

**Q 1. What are the contracts which cannot be specifically enforced?
Discuss**

ANS 1. Contracts which cannot be specifically enforced (Section 14)

Section 14 deals with contracts which cannot be specifically enforced. The provision is as follows :

"14. Contracts not specifically enforceable.—(1) The following contracts cannot be specifically enforced, namely :

(a) a contract for the non-performance of which compensation in money is an adequate relief; (b) a contract which runs into such minute or numerous details or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the court cannot enforce specific performance of its material terms; (c) a contract which is in its nature determinable; (d) a contract, the performance of which involves the performance of a continuous duty which the court cannot

supervise. (2) Save as provided by the Arbitration Act, 1940 (10 of 1940), no contract to refer present or future differences to arbitration shall be specifically enforced; but if any person who has made such a contract (other than an arbitration agreement to which the provisions of the said Act apply) and has refused to perform it, sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit. (3) Notwithstanding anything contained in clause (a) or clause (c) or clause (d) of sub-section (1), the court may enforce specific performance in the following cases (a) where the suit is for the enforcement of a contract,

(i) to execute a mortgage or furnish any other security for securing the repayment of any loan which the borrower is not willing to repay at once : Provided that where only a part of the loan has been advanced the lender is willing to advance the remaining part of the loan in terms of the contract; or (ii) to take up and pay for any debentures of a

company; (b) where the suit is for,

(i) the execution of a formal deed of partnership the parties having commenced to carry on the

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business of the partnership; or

(ii) the purchase of a share of a partner in a firm; (c) where the suit is for the enforcement of a contract for the construction of any building or the execution of any other work on land : Provided that the following conditions are fulfilled, namely :

(i) the building or other work is described in the contract in terms sufficiently precise to enable the court to determine the exact nature of the building or work; (ii) the plaintiff has a substantial interest in the performance of the contract and the interest is of such a nature that compensation in money for non-performance of the contract is not an adequate relief; and (iii) the defendant has, in pursuance of the contract, obtained possession of the whole or any part of the land on which the building is to be constructed or other work is to be executed.

(1) Where compensation in money is an adequate relief (Section 14(1)(a))

A contract for the non-performance of which compensation in money is an adequate relief cannot be specifically enforced, because it is expected that the plaintiff, in such a case, should bank upon the remedy of compensation, which is the normal remedy for the non-performance (or breach) of contract. For the same reason Section 10(b) provides that where compensation in money for its non-performance would not afford adequate relief the contract may be specifically enforced.

The point may be explained through the following illustrations :

(1) A contracts to sell, and B contracts to buy, a lakh of rupees in the four per cent loan of the Central Government. (2) A contracts to sell, and B contracts to buy, 40 chests of indigo at Rs. 1,000 per chest. (3) In consideration of certain property having been

transferred by A to B. B contracts to open a credit in A's 1 Sortion U I favour to the extent of Rs. 10,000, and to honour A's drafts to that amount

The above contracts cannot be specifically enforced, for, in the first and second both A and B, and in the third A would be reimbursed by compensation in money.

The other examples of such contracts are-a contract to lend money, an agreement to pay money by instalments, a contract for mortgage of immovable property, an agreement to repair certain premises and a contract for the sale of goods.5.

In case of contract for the sale of something which has its special value and is not an ordinary article of commerce, such as rare coins, the contract can be specifically enforced, because compensation in money will not constitute an adequate relief in such a case.

(2) Contract which runs into minute or numerous details (Section 14(1)(b))

The following kinds of contracts cannot be specifically enforced :

(i) A contract which runs into such minute or numerous details; or (ii) which is so dependent on the personal qualification or volition of the parties; or (iii) otherwise from its nature is such, that the Court cannot enforce specific performance of its material terms.?

The above mentioned provision may be explained through the following illustrations :

- (1) A contracts to render personal service to B; (2) A contracts to employ B on personal service; (3) A, an author, contracts with B, a publisher, to complete a literary work; B cannot enforce specific performance of these contracts; (4) A contracts to buy B's business at the amount of a valuation to be made by two valuers, one to be named by A and the other by B. A and B each name a valuer, but before the valuation is made, A instructs his valuer not to proceed; (5) By a charter-party entered into in Calcutta between A, the owner of a ship, and B, the charterer, it is agreed that the ship shall proceed to Rangoon and there load a cargo of rice, and thence proceed to London, freight to be paid one-third on arrival at Rangoon, and two-thirds on delivery of the cargo at London; (6) A lets land to B and B contracts to cultivate it in a particular manner for three years next after the date of the lease; (7) A and B contract that, in consideration of annual advances to be made by A. B will for three years next after the date of the contract grow particular crops on the land in his possession and deliver them to A when cut and ready for delivery; (8) A contracts with B that, in consideration of Rs. 1,000 to be paid to him by B, he will paint a picture for B; (9) A contracts with B to execute certain works which the Court cannot superintend; (10) A contracts to supply B with all the goods of a certain class which B may require; (11) A contracts with B to take from B a lease of a certain house for a specified term, at a specified rent, "if the drawing-room is handsomely decorated", even if it is held to have so much certainty that compensation can be recovered for its breach;
- (12) A contracts to marry B.

The above contracts cannot be specifically enforced. (i) Contract running into minute details

If a contract requires continuous acts and involves watching of those acts by the court, the same can not be specifically enforced. For instances, a contract to build or repair a structure, as the same involves continuous acts running into minute details.

In *M/s. Geeta Pump (Pvt.) Ltd. v. District Judge, Saharanpur*,² a consumer of electricity filed a suit seeking permanent injunction

directing the Electricity Board to supply electricity in all every day for 24 hours in all the three phases.

It was held that the supply of electricity is a technical matter and has so many details. The suit, which runs into such minute details and the nature of the contract is such that the court cannot enforce performance of material terms of the contract, cannot be specifically enforced, in view of the provision contained in Section 14(1)(b), Specific Relief Act.

Such a suit was, therefore, liable to be dismissed.

(ii) Contract dependent on personal qualification or volition

A contract of service depends on the personal volition of the parties and, therefore, the same cannot be specifically enforced either by the master or the servant.' Thus, the court cannot either require a person to continue to employ another person, or require some one to continue to serve a particular master.³

(iii) Contract not capable of specific performance

If the contract from its nature is such that its material terms cannot be enforced by the court, specific performance of the same cannot be granted. For instance a contract of betrothal (engagement) or marriage between the parties cannot be specifically enforced by the court. Similarly, a contract for sale of immovable property which is under attachment is sold 'subject to Court's approval' cannot be specifically enforced, 'if the court does not approve the sale.⁵ Similarly, if a contract is unlawful and requires sale of property if a departmental enquiry is hushed up, the same cannot be specifically enforced. (3) Contract which is determinable (Section 14(1)(c)]

When a contract is of the nature that it is determinable the same cannot be specifically enforced. Determinable contract means a contract which can be determined or put to an end by a party to the contract. When a contract is determinable or revocable by a party to the contract it cannot obviously be enforced. In case of partnership

at will any partner can put to an end of relation of partnership, i.e., he can retire by giving a notice in writing to all the other partners of his intention to retire. Similarly, in case of such a partnership, a firm may be dissolved by any partner giving a notice in writing to all the other partners of his intention to dissolve the firm. As a contract of partnership is determinable, as seen above, in case of partnership at will, enforcement of such a contract carries no meaning. The point may be explained further through the following illustration :

A and B contract to become partners in a certain business, the contract not specifying the duration of the proposed partnership. This contract cannot be specifically performed for, if it were so performed, either A or B might at once dissolve the partnership. (4) Contract involving performance of a continuous duty which the Court cannot supervise (Section 14(1)(d))

A contract, the performance of which involves the performance of a continuous duty which the court cannot supervise, cannot be specifically enforced. Under the Specific Relief Act, 1877 if a contract involved performance of a continuous duty over a period longer than three years could not be specifically enforced. The Law Commission considered the limit of three years as artificial and arbitrary and it recommended the omission of the time limit. The Act of 1963 does not lay down any time limit of the performance of a continuous duty. Under the present provision the test is whether the contract is of such a nature that the court cannot supervise the same, and whether it involves performance of a continuous duty. Thus, a contract to give maintenance, or a contract to execute a deed every year, cannot be specifically enforced.

