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DAY-7 [SRA and Limitation]

26/4/2023

Q3

What is the importance of "ready and willing to perform" in a suit for specific Performance? What happens when the plaintiff has not averred his readiness and willingness to perform his pleadings?

Ans:

Specific Performance Act, 1963 provides for the remedy of specific performance of the contract in case of breach of the same by one of the parties to contract. Thus preference has been given to intention of the parties with which they entered into a contract.

Prior to 2018, it was discretion of the Court to grant or not grant the relief of specific performances dependant upon facts and circumstances of the case. But, after 2018 amendment, Section 10 makes it mandatory to grant the specific performance of a contract except as under Section 11(2), 14, 16.

* explain the meaning of readiness and willingness

Section 16(c) specifically provide that no relief for specific performance shall be granted in favour of a person who fails to ~~aver~~ prove that he has performed or is ready and willing to perform his part of the contract.

Readiness means the person asking for specific performance has financial capacity to fulfil his

readiness, financial capacity to perform the contract willingness & taken all steps for the performance of the contract

part of the contract and willingness means that person has intention to fulfil his part of the contract, if not already performed.

It is important for the plaintiff to prove his readiness and willingness because, the person asking ~~for~~ Court to direct the defendant to perform must himself shall perform his part of the contract first.

It is based on the principle: 'one who seeks equity must do equity'.

For example, 'A' and 'B' entered into contract to sell produce of wheat for ₹10,000. later 'A' refused to sell his produce to 'B'. Now, if 'B' seeks specific performance, then he shall have with him ₹10,000 as per the contract. Otherwise it will be unjust for 'A' if forced to sell his produce to a person who cannot compensate for same.

Averment of Readiness and willingness:

By 2018 amendment Act, the word "aver and" has been omitted from Section 16(1). Thus, now the plaintiff has to just prove his readiness and willingness. It does not mean he shall not aver the same.

'Aver' means to plead. Order 6 of the Code of Civil Procedure makes it mandatory to plead all the facts and on those pleadings only evidence is allowed before court.

Thus, if a party does not aver his readiness

and willingness then he cannot give evidence to prove the same, unless he amends his pleading and over his readiness and willingness.

Q2 Distinguish between Temporary Injunction and Perpetual Injunction and Mandatory Injunction. Under what circumstances can an injunction be refused?

Ans: Injunction means 'to stop'. The relief of injunction is called 'negative relief' because it stops a party from doing something. The court after seeing the a) Prima facie case
b) Balance of convