

## CONTOURS OF RELIEF OF SPECIFIC PERFORMANCE OF CONTRACTS

By

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The word "contour" denotes an outline in general parlance. Thus the current presentation is an attempt to touch various dimensions on the topic of specific performance of contracts.

The law of specific relief is an offshoot of the law of Contracts. Urbanisation, modernisation, economic development etc., resulted in vast demand for land and increase in real estate. Consequently the litigation on these aspects also increased. A need was felt for enacting a separate legislation to cover these areas and other related aspects. Hence the Specific Relief Act was enacted.

**Pleadings :** Form 47, 48 of Appendix A of CPC provides necessary ingredients in pleading the relief of specific performance.

**Court Fee:** The court fee shall be computed on the amount of the consideration as provided under Sec.39 of A.P. Court Fees & Suits Valuation Act.

**Adding of parties & bonafide purchaser :** Often petitions are filed for impleading subsequent purchasers in the suit. There is a lot of academic debate on this aspect. However each case has to be appreciated on its own facts. Guidance on this aspect is available from the landmark judgment of Hon'ble Supreme Court in the case of **Mumbai International Airport Pvt.Ltd. Vs. Regency Convention Centre & Hotels Pvt. Ltd. & others [2010 LawSuit(SC) 431]** discussed the aspect of exercise of discretion while impleading parties.

*"We may now give some illustrations regarding exercise of discretion under the said Sub-Rule.*

*12.1) If a plaintiff makes an application for impleading a person as a defendant on the ground that he is a necessary party, the court may implead him having regard to the provisions of Rules 9 and 10(2) of Order I. If the claim against such a person is barred by limitation, it may refuse to add him as a party and even dismiss the suit for nonjoinder of a necessary party.*

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*12.2) If the owner of a tenanted property enters into an agreement for sale of such property without physical possession, in a suit for specific performance by the purchaser, the tenant would not be a necessary party. But if the suit for specific performance is filed with an additional prayer for delivery of physical possession from the tenant in possession, then the tenant will be a necessary party in so far as the prayer for actual possession.*

*12.3) If a person makes an application for being impleaded contending that he is a necessary party, and if the court finds that he is a necessary party, it can implead him. If the plaintiff opposes such impleadment, then instead of impleading such a party, who is found to be a necessary party, the court may proceed to dismiss the suit by holding that the applicant was a necessary party and in his absence the plaintiff was not entitled to any relief in the suit.*

*12.4) If an application is made by a plaintiff for impleading someone as a proper party, subject to limitation, bonfides etc., the court will normally implead him, if he is found to be a proper party. On the other hand, if a non-party makes an application seeking impleadment as a proper party and court finds him to be a proper party, the court may direct his addition as a defendant; but if the court finds that his addition will alter the nature of the suit or*

*introduce a new cause of action, it may dismiss the application even if he is found to be a proper party, if it does not want to widen the scope of the specific performance suit; or the court may direct such applicant to be impleaded as a proper party, either unconditionally or subject to terms. For example, if 'D' claiming to be a co-owner of a suit property, enters into an agreement for sale of his share in favour of 'P' representing that he is the co-owner with half share, and 'P' files a suit for specific performance of the said agreement of sale in respect of the undivided half share, the court may permit the other co-owner who contends that 'D' has only one-fourth share, to be impleaded as an additional defendant as a proper party, and may examine the issue whether the plaintiff is entitled to specific performance of the agreement in respect of half a share or only one-fourth share; alternatively the court may refuse to implead the other co-owner and leave open the question in regard to the extent of*

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*share of the vendor-defendant to be decided in an independent proceeding by the other co-owner, or the plaintiff; alternatively the court may implead him but subject to the term that the dispute, if any, between the impleaded co-owner and the original defendant in regard to the extent of the share will not be the subject matter of the suit for specific performance, and that it will decide in the suit, only the issues relating to specific performance, that is whether the defendant executed the agreement/contract and whether such contract should be specifically enforced. In other words, the court has the discretion to either to allow or reject an application of a person claiming to be a proper party, depending upon the facts and circumstances and no person has a right to insist that he should be impleaded as a party, merely because he is a proper party."*

**Ready & willingness:** Sec.16 (c) along with its explanation provides that the Plaintiff shall not only plead but also prove about his ready and willingness to perform his part of contract. As per judicial precedents it is not necessary for the Plaintiff to use the exact phraseology about his ready and willingness. It is sufficient if his pleadings contain the substance of the Sec.16 (c).

**Time whether essence of contract & limitation:** Art.54 of Limitation Act prescribes the period of limitation for specific performance as three years from the date fixed for performance or if no such date is fixed, when the plaintiff has noticed that the performance is refused. In cases relating to immovable property, time is never essence of contract. Even then the Court has to look into express terms of the contract; nature of the property; and the surrounding circumstances in adjudicating the case. However the parties may intend to make make as essence of contract; but this must be expressed in unequivocal language.