(5) Agreement to refer to arbitration (Section 14(2))

According to Section 14(2), except as provided by the Arbitration Act, 1940, no contract to refer present or future differences to arbitration shall be specifically enforced.

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It may be noted that Section 28, Indian Contract Act, 1872 permits making of a valid contract to refer the existing or future disputes to arbitration, and such contracts are valid and are not considered void as being in absolute restraint of legal proceedings.

Section 14(2) which makes such contracts not specifically enforceable reads as follows :

"Save as provided by the Arbitration Act, 1940 (10 of 1940), no contract to refer present or future differences to arbitration shall be specifically enforced : but if any person who has made such a contract (other than an arbitration agreement to which the provisions of the said Act apply and has refused to perform it), sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit."

Q 2 . What are contracts which can be specifically enforced?

ANS 2. Cases in which specific performance of contract enforceable (Section 10).

According to Section 10 specific performance of a contract may be enforced by the Court at its discretion in certain situations. Section 10 reads as follows :

10. Cases in which specific performance of contract enforceable.—Except as otherwise provided in this Chapter, the specific performance of any contract may, in the discretion of the court, be enforced

(a) when there exists no standard for ascertaining actual damage caused by the non-performance of the act agreed to be done; or (b) when the act agreed to be done is such that compensation in money for its non-performance would

not afford adequate relief. Explanation.—Unless and until the contrary is proved, the court shall presume

(i) that the breach of a contract to transfer immovable property cannot be adequately relieved by compensation in money; and (ii) that the breach of a contract to transfer movable property can be so relieved except in the following cases :

(a) where the property is not an ordinary article of commerce, or is of special value or interest to the plaintiff, or consists of goods which are not easily obtainable in the market; (b) where the property is held by the defendant as the agent or trustee of the plaintiff. On the breach of contract by one party the other party has two alternatives :

(i) To bring an action for breach of contract, or (ii) To sue for the specific performance of the contract. In)

(an action for specific performance he can require actual execution of the contract in terms of the agreement between the parties.

In an action for specific performance the existence of a validly concluded contract has got to be proved. If there is no concluded contract specific performance shall not be granted.

Section 58 of the Sale of Goods Act, 1930 is an example of the application of specific performance. The provision reads as under :

"58. Specific performance. Subject to the provisions of Chapter II of the Specific Relief Act, 1877, in any suit for breach of contract to deliver specific or ascertained goods, the Court may, if it thinks fit, on the application of the plaintiff, by its decree direct that the contract shall be performed specifically, without giving the defendant the option of retaining the goods on payment of damages. The decree may be unconditional or upon such terms and conditions as to damages, payment of the price or otherwise, as the Court may deem just, and the application of the plaintiff may be made at any time before the decree."

The two situations when a contract may be specifically enforced are being discussed hereunder :

(1) When there exists no standard for ascertaining actual damage.—Specific performance of a contract is permitted when there exists no standard of ascertaining actual damage caused by the breach of contract. If the damage caused by the breach of contract is ascertainable, the remedy available is a claim for damages rather than specific performance of the contract.

For instance, if the article sold is such that it is available in the market, the loss is ascertainable on the basis of the difference between the contract price and the market price on the date of breach of contract. In such a situation specific performance is not permitted. On the other hand, for example, A agrees to buy and B agrees to sell, a picture by a dead painter and two rare China vases. A may compel B specifically to perform this contract, for, there is no standard for ascertaining the actual damage which would be caused by its non-performance.³

(2) When money compensation would not provide adequate relief.—Specific performance of a contract is also permitted when the act agreed to be done is such that compensation in money for

its non-performance would not afford adequate relief.

