

PAPER PRESENTATION
ON THE
TOPIC OF

THE PRINCIPLES OF MANDATORY INJUNCTION

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THE PRINCIPLES OF MANDATORY INJUNCTION

INTRODUCTION:

Preventive Relief is granted at the discretion of the court by injunction, Temporary or Perpetual. The Relief of Injunction is an equitable relief and he who seeks equity must do equity. Hence, a party who asks for an injunction must be able to satisfy the court that his dealing of the matter had been fair, honest and free of any fraud or illegality. The Discretion in granting or refusing injunction must be exercised judicially and not arbitrarily. Section 36 of the Specific Relief Act states that Preventive relief is granted at the discretion of the court by way of injunctions, temporary or perpetual. Following are the kinds of injunctions.

1. Prohibitory Injunction
2. Mandatory Injunction
3. Temporary Injunction
4. Perpetual Injunction

Temporary and Perpetual Injunctions:

Temporary injunctions are such as are to continue until a specified time, or until the further order of the court, and they may be granted at any stage of a suit, and are regulated by the Provisions under Order XXXIX of Code of Civil Procedure, 1908. 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. An interim relief is granted to a person on the footing that the person is prima facie entitled to the right on which is based the claim for the main relief as well as the interim relief. Perpetual injunction can be granted to prevent the breach of an obligation existing in favour of the plaintiff whether expressly or by implication.

As under Section 38 of The Specific Relief Act, Perpetual injunction can be granted under following circumstances:

- (1) Subject to the other provisions contained in or referred to by this Chapter, a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing

in his favour, whether expressly or by implication.

(2) When any such obligation arises from contract, the court shall be guided by the rules and provisions contained in Chapter II.

(3) 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 no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;
- (c) where the invasion is such that compensation in money would not afford adequate relief;
- (d) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

Mandatory injunctions:

If an Injunction forbids or prohibits the commission or continuance of an act like an act of trespass etc. It is known as Prohibitory or Mandatory Injunction. The relief of mandatory injunction is a discretionary relief and can be granted in the circumstances specified under section 39 of the Specific Relief Act, 1963.

Section 39 of The Specific Relief Act deals with the relief of Mandatory Injunction, it states as under : "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."

Mandatory Injunctions are contemplated under section 39 of the Specific Relief Act, and is granted where it is necessary to prevent the breach of an obligation of the erring party, and the party may be compelled to perform certain acts. Such Injunction can be granted under following circumstances:

1. There must be an obligation on part of the defendant to perform certain acts the breach of which, must be alleged by the plaintiff.
2. Such relief must be enforceable by the court.

To Prevent breach of an obligation:

As under section 39 of the Specific Relief Act deals with the circumstances where Mandatory Injunction can be granted. Power to grant mandatory Injunction is to be exercised in very exceptional and rare circumstances. And it can be granted by the court to prevent breach of an obligation on part of the Defendant.

To compel performance of certain acts:

The court can compel the Defendant to perform certain acts, when an unlawful act obstructs the Lawful enjoyment of Plaintiff's rights over property. Eg. Removal of unlawful constructions made over the property of Plaintiff.

Capable of Enforcing:

Where breach of an obligation can be compensated with the relief of Specific Performance, and where the Agreement is not specifically enforceable, then Mandatory Injunction cannot be granted. Where such relief of Injunction is not enforceable, court cannot grant it. Eg: where the Mandatory injunction is granted to perform construction works. Such relief cannot be enforced by court, as it requires continuous supervision.

Mandatory injunction at Interlocutory Stage:

A mandatory injunction can be granted on an interlocutory application as well as at the hearing, but, in the absence of special circumstances, it will not normally be granted. However, if the case is clear and one which the court thinks ought to be decided at once, or if the act done is a simple and summary one which can be easily remedied, or if the defendant attempts to steel a march on the plaintiff, such as where, on receipt of notice that an injunction is about to be applied for, the defendant hurries on the work in respect of which complaint is made so that when he receives notice of an interim injunction it is completed, a mandatory injunction will be granted on an interlocutory applications.¹

The Hon'ble Apex Court laid down the guidelines for granting Interlocutory Mandatory Injunctions in **Dorab Cawasji Warden vs Coomi Sorab Warden & Ors**²

“The relief of interlocutory mandatory injunctions are thus 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. But 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 injus- tice or irreparable harm, courts have evolved certain guid- lines.

¹ 24 Halsbury's Laws of England (4th Edn.) para 948

² 1990 (2) SCC 117

Generally stated these guidelines are:

- (1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.
- (2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.
- (3) The balance of convenience is in favour of the one seeking such relief.”

The Hon'ble Apex Court while dealing with the issue whether an interim Mandatory Injunction can be granted in a suit, held as under: in **Hammad Ahmed Vs. Abdul Majeed & Ors.**³ “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. The court would grant such an interim relief only if 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. 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.” The argument that under Order XXXIX Rules 1 and 2 of the Code, the Court has the jurisdiction to maintain the status of the parties on the date of filing of the suit or on the date of passing of the order but cannot direct the parties to do something which was not in existence at the time of filing of the suit, is not a general rule of universal application. The nature of the orders claimed by the Appellant are not passed ordinarily in a routine manner as the Plaintiff is required to have a case which should be of higher standard than mere prima facie case.