**Impounding:** It is a common practice that parties may often request the Court to send the unregistered agreement of sale for impounding. Sometimes inordinate delay may occur during the proceedings. Recently the Hon'ble High Court of Andhra Pradesh in the case of **Buddha Jagadeeswara Rao vs Sri Ravi Enterprises** referred to the case of **Y.Peda Venkaiah vs. RDO** wherein the Hon'ble High Court held that when original document was sent to the Collector at request of party u/s.38(2) of

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the Stamp Act by the Court, the trial of the case need not be stayed till the document is received back by the Court.

**Alternative relief:** The Plaintiff can seek alternative relief for refund of the advance sale consideration but this is subject to limitation.

**Recent amendments :** The Act is recently amended by virtue of which Sec.14A, 20A, 20B, 20C, 41(ha) are introduced. Gazette notification is also published and the Act came into force on 1<sup>st</sup> October, 2018.

**Discretionary relief:** Since the relief under this Act is discretionary, the Plaintiff has approach the Court with clean hands. Sec.20 of the Act

provides that the Court is not bound to grant such relief merely because it is lawful to do so and that the discretion of the Court is not arbitrary but sound and reasonable, guided by judicial principles.

**Extension of time:** As held in **Sujatha vs. B.Vyunkunta Rao [2000 (1) ALD 237]** the Court has power to extend time for deposit of balance sale consideration. Earlier there was divergence of opinion on this aspect.

**Execution:** It is interesting to note for academic discussion that there is a distinction between executing a decree for specific performance by filing an Execution petition and filing an Interlocutory Application. There is a specific provision i.e., Sec.28(3) of Specific Relief Act which provides that upon compliance of the Orders of the Court to deposit money, the Court may on the application in the same suit award such further relief including execution of proper conveyance, delivery of possession or partition or separate possession.

**Return of documents:** The Court must be quite vigilant while dealing with documents including return of documents after disposal of the suit. In this connection the Hon'ble High Court of Andhra Pradesh issued certain guidelines which are reproduced here:

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HIGH COURT OF ANDHRA PRADESH:: AT HYDERABAD

**ROC.NO.1628/SO/2005 DATED: 10.07.2006** CIRCULAR NO.13/2006

**Sub:** Indian stamp Act – Document produced not duly stamped to be impounded by the Court – Instructions – Issued.

*In view of Sections 33, 35, 38 of Indian Stamp Act, when a document is produced into Court not duly stamped, the Court is bound to impound the same or send it to the Collector for recovery of deficit stamp duty and penalty.*

*In view of the same all the Presiding Officers of the Courts concerned are directed to take the following steps.*

*(1) To ensure that the documents which are produced in the court and which are liable to stamp duty are properly stamped.*

*(2) In case any document is not properly stamped that same shall be impounded and the Presiding Officer shall ensure that an endorsement on the document impounded is made by the Chief Ministerial Officer.*

*(3) If a party produces a document in the Court which is insufficiently stamped and pays the penalty to the Court as required under Section 33 of the Indian Stamp Act, the same shall be endorsed on the document.*

*(4) Where a party requests to receive an insufficiently stamped document in evidence, the document shall not be received in evidence, unless, the party pays the required stamp duty and penalty.*

*(5) If the party requests the Court to send the document to the Collector, for collection of the stamp duty and penalty, the Court may consider such request and send the document to the Collector.*

*If the stamp duty and penalty is not paid or insufficiently paid on a document produced into Court and no request is made to send the same to the Collector, such document shall not be returned to the party. The same shall be sent to the Collector for appropriate action.*

*Therefore, all the Presiding Officers of the Subordinate courts are directed to follow the above instructions scrupulously.*

*The Unit Heads are requested to communicate this circular to all the Subordinate Courts under their control. Receipt of this circular be acknowledged.*

**REGISTRAR GENERAL**

These are the brief aspects involved in adjudicating a suit for specific performance. With this I humbly conclude my presentation.

C.N.MURTHY,

Principal Senior Civil Judge, Kadapa

## Scope of exercising discretion to grant relief of Specific Performance

Discretion as to decreeing specific performance. The jurisdiction to decree specific performance is discretionary, and the Court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the Court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a Court of appeal.

The following are cases in which the Court may properly exercise a discretion not to decree specific performance: \_\_\_

I. Where the circumstances under which the contract is made are such as to give the plaintiff an unfair advantage over the defendant, though there may be no fraud or misrepresentation on the plaintiff's part.