Compensation in money would not provide adequate relief is presumed in the following cases :2

(i) When the breach of contract relates to transfer of immovable property; (ii) when it is movable property and the article transacted is not an ordinary article of commerce, or is of special value or interest to the plaintiff, or consists of goods which are not easily available in the market; and (iii) where the property is held by the defendant as agent or trustee of the plaintiff.)

Money compensation not adequate relief

In *Ram Karan v. Govind Lal*, there was an agreement for the sale of agricultural land. The buyer had paid full sale consideration to the seller, but the seller even then avoided executing the sale deed as per the agreement. The buyer brought an action for the specific performance of the contract, viz., he prayed for a direction to the seller to execute the sale deed.

It was held that the case was covered by Section 10(b) of the Specific Relief Act, i.e., payment of compensation in money would not afford adequate relief, and, therefore, the seller was directed to specifically perform the contract by executing sale deed in favour of the buyer.

Interim order enforcing family settlement

In *Ravi Singhal v. Monali Singhal*, there was a family settlement between estranged spouses. Under the settlement the husband was supposed to provide to the wife residential house, monthly maintenance allowances and the daughter's school fees. The husband challenged the agreement, when the wife filed a suit to enforce the same. 2

It was held pending the decision on the validity of the agreement by the trial Court the interim order was passed requiring, the husband to pay interim maintenance arrears and maintenance allowance and daughter's school fee to the wife. The trial Court was also directed to dispose of the suit expeditiously.

Specific performance of agreement to sell.—Where part payment was paid by plaintiff and defendant admitted that he had handed over all documents of title of property to the plaintiff. Sale price in agreement was not low and defendant had failed to establish that said document was only a loan transaction. Held, that as the sale agreement was valid and properly executed by defendant, hence, the defendant was liable to perform his part of contract.?) 1 Suit for specific performance of contract of sale. —Where the plaintiff was always ready and willing to perform her part of contract but the seller defendant had committed breach in not carrying out the terms of the agreement. The appellant had agreed to take the flat on as it where basis without claiming any reduction in purchase price for anything incomplete in

the building. It was held that asking appellant to pay an additional sum of Rs. 40,000/(Rupees Forty Lacs) would be too onerous and would amount to denying her specific performance, even if the price of it had increased during the pendency of litigation.

A retired partner could sell his share after retirement.-Where there was retirement of a partner from partnership firm, held that as he could sell his share after retirement, therefore, specific performance of agreement to sell the share of retired partner in machinery installed in the factory of partnership firm could be enforced 3

Specific performance of contract-Question to be determined whether the purchaser should be directed to pay any additional amount. It is true that grant of decree of specific performance lies in the discretion of the Court and it is also well settled that it is not

always necessary to grant specific performance simply for the reason that it is legal to do so. It is further well settled that the Court in its discretion can impose any reasonable condition including payment of an additional amount by one party to the other while granting or refusing decree of specific performance. Whether the purchaser shall be directed to pay an additional amount to the settler or converse would depend upon the facts and circumstances of a case. Ordinarily, the plaintiff is not to be denied the relief of specific performance only on account of the phenomenal increase of price during the pendency of litigation. That may be, in a given case, one of the considerations besides many others to be taken into consideration for refusing the decree of specific performance. As a general rule, it cannot be laid that ordinarily the plaintiff cannot be allowed to have, for her alone, the entire benefit of phenomenal increase of the value of the property during the pendency of the litigation. While balancing the equities, one of the considerations to be kept in view is as to who is the defaulting party. It is also to be borne in mind whether a party is trying to take undue advantage over the other as also the hardship that may be caused to the defendant by directing the specific performance. There may be other circumstances on which parties may not have any control. The totality of the circumstances is required to be seen.)

