

WORKSHOP DT.

TOPIC

**Alternative remedies for Specific Performance of Contracts**

By

Ms. S.Sreelakshmi, Senior Civil Judge, Rajam.

**Introduction:-**

1. A contract is a written or oral agreement which is legally enforceable entered into by two or more parties for a particular purpose where each party assumes a legal obligation that must be fulfilled.

The law of contract confines itself to the enforcement of voluntarily created civil obligations. But the law of contracts not able to take care of all the agreements. Many agreements remain outside the purview of law of contracts.

2. The Specific Relief Act 1963 is an Act of the Parliament of India which provides remedies for persons whose civil or contractual rights have been violated. The Specific Relief Act 1963, the name itself suggests that it provides specific reliefs. In the case of specific relief, the plaintiff obtains the very thing to which he is entitle to. In other words it is remedy which aims at enact fulfillment of an obligation or specific performance of the contract. The basic principle behind the screen of specific performance is "whenever there is a wrong there must be remedy". It provides a specific relief so as to remedy the violation of legal rights.

3. Specific performance is an equitable remedy in the law of contract, whereby a Court issues an order requiring a party to perform a specific act such as to complete of the contract. Specific performance is an equitable relief given by the Court to enforce against a defendant the duty of doing what he agreed by contract to do. Thus, the remedy of specific performance is in contract with the remedy by way of damages for breach of contract, which gives pecuniary compensation for failure to carry out the terms of contract. Damages and specific performance are both remedies available upon breach of obligations by a party to the contract. The former is a "Substitutional" remedy and the latter is a "Specific" remedy.

4. As per the Specific Relief Act 1963, the remedy of specific performance was not available to a party as a matter of right but the grant was based on the discretion of the Court. The Amendment Act has brought about a substantive change in the substratum of the Act. As per the Amendment, the Courts are bound to enforce the specific performance of a contract as a rule, subject to limited exceptions.

5. Prior to Amendment 2018, specific performance cannot asked for as a right because it is provided on the satisfactory discretion of the Court. The plaintiff seeking specific performance must satisfy the Court that the normal remedy of damages is inadequate. The relief must be specifically claimed. When the plaintiff claims specific performance of that particular agreement,

the suit could be decreed for specific performance of that particular agreement only, but not for any other agreement. Parties to a contract must perform their contractual obligations. In case of breach, they will be sued for non-performance.

6. Before passing the Amendment specific performance was an exception rather than rule and in most of the cases the legal right available was damages. The Court can use its discretion only when

(1) The actual damage caused due to non-performance of the action could not be ascertained.

(2) When monetary compensation would not be adequate relief for non-performance of the contract.

As a result, Indian Courts often awarded damages for breach of contract as a general rule and grant of specific performance as an exception.

There are certain circumstances when specific performance cannot be awarded.

(1) When the specific performance is impossible.

(2) When the contract is too vague to be enforced.

(3) When the element of consensus-ad-idem is missing.

(4) The contract was made for no consideration.

(5) When the contract is void or unenforceable.

7. The Specific Relief (Amendment) Act, 2018 was published in official Gazette on 4th April, 2018. After Amendment

to Section 16 the plaintiff pleadings that he performed or has been ready and willing to perform the essential terms of the contract is no longer mandatory.

8. The Specific Relief (Amendment) Act, 2018, Section 20 of the old Act totally substituted with the new provisions. It provides an alternative to the party who suffers by breach of contract to go for substituted performance through a third party or by his own agency and he can recover the expenses and other costs actually incurred, spent or suffered by him from the party committing such breach subject to conditions.

Section 20 substituted performance of contract.

(1) Without prejudice to the generating of the provisions contained in the Indian Contract Act, 1872 and except as otherwise agreed upon by the parties, where the contract is broken due to non-performance of promise by any party, the party who suffers by such breach shall have the option of substituted performance through a third party, the party who suffers by him from the party committing such breach.

(2) No substituted performance of contract under sub-Section (1) shall be undertaken unless the party who suffers by such breach have given a notice in writing, of not less than 30 days to the party in breach calling upon him to perform the contract within such time as specific in the notice, and on his refusal or failure to do so, he may get the same performed by a third party or by his own agency. Provided that the party who suffers such breach shall not be entitled to recover the expenses and costs under sub-

Section (1) unless he has got the contract performed through a third party or by his own agency.

(3) Where the party suffering breach has got the contract performed through a third party or by his own agency after giving notice under sub-Section (1) he shall not be entitled to claim relief of specific performance against the party in breach.

So as per Section 20 of Amendment Act when there is a breach of contract by any party, then the party who suffers by such breach shall have the option of substituted performance through a third party or by his own agency provided, he has given a notice in writing, of not less than 30 days, to the party in breach calling upon him to perform the contract within such time as specific in notice and on his refusal or failure to do so he may get the same performed by a 3rd party or by his own agency. He can recover the expenses and other costs actually incurred, spent or suffered by him from the party committing such breach, the party who suffers such breach shall not be entitled to recover the expenses and costs unless sub-Section (1) unless he got the contract performed through a third party or by his own agency, where the party suffering breach of contract has got the contract performed through a third party or by his own agency after giving notice under sub-Section (1) i.e., substituted performance, then he shall not be entitled to claim relief of specific performance against the party in breach as he has already got the contract performed through third party or by his own agency. At this point he can only claim to recover the expenses and other costs actually

incurred, spent or suffered by him from the party committing such breach.

**M.K. Chabbra Vs. Damanjith Kaur.** The Hon'ble High Court at Delhi dt.07.01.2019.

The facts of the case are that the appellant/plaintiff filed the suit seeking specific performance of the agreement to sale dt.28.03.1993 for the suit property. The counter claim filed by the respondent/defendant seeking to recover damages of a sum of Rs.25,50,000/- from the appellant/plaintiff. Both the suits were dismissed. Their Lordships held that the facts of the case show that the appellant/plaintiff is clearly harassing the respondent/defendant who is a ready who was in different circumstances when the agreement to sell was entered into in March 1993. The very fact and admittedly since the agreement to sell was only for 50% of the market value of the property shows that the respondent/defendant was in trying instances and was under the compulsion for various reasons to enter into the agreement to sell. Not only that only an amount of Rs.1,00,000/- out of Rs.15,00,000/- was paid. Therefore the respondent/defendant is being malafidely and willingly harassed by the appellant/plaintiff. Accordingly while dismissing this appeal the respondent/defendant is also held entitled to costs of Rs.2,00,000/- from the appellant/plaintiff.

**What is Alternative Remedy:**

Relief means a remedy or redressal to indemnify the loss or damage suffered by the other party. When either of the parties breaches the contract, it gives right to the other party to sue him for a remedy. In other words, a remedy is the means given by law, for the enforcement of a right. Alternative remedy eliminates the harsh consequences of the Rule of Common Law pleading, that required a party to make one demand for one type of relief and to lose the case, if a different remedy were more appropriate. A party can ask for alternative forms of relief and recover what is later proved appropriate at trial.

As per the Specific Relief Act 1963, a plaintiff can claim compensation in addition to, or in substitution of a relief for specific performance in a suit for specific performance of a contract. It means as per old Act, compensation can be claimed as an alternative relief for specific performance. As per the Specific Relief Amendment Act, 2018, in Section 21(1) of the Principal Act, the words "Either in addition to or in substitution of" the words "in addition to" was substituted. It means as per latest amendment, compensation can only be claimed as an additional relief, but, cannot be claimed as an alternative relief to the relief of specific performance.

No compensation shall be awarded under this Section unless the plaintiff has claimed such compensation in the plaint.

**Kinds of Alternative Remedies:-**

In a breach of contract, the aggrieved party has one or more of the following remedies, alternative to specific performance.

- (1) Recovery of possession of Property.
- (2) Relief of damages and compensation.
- (3) Rectification and Cancellation of Instruments.
- (4) Rescission of contracts.
- (5) Preventive relief.
- (6) Declaratory relief.
- (7) Suit for quantum meruit.

**(1) Recovery of possession of property.**

Though the Specific Relief Act is concerned only with the enforcement of civil rights and not penal laws, even civil law has to take care of certain rights, the violation of which is capable of creating serious violent clashes, and these are rights to possession of property. The very first chapter of Specific Relief Act 1963 provides relief to those who have been dispossessed of their property.

**Section 6** deal with Suits by a person dispossessed of immovable property. Possession here means legal possession which may exist with or without actual possession and with or

without rightful or origin. Thus where a trespasser is allowed to continue on the property and the owner sleeps upon his rights and makes no efforts to remove him, he will gain possession. The possession of a tenant after the termination of the tenancy continuous to be a juridical possession. His right to possession remains unless the owner gets a decree of eviction against him. In the matter of **Express Newspapers (P) Ltd., Vs Union of India** the Hon'ble Supreme Court held that where breach is found, the lessor must adopt the due process of law by fling a civil suit to enforce the right of re-entry such a lease is not an "unauthorized occupant" of "public premises" and he will be entitled to relief against such eviction.

From the very Section 54 of transfer of Property Act 1882 it deal with not only of sale of properties, but also agreement of sale.

## **2. Relief of Damages and compensation.**

Damages and compensation are the remedies available in case of breach of obligation by a party to the contract; the former is a 'substitutional' remedy, and the latter a 'specific' remedy. The plaintiff seeking this remedy must first satisfy the Court that the normal remedy of damages is inadequate, in cases of contracts for transfer of immovable property, damages will not be adequate.

**Ex:** "A" enters into a contract with "B" offering to sell his house for Rs.50,000/- and "B" accepts to purchase the same.

“Damages” means monetary compensation for loss suffered by the aggrieved party in a breach of contract. Whenever a breach of contract takes place, the remedy of damages is the one that comes to mind immediately as a consequence of breach. The quantum of damages is determined by the magnitude of loss caused by breach. The term ‘damage’ is different from the term ‘damages’. The former denotes the loss or damage as a consequence of the breach of contract, while the latter refers to the compensation paid for the breach of a contract.

“In order to establish a right to damages, the plaintiff must show the loss which he has sustained was caused by the breach. But assuming this can be proved, the law will nevertheless, not compel the defendant to assume liability for the loss which the plaintiff may conceivably have suffered as a consequence of the breach. Certain losses may be too ‘remote’ and for this, the plaintiff is not entitled to compensation. **In Hadley Vs Baxendale (1854)** the basis Principle governing the fixation of the quantum of damages was settled in this case. The House of Lords held that the defendant was not liable for the loss or profit accrued during the Period of closure, since the plaintiff did not disclose the defendant that the mill was closed for want of the crankshaft. If the plaintiff would have informed that the work was dislocated for want of crankshaft, the defendant could have made alternative arrangements for Quick transportation of the crankshaft.

Section 73 of Contract Act, 1872 provides Compensation for the loss or damage caused by breach of

contract. When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it. In **Pannalal Jakidas Vs Mohanlal AIR 1951 SC 144**. The Hon'ble SC observed that "the party in breach must make compensation in respect of the direct consequences flowing from the breach and not in respect of loss or damage indirectly or remotely caused. Section 21 of specific performance Act 1963 confer power to award compensation in certain cases. In a suit for specific performance of a contract, the plaintiff may also claim compensation for its breach, either in addition to or in substitution of, such performance. If the court is of opinion that specific performance ought not to be ordered, the court may award compensation. Every party seeking the relief of specific performance is allowed by this Section to claim for the breach of the contract. Compensation would be assessed in accordance with the principles stated in **Section 73 of the Contract Act**. Even where the contract has become incapable of specific enforcement, the court can exercise the power under this section to award compensation. The measure of compensation is by the standards of Section 73 of the Indian Contract Act. The quantum of compensation is ascertainable with reference to the determination of the market value. The compensation awarded may safely be taken to be the measure of damages, subject, of course, to the