### Illustrations

(a) A, a tenant for life of certain property, assigns his interest therein to B. C contracts to buy, and B contracts to sell, that interest. Before the contract is completed, A receives a mortal injury from the effects of which he dies the day after the contract is executed. If B and C were equally ignorant or equally aware of the fact, B is entitled to specific performance of the contract. If B knew the fact, and C did not, specific performance of the contract should be refused to B.

(b) A contracts to sell to B the interest of C in certain stock intrade.

It is stipulated that the

sale shall stand good, even though it should turn out that C's interest is worth nothing. In fact, the value of C's interest depends on the result of certain partnership accounts, on

which he is heavily in debt to his partners. This indebtedness is known to A, but not to B. Specific performance of the contract should be refused to A.

(c) A contracts to sell, and B contracts to buy, certain land. To protect the land from floods, it

is necessary for its owner to maintain an expensive embankment. B does not know of this circumstance, and A conceals it from him. Specific performance of the contract should be refused to A.

(d) A's property is put up to auction. B requests C, A's attorney, to bid for him. C does this

inadvertently and in good faith. The persons present, seeing the vendor's attorney bidding, think that he is a mere puffer and cease to compete. The lot is knocked down to B at a low price. Specific performance of the contract should be refused to B.

II. Where the performance of the contract would involve some hardship on the defendant which

he did not foresee, whereas its nonperformance would involve no such hardship on the plaintiff.

### Illustrations

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(f) A and B, trustees, join their beneficiary, C, in a contract to sell the trustee estate to D, and

personally agree to exonerate the estate from heavy encumbrances to which it is subject. The purchase money

is not nearly enough to discharge those encumbrances, though, at

the date of the contract, the vendors believed it to be sufficient. Specific performance of the contract should be refused to D.

(g) A, the owner of an estate, contracts to sell it to B, and stipulates that he, A, shall not be obliged to define its boundary. The estate really comprises a valuable property, not known to either to be part of it. Specific performance of the contract should be refused to B unless he waives his claim to the unknown property.

(h) A contracts with B to sell him certain land, and to make a road to it from a certain Railway station.

It is found afterwards that A cannot make the road without exposing himself to litigation. Specific performance of the part of the contract relating to the road should be refused to B, even though it may be held that he is entitled to specific performance of the rest with compensation for loss of the road.

(i) A, a lessee of mines, contracts with B, his lesser, that at any time during the continuance

of the lease B may give notice of his desire to take the machinery and plant used in and about the mines, and that he shall have the articles specified in his notice delivered to him at a valuation on the expiry of the lease. Such a contract might be most injurious to the lessee's business, and specific performance of it should be refused to B.

(j) A contracts to buy certain land from B. The contract is silent as to access to the land. No

right of way to it can be shown to exist. Specific performance of the contract should be refused to B.

(k) A contracts with B to buy from B's manufactory and not elsewhere all the goods of a certain class used by A in his trade. The Court cannot compel B to supply the goods, but if he does not supply them, A may be ruined unless he is allowed to buy them elsewhere. Specific performance of the contract should be refused to B.

The following is a case in which the Court may properly exercise a discretion to decree specific performance: —

III. Where the plaintiff has done substantial acts or suffered losses in consequence of a contract

capable of specific performance.

Illustration

A sells land to a railway company,

who contract to execute certain works for his convenience.

The company take the land and use it for their railway. Specific performance of the contract to

execute the works should be decreed in favour of A.

1 Omitted by Ord. No. XXII of 1983, s.3.

(d) For whom Contracts may be specifically enforced

23. Who may obtain specific performance. Except as otherwise provided by this Chapter, the

specific performance of a contract may be obtained by —

(a) any party thereto;

(b) the representative in interest or the principal, of any party thereto: provided that where the learning, skill, solvency or any personal quality of such party is a material ingredient in the contract, or where the contract provides that his interest shall not be assigned his representative in interest or his principal shall not be entitled to specific performance of the contract, unless where his part thereof has already been performed;

(c) where the contract is a settlement on marriage, or a compromise of doubtful rights between members of the same family, any person beneficially entitled there under;

(d) where the contract has been entered into by a tenant for life in due exercise of a power,

the remainder man;

- (e) a reversioner in possession, where the agreement is a covenant entered into with his predecessor in title and the reversioner is entitled to the benefit of such covenant;
- (f) a reversioner in remainder, where the agreement is such a covenant, and the reversioner is entitled to the benefit thereof and will sustain material injury by reason of its breach;
- (g) when a public company has entered into a contract and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation;
- (h) when the promoters of a public company have, before its incorporation, entered into a contract for the purposes of the company, and such contract is warranted by the terms of the incorporation, the company.
- (e) For whom Contracts cannot be specifically enforced.

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# **WORK SHOP – II MATERIAL.**

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