Specific performance of contract on power of attorney executed by vender in favour of his son.—Where power of attorney had been executed by vender in favour of his son and agreement was entered by son for alienation of property. In agreement option was given to purchasing party that in case of default by seller, vendee may get sale deed registered through Court or may opt receiving double the amount. Held, that stipulation in the said agreement

could not be taken to mean that vendee had no right to get performance of agreement in insisting execution of sale deed.3)

Cases in which specific performance of contracts connected with trusts enforceable (Section 11)

According to Section 11

(1) Except as otherwise provided in this Act, specific performance of a contract may, in the discretion of the Court, be enforced when the act agreed to be done is in the performance wholly or partly of a trust. (2) A contract made by a trustee in excess of his powers or in breach of trust cannot be specifically enforced.

Act in the performance of trust (Section 11(1))

According to Section 11(1) when the act agreed to be done is in the performance, wholly or partly, of a trust, specific performance of the same may be granted at the discretion of the Court. For instance, A holds certain stock in trust for B. A wrongfully disposes of the stock. The law creates an obligation on A to restore the same quantity of stock to B, and B may enforce specific performance of 2

Suit for specific performance-Time stipulated in agreement for execution of sale deed.—Where there was condition of nature that agreement shall stand frustrated without giving right to parties for enforcing terms in event of breach. Held, that it was a valid and binding condition. But in case plaintiff performed his obligation under contract and only formality of obtaining registered sale deed remained to be done, plaintiff could have recourse by filing suit if

Specific performance of part of contract (Section 12)

Section 12 which deals with Specific performance of part of contract, is as under :

"12. Specific performance of part of contract.-(1) Except as otherwise hereinafter provided in this section, the court shall not direct the specific performance of a part of a contract. (2) Where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed bears only a small proportion to the whole in value and admits of compensation in money, the court may, at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency. (3) Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed either

(a) forms a considerable part of the whole, though admitting of compensation in money; or 7

(b) does not admit of compensation in money; he is not entitled to obtain a decree for specific performance; but the court may, at the suit of the other party, direct the party in default to perform specifically so much of his part of the contract as he can perform, if the other party

(i) in a case falling under clause (a), pays or has paid the agreed consideration for the whole of the contract reduced by the consideration for the part which must be left unperformed and in a case falling under clause (b), pays or has paid the consideration for the whole of the contract without any abatement; and (ii) in either case, relinquishes all claims to the performance of the remaining part of the contract and all right to compensation, either for the deficiency or for the loss or damage sustained by him through the default of

the defendant. (4) When a part of a contract which, taken by itself, can and ought to be specifically performed, stands on a separate and independent footing from another part of the same contract which cannot or ought not to be specifically performed, the court may direct specific performance of the former part. Explanation. For the purposes of this section, a party to a contract shall be deemed to be unable to perform the whole of his part of it if a portion of its subject-matter existing at the date of the contract has ceased to exist at the time of its performance.

Performance of part of contract.—Section 12 (3) of the Specific Relief Act, 1963, is a beneficial provision so far as the purchasers are concerned. In the instant case, in view of the findings of fact arrived at by the High Court, the decree for specific performance of contract in respect of the entire suit land could not have been granted as the appellant herein was not authorized by his sister to enter into the agreement for sale. The relinquishment of claim as contemplated under Section 12 (3) (ii) of the Act as regard performance of the remaining part of the contract and all rights to compensation need not specifically be pleaded and can be made at any stage of the litigation. Such a plea can also be raised at the appellate stage. Delay by itself it is trite, may not stand in the way of the plaintiff from claiming the relief unless the defendant establishes prejudice. The appellant had entered into an agreement for sale on the premise that he had the requisite authority to do so on behalf of his sister as also on his own behalf. The sister of the appellant denied or disputed such authority and in that view of the matter, it is beyond any pale of doubt that the agreement for sale was entered into in respect of the entire suit land having regard to the fact that the sister of the

appellant did not authorize him to enter into the said agreement, sub-section (3) of Section 12 of the Act would clearly be attracted."