deduction there from of money value of the services, time and energy expended by the appellant in pursuing the claims of compensation and the expenditure incurred by him in the litigation culminating in the award. Any person suffered loss due to failure to fulfill the terms, is entitled to receive the compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.

**Explanation:-**

In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

In **Gayatri Gupta Vs. Ruby Sharma and others**, Hon'ble High Court of Delhi, decision dt.23.01.2019.

The facts of the case are that the trial Court dismissed the suit. The plaintiff preferred this appeal. Their Lordships observed that there is a breach of contract then an aggrieved party is entitled to monetary damages as per Section 73 of the Indian Contract Act and which monetary damage is the amount of loss which is caused to the aggrieved party under the contract. An aggrieved party who was the proposed buyer under the agreement to sell will suffer loss if in case on the date and in around the date of breach the value of a similar property as the contracted property under the agreement to sell, which could be purchased by the plaintiff as a proposed buyer had increased. In the extent of increase of price of the property a plaintiff who is a proposed buyer suffers loss when a proposed seller/defendant does not sell

the property under an agreement to sell, because a buyer has to pay a higher price for purchase of a similar property and thus ordinarily whenever there is a breach of contract price and the higher price of a similar property in around the date of breach.

Therefore, the appellant/plaintiff having only paid 8% of the sale consideration was not entitled to the discretionary relief of specific performance and the trial Court has rightly so held in this regard. The trial Court has also rejected the claim for damages of Rs.20,00,000/- because damages have to be specifically proved. There is no merits in the appeal dismissed.

### **3. Rectification and cancellation of instruments.**

Section 26 of specific relief act 1963 provides remedy for rectification of instruments. The word instrument includes every document by which any right or liability is or purports to be created, transferred, limited , extended, extinguished or recorded. As per sub section (4) of the section 26 the relief for rectification of instrument shall not be granted to any party unless it has been specifically claimed provided the court shall at any stage of the proceeding allow him to amend the pleadings. The essential ingredients to seek rectification or (1) there must mutual mistake or fraud, 2) the instrument did not truly express the intention of the parties, in **State of Karnataka Vs KK Mohan Dsa, AIR 2007 (SC) 2917** it is held that rectification of written contract, in the absence of plea of mutual mistake, or fraud, such relief is not permissible. In **Nawab Begum Vs A.H.Creet ILR (1905) 27 Allahabad 678**, it was held that the mistake may be either of fact

or of law although the court of equity will not generally grant relief against a mistake of law, except where the mistake results in an equitable result. In **New India Rubber works (P) Ltd. Vs Oriental Fire and General Insurance Company Ltd. (1969) 1 Comp. L.J.153 (Cal)** it was held that section 26 provided that an instrument can be rectified if through fraud or a mutual mistake of parties, the contract does not express their real intention.

Many transactions are required by law to be in writing. Many more transactions are put into writing because of expediency. A written transaction is an instrument. An instrument is the result of negotiations. Occasionally it happens that the instrument that emerges fails to express the intention of the parties. Its rectification may become necessary. Chapter III of Specific Relief Act helps parties who want to have their mistakenly executed documents rectified.

Section 31 to 33 of the Specific Relief Act 1963 provide for the **cancellation of instrument**. As per section 31 any person against whom a written instrument is voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue may have it adjudged void or violable and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled. If the instrument has been registered under the Indian Registered Act 1908, the court shall send a copy of the decree of cancellation to

the officer in whose office, the said instrument has been so registered and such officer shall note on the copy of the instrument, the fact of its cancellation.

**Jitendra Ayush Jain (HUF) Vs. Laxman Bhagaji Najar**, dt.13.02.2012 of Hon'ble High Court of Bombay.

The facts of the case is that the suit is filed for the relief of specific performance of contract of sale of immovable property, agricultural land which is owned by the present respondent. The respondent/defendant has filed written statement and the evidence of the plaintiff was closed on the date when the application for amendment was filed. Only during cross-examination of the defendant, the plaintiff realized that amendment of the pleading need to be made and so he got filed application for amendment of the pleading. The plaintiff wants to show that the property of the defendant is situated at Georai, Tahsil and District Aurangabad and not at Chitegaon, Tahsil Paithan, District Aurangabad. The plaintiff wants to prove that the defendant is owner of Lot No.57 situated at Georai and the description of the property given in the agreement of sale tallied with the property of the defendant situated at Chitegaon. The plaintiff wants to show that due to mutual mistake village Chitegaon, Tahsil Paithan was shown as a place where the property is situated.

The respondent/defendant submitted that the plaintiff has prayed only for amendment of the pleading when there is instrument of aforesaid nature. The respondent contention is that so long the instrument is of aforesaid nature, the trial Court could

not have even considered even the amendment to the pleading as the document is not consistent with the pleading.

Under Section 26, the Court may in its discretion direct rectification of the instrument. So as to express that intention of party Provided that where a party has not claimed any such relief in pleading Court shall at any stage of the proceeding allow him to amend the pleading on such terms as may be just for including such claim. In which their Lordships held that the said order needs to be set aside to allow the plaintiff to make amendment but for that the plaintiff needs to make an application for direction to rectify the instrument which contain the contract which is to be used in the suit.

#### **(4) Rescission of contracts.**

It is the remedy that terminates the contractual duties of both parties, where there is a breach of contract, the aggrieved party may sue or treat the contract as rescinded and refuse further performance. The rescission of contract necessarily constitutes a bar to its performance by either of the party to it. Rescission means cancellation of the contract. This will enable the party to be free from his own obligations under the contract. The ground for bringing suit for rescission have been given in section 27 and 28 of specific relief act. As per section 27 of the said Act, the relief of rescission comes handy to a person who has become the victim of an imposition by means of contract. This burden of contract has been imposed upon him by means of a fraud or illegality or something equivalent which make the contract either void or

voidable. This is rescission, that is, getting rid of contract. Accordingly, section 27 provides that the courts may allow the relief of rescission in the following cases.

1. Where the contract is voidable or terminable by the plaintiff.
2. Where the contract is unlawful for causes not apparent on its case and the defendant is more to blame.

Section 28 of the said Act provides certain circumstances of contract for the sale or lease of immovable property, specific performance of which has been decreed. This section enables the court to put inbuilt remedy of rescission in decree of specific performance. Where a decree of specific performance has been passed in respect of a contract for the sale or lease of immovable property, but the party to whom such relief has granted does not pay the price within the time delimited, the seller may ask the court for rescission. The court will direct the purchaser or lessee, if he has already taken the possession, to restore it to the seller and also to pay him rent for period during which he enjoyed the benefits of possession. Where justice so requires the court may order refund of the earnest money, if any, paid by the vendee or lessee. On the other hand, the vendee or lessee has deposited the money as directed by the court, he may be allowed for any relief as may seem just to the court in the circumstances. In **Ramankutty Guptan Vs Avara (1994) 2 SCC 642**, it was observed that the relief may be allowed even where the deposit was late but it was made during pendency of the appeal and the court retains control over the matter even after passing the decree. In **M.Mohammad Aslam Vs**

**C.N.A.Gowthaman AIR 2003, Madras, 248**, it was held no rescission would be allowed where the purchaser paid the balance consideration money as ordered by the court. In **Suseela Devi Vs Maharshi Commerce Ltd., AIR 2010 NOC 819 AP**. it was held that the rescission can be ordered for non deposit of any other sum ordered by the court not necessarily the balance amount of consideration.

Section 29 deals with alternative prayer for rescission in suit for specific performance. A plaintiff instituting a suit for specific performance of contract in writing may pray in the alternative, that, if the contract cannot be specifically enforced it may be rescinded and delivered up to be canceled, and the court, if it refuses to enforce the contract specifically, may direct it to be rescinded and delivered up accordingly. In **Araveti Sreenivasulu Vs. Makam Suresh Babu (died) and others, 2018 (6) ALT 140 part 21**, it was held that the court which passed the decree does not become **functous officio** with the passing of decree for specific performance and the exercise of discretion under this section must be equitable to both the parties. It is also observed that if extension of deposit of balance sale, is considered beyond the reasonable period (in this case beyond 5 years), the conditions stipulated in the decree are not treated with legal sanctity and said exercise of discretion for extension of time, is illegal and untenable.

**(5) Preventive Relief.**

There are cases in which the contract does not admit specific performance, nor damages are likely to serve any purpose. In such cases the court may have to restrain the party threatening breach, to the extent to which it is possible to do so. For example, a person contracts to sing at a particular place and also undertakes not to sing elsewhere during the same period. He threatens breach. The court cannot force him to sing. The positive side of the bargain is not specifically enforceable. But the negative undertaking "not to sing elsewhere" can be enforced by restraining him from giving his performances elsewhere. Injunction is a court order or decree to a person asking him to refrain from doing a contemplated act or from continuing an ongoing act. Such an order of injunction becomes a remedy for the aggrieved party when the court orders the guilty party to refrain from doing precisely that which is causing the breach of contract. This type of remedy as "injunction", upon the party concerned directing him not to do a particular act or asking him to perform a particular duty, known as a mandatory injunction. Such relief is granted under the provisions of Part III of the Act running from Chapter VII to the end.

On Civil benches daily we are dealing with majority of civil suits claiming declaration of Title and Recovery of Possession, the suits claiming declaration of Title and perpetual Injunction, Suits claiming perpetual Injunction and Recovery of Possession etc,. The plaintiffs claiming such reliefs must prove absolute title

and legal possession over schedule property with clear identity with in specific boundaries.

In the case **Kamal Kumar Vs. Premlatha Joshi and others** in Civil Appeal No. 4453/2009 dt.07.01.2019 Hon'ble Supreme Court.

The facts of the case is that the plaintiff filed a suit for specific performance. The trial Court dismissed the suit. The plaintiff preferred 1st appeal in the Hon'ble High Court and the same was dismissed. Again the appellant/plaintiff filed this appeal by way of Special Leave in Hon'ble Supreme Court.

Their Lordships observed that, it is settled principle of law that the grant of relief of specific performance is a discretionary and equitable relief. The material questions, which are required to be gone into for grant of the relief of specific performance, are First, whether there exists a valid and concluded contract between the parties for sale/purchase of the suit property; Second, whether the plaintiff has been ready and willing to perform his part of contract and whether he is still ready and willing to perform his part as mentioned in the contract; Third, whether the plaintiff has, in fact, performed his part of the contract and, if so, how and to what extent and in what manner he has performed and whether such performance was in conformity with the terms of the contract; Fourth, whether it will be equitable to grant the relief of specific performance to the plaintiff against the defendant in relation to suit property or it will cause any kind of hardship to the defendant and, if so, how and in what manner and the extent if such relief is eventually granted to

the plaintiff; and lastly, whether the plaintiff is entitled for grant of any other alternative relief, namely, refund of earnest money etc. and, if so, on what grounds.

Their Lordships held that, the aforementioned questions are part of the statutory requirements Section 16(c), 20, 21, 22, 23 of Specific Relief Act, 1963. These requirements have to be properly pleaded by the parties in their respective pleadings and proved with the aid of evidence in accordance with law. It is only then the Court is entitled to exercise its discretion and accordingly grant or refuse the relief of specific performance depending upon the case made out by the parties on facts.

