party to comply with the same and thereby virtually denying the relief which be would otherwise be ordinarily entitled to.

Lastly I may conclude that the grant of a mandatory injunction is no doubt a discretionary relief but the discretion is one that should be exercised judicially and according to well settled principles. If it is wrongly exercised, it is subject to correction on appeal. With this I conclude my presentation on this topic.

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