Partial Specific performance. The power to grant partial relief, from the very language of the Section 12 (3) of the Specific Relief Act, 1963 is discretionary with the Court to be exercised keeping in view the facts and circumstances of each case and the rights and interests of the parties involved. The plaintiff-vendee could have, in any case, opted for conveyance of life interest of the vendor soon after he came to know of the negotiations for sale with Bob Daswani, which took place in the presence of one of the partners of the plaintiff-vendee. Even after deriving the knowledge of the execution of the sale deed dated 29.12.1979, the option to obtain lesser relief of transfer of life interest was not exercised. It was exercised as late on 25.11.1986 by filing an affidavit and at the time when pleadings of the parties were completed and the joint trial in the two suits had already commenced. During long pendency of the suits between 1979 to 1986, the parties interested in the property changed their positions)

Q 3 . What is injunction ? What do you know about temporary perpetual and mandatory injunction ? Explain briefly.

**ANS 3 .PREVENTIVE RELIEF OR INJUNCTIONS
(SECTIONS 36-44)**

Grant of preventive relief or injunction (Section 36)

According to Section 36 preventive relief is granted at the discretion of the court by injunction temporary or perpetual.

A preventive relief (injunction) is an order or command of the Court preventing a party from doing something which he is under a legal duty not to do. For instance, every person is legally bound not to commit trespass or not to defame a person, and, therefore, the court may issue an injunction preventing a party from committing a trespass, or defaming someone.

Discretion of the court

The jurisdiction of the court to grant injunctions, whether temporary, or perpetual, is discretionary. It is the discretion of the court to grant or refuse such relief. The discretion does not mean that court can act arbitrarily. The court is to be guided by the principles of justice, equity and good conscience. The court has to weigh the amount of mischief done or threatened to be done to the plaintiff and harm likely to be caused to the defendant by the issue of injunction.

Coparcener could not seek injunction against other coparceners.-A coparcener could not seek an injunction against the other coparceners restraining them from enjoying the joint family properties. Therefore, in the instant case second defendant was not entitled to seek an injunction restraining the plaintiffs from enjoying the plaint schedule property.?

Temporary and Perpetual injunctions (Section 37) Temporary Injunctions (Section 37(1)]

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 Code of

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Temporary or interlocutory injunctions are to continue temporarily either until a specified time, or until further order of the court. It is only provisional in nature and does not conclude a right or finally settle the matter. For instance, these may be an order to preserve the property until the final hearing of the case. The object may be to maintain status quo, so that the alleged harm is avoided, which could otherwise occur until the case is finally disposed of by the Court, on merits.2

To obtain temporary injunction the plaintiff has to prove that there is a prima facie case in his favour indicating existence of a legal right asserted by him. It has to be shown by him that the balance of convenience is in his favour so that mischief likely to be caused by the act of the defendant is prevented.

Order 39, Rule 1, Code of Civil Procedure, 1908 contains the following provision regarding the grant of temporary injunction

"1. Cases in which temporary injunction may be granted.-Where in any suit it is proved by affidavit or otherwise,

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or (b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors. (c) that the

defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any

property in dispute in the suit, the Court may by order grant a temporary injunction to restrain such act, or make such order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the Court thinks fit, until the disposal of the suit or until further orders."

| The prayer for grant of a temporary injunction may be made by either party to the suit, under Order 39, Rule 1 of the C.P.C., 1908.

Perpetual injunction (Sections 37(2) and 38)

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.?

Section 37(2) is a general provision stating that a perpetual injunction can only be granted by a decree made at the hearing and upon merits of the case.

Suit for permanent injunction based on possession.-In this case it was held that ordinarily the Court should not go into the question of title. However, when the parties led evidence of title and sought a decision on the same day, the parties could not find fault with the Court contending that the title of the deed is unnecessary.³

Plaintiff entitled to interim reliefs of injunction against owner restraining the transfer of property:- Where there was Memorandum of Undertaking between parties to develop and sell land. It was obligatory on the owner in MOU regarding consent from tenant to get tenements vacated for starting development of structure. Owner had retained first instalment of payment and demanded second instalment of large amount without fulfilling aforesaid obligation. Held that MOU could not come to an end on ground of failure of owner to obtain consent letters from tenants. The plaintiff was entitled to interim reliefs of injunction against owner restraining him from transferring property to any other person.