Reference was also made to Supreme Court's judgment in the case of *Deoraj vs. State of Maharashtra & ors.*, whereby the 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.

Principles laid down in **Anathula Sudhakar vs P. Buchi Reddy (Dead) By Lrs & Ors**⁴
Where a plaintiff is in lawful or peaceful possession of a property and such possession is

³ CIVIL APPEAL NOS. 3382-3383 OF 2019 9 July, 2019

⁴ AIR 2008 SC 2033

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.

In a suit for permanent injunction to restrain the defendant from interfering with plaintiff's possession, the plaintiff will have to establish that as on the date of the suit he was in lawful possession of the suit property and defendant tried to interfere or disturb such lawful possession. Where the property is a building or building with appurtenant land, there may not be much difficulty in establishing possession. The plaintiff may prove physical or lawful possession, either of himself or by him through his family members or agents or lessees/licensees. Even in respect of a land without structures, as for example an agricultural land, possession may be established with reference to the actual use and cultivation. The question of title is not in issue in such a suit, though it may arise incidentally or collaterally. But what if the property is a vacant site, which is not physically possessed, used or enjoyed? In such cases the principle is that possession follows title. If two persons claim to be in possession of a vacant site, one who is able to establish title thereto will be considered to be in possession, as against the person who is not able to establish title. This means that even though a suit relating to a vacant site is for a mere injunction and the issue is one of possession, it will be necessary to examine and determine the title as a prelude for deciding the de jure possession. In such a situation, where the title is clear and simple, the court may venture a decision on the issue of title, so as to decide the question of de jure possession even though the suit is for a mere injunction. But where the issue of title involves complicated or complex questions of fact and law, or where court feels that parties had not proceeded on the basis that title was at issue, the court should not decide the issue of title in a suit for injunction. The proper course is to relegate the plaintiff to the remedy of a full-fledged suit for declaration and consequential reliefs.

Injunction and Specific Performance:

The Hon'ble Supreme Court of India in **Sucha Singh Sodhi (D) Thr.Lrs. vs Baldev Raj Walia**⁵ and in **Rathnavathi & Anr vs Kavita Ganashamdas**⁶ observed that the suits for permanent injunction and specific performance are based on different cause of actions and that the same are not hit by Order II rule 2 of Civil Procedure Code. And the Hon'ble Apex court in *Rathnavathi & Anr vs Kavita Ganashamdas stated supra*,

⁵ CIVIL APPEAL NO.3777 OF 2018 dated 13 Apr 2018

⁶ (2015 (5) SCC 223

observed as under “ In our considered opinion, both the suits were, therefore, founded on different causes of action and hence could be filed simultaneously. Indeed even the ingredients to file the suit for permanent injunction are different than that of the suit for specific performance of agreement. In case of former, plaintiff is required to make out the existence of prima facie case, balance of convenience and irreparable loss likely to be suffered by the plaintiff on facts with reference to the suit property as provided in Section 38 of the Specific Relief Act, 1963 read with Order 39 Rule 1 & 2 of CPC. Whereas, in case of the later, plaintiff is required to plead and prove her continuous readiness and willingness to perform her part of agreement and to further prove that defendant failed to perform her part of the agreement as contained in Section 16 of The Act. One of the basic requirements for successfully invoking the plea of Order II Rule 2 of CPC is that the defendant of the second suit must be able to show that the second suit was also in respect of the same cause of action as that on which the previous suit was based.”

When an injunction cannot be granted:

Section 41 of The Specific Relief Act sets out the circumstances where the relief of Injunction cannot be granted. They are:

- (a) to restrain any person from prosecuting 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 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 proceeding in a 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 usual mode of proceeding except in case of breach of trust;
- (i) when the conduct of the plaintiff or his agents has been such as to disentitle him to the assistance of the court;
- (j) when the plaintiff has no personal interest in the matter.

Damages in lieu of, or in addition to, injunction:

Where the court while exercising its discretion declines the grant of injunction the court has jurisdiction to award damages though no damages may have been asked for by the Plaintiff. It is the court that compensates the plaintiff for the relief, which in its discretion, it does not award and the question of the plaintiff claiming compensation does not arise. Section 40 of The Specific Relief Act states the circumstances where the court can grant and reject damages as a relief in lieu of or in addition to the relief of Injunction. They are:

- (1) 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.
- (2) No relief for damages shall be granted under this section unless the plaintiff has claimed such relief in his plaint: Provided that where no such damages have been claimed in the plaint, the court shall, at any stage of the proceedings, allow the plaintiff to amend the plaint on such terms as may be just for including such claim.
- (3) 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.

Limitation:

Under Article 113 of The Limitation Act, Any suit for which no period of limitation is provided elsewhere in this Schedule the limitation period is Three years from the date on which the right to sue accrues. And as per the said Article, the suit for mandatory injunction has to be filed within three years from the date on which the right to sue accrued. As per the provisions of section 135 of the said Act, decree granting mandatory injunctions, shall have to be executed within three years from the date of decree or where a date is fixed for performance, from such date. The execution of a decree granting perpetual injunctions shall not be subject to any period of limitation as per provisions of Article 136.

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