#### **(6) Declaratory Relief.**

There is one more matter of which the Specific Relief Act takes care and that is "declaratory relief". Occasionally it may happen that a person is entitled to some status or character or has a right in some property, but there are persons who are denying him the enjoyment of his right. He is allowed by Chapter VI of the Specific Relief Act to proceed any person who is denying or interested in denying him his right and the court may issue a general declaration as to his entitlement to such right (declaratory decrees). In **Pankajakshy Vs. Devaki Ramakrishnan AIR 2011 Kerala 30**, held "an oral Sale is not recognized by Law and the Law recognizes only two modes of transfer and conveyance, namely by registered instrument or by delivery of possession and the plaintiff is not entitled to a declaration even assuming there

was some evidence to show that the plaintiff was in settled possession.

Sections 34 and 35 lay down the law relating to declaratory decrees. A declaratory decree is a decree declaratory of a right which is doubtful or which requires to be cleared. The object of declaratory decrees is to prevent future litigation by removing the existing cause of controversy. In other words, if a cloud is cast upon the title or legal character of the plaintiff, he is entitled to seek the aid of the court to dispel it. It is essential for a decree under Section 34 that the plaintiff must be entitled to any legal character to any right to property. It does not sanction every kind of declaration but only a declaration that plaintiff is entitled to any legal character or to any property. It is not a matter of absolute right to obtain a declaratory decree and it is discretionary for the court to grant or refuse to grant it. In declaratory Suit, identity of party to suit and schedule property must be specific and clear. Identity of a party to a suit can be challenged in two ways (a) by contending that there was never such a person in existence or (b) that the person claiming to be so and so, was not the actual person but an impersonator. If such a plea is taken the burden is on the defendant. Once the plaintiff is successful proving identity and defendant failed to negative, the plaintiff is entitled for declaration. **In Mrs. Noorunnisa Begum Vs, Raj kumar and others 2018 (4) ALT 631 (DB)** it was held "once it is found that plaintiff is entitled to declaration title, such person would normally be entitled to recovery of possession, unless a bar for recovery on

the ground of limitation or other technicalities pleaded” and “once entitled for recovery of possession, he is entitled even for mutation in revenue record, if name is already entered in revenue records”.

### **(7) Suit for quantum meruit.**

The term quantum meruit means ‘as much as earned’. It implies ‘a payment deserved by a person for the reason of actual work done’. When a party has done some work under a contract, and the other party repudiates the contract or somehow the full performance of the contract becomes impossible, the party who has done the work can claim remuneration for the work under a suit for quantum meruit. In a situation in which a contract is entered into, but the services are not completed, the question of fair payment may be brought to the court. In a case of incomplete work, the theory of **quantum meruit** is used to determine whether payment is due, in what amount payment should be made, and which party should be paid. In **State of Madras Vs. Gannon Dunkerley & Co. ( Madras) Ltd., dated 1st April 1958**, it was held that claim for damages for breach of contract the value of the materials is a factor relevant only as furnishing a basis for assessing the amount of compensation and if a contractor is prevented by the other party to the contract from completing the construction, the goods delivered under the contract are not the goods contracted for, the purchaser has got a right to reject them, or to accept them and claim damages for breach of warranty under the Law.

In **AP Civil Supplies Vs. M/S Mahalaxmi Traders., AP High Court dated 29th Jan 2016**, it was held that compensation Quantum meruit is awarded for the work done or service rendered, when price thereof not fixed by contract for work done or service rendered pursuant to the terms of contract, it cannot be awarded when contracts provides for the consideration payable in that behalf.

I feel it is a privilege and pleasure for having been asked to submit the presentation on the topic.

Thanking you.

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SENIOR CIVIL JUDGE,  
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