Sufficient reason must be given for granting mandatory injunction.-In suit for mandatory injunction sufficient reason must be given for granting interim injunction and mandatory injunction could be granted only after full trial lest it would amount to deciding the very suit.

Suit for specific performance and injunction Order of injunction restraining defendants from causing any interference with possession of plaintiffs over suit property proper.—Where)

three agreements to sell in respect of suit land had been executed by defendants in favour of plaintiff. They had been put in possession of land. Huge amount was paid as consideration to defendants. But defendants were avoiding to execute sale deeds and interfering with plaintiffs possession over land. As plaintiff had prima facie case, re-informed by considerations of balance of convenience and irreparable loss in their favour, hence, order of injunction restraining defendants, pending suit, from causing any interference with possession of plaintiffs over suit property was proper.!

Order directing demolition of construction for protection of easementary rights.—Where there was allegation of construction made in deviation of sanction building plan. Corporation was the sole agency for granting licence for construction, but said Corporation was not impleaded as party. Order directing demolition of construction for protection of easementary rights was liable to be set aside. Circumstances for granting of perpetual injunction (Section 38)

e Section 38 contains the following rules for the grant of perpetual injunction

(1) Subject to the other provisions contained and referred to in Chapter VIII, Specific Relief Act, 1963, 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 for specific performance of contracts, contained in Chapter II (i.e., Sections 9 to 25) of the Act. (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

musuphuyvje--- The provision contained in Section 38 may be explained through the following illustrations :

- (a) A lets certain land to B, and B contracts not to dig sand or gravel thereout. A may sue for an injunction to restrain B from digging in violation of

his contract. (b) A trustee threatens a breach of trust. His co-trustees, if any, should, and the beneficial owners may, sue for an injunction to prevent the breach. (c) The directors of a public company are about to pay a dividend out of capital or borrowed money. Any of the shareholders may sue for an injunction to restrain them... (d) The directors of a fire and life-insurance company are about to engage in marine insurances. Any of the shareholders may sue for an injunction to restrain them. (e) A, an executor, through misconduct or insolvency, is bringing the property of the deceased into danger. The Court may grant an injunction to restrain him from getting in the assets.) (f). A, a trustee for B, is about to make an imprudent sale of a small part of the trust-property. B may sue for an injunction to restrain the sale, even though compensation in money would have afforded him adequate relief. (g) A makes a settlement (not founded on marriage or other valuable consideration) of an estate on B and his children. A then contracts to sell the estate to C. B or any of his children may sue for an injunction to restrain the sale. (h) In the course of A's employment as a vakil, certain papers belonging to his client, B, comes into his possession. A threatens to make these papers public, or to communicate their contents to a stranger, B may sue for an injunction to restrain A from so doing. (i) A is B's medical adviser. He demands money of B, which B declines to pay. A then threatens to make known the effect of B's communications to him as a patient. This is contrary to A's duty, and B may sue for an injunction to restrain him from so doing. (i) A, the owner of two, adjoining houses, lets one to B and afterwards lets the other to C. A and C begin to make such alterations in the house let to C as will prevent the

No injunction against exercise of legal right

In *Saraswathi Ammal v. Viveka Primary School*, the tenant filed a suit to obtain permanent injunction to a restrain the landlord from evicting him permanently. It was held that such an action was not maintainable as it was aimed at casting embargo on landlord's /

right to enjoy legal right in respect of his property. Permanent injunction can bind successors in interest also

It has been held by the Supreme Court in *Kanahiyalal v. Babu Ram*, that in a suit for permanent injunction regarding partition of property, the partition deed contemplated giving use of gallery to one of the co-owners. It was held that the condition in the partition deed binds not only the two co-owners but their successor-in-interest also. Hence, issue of permanent injunction restraining successor in interest of the other co-owner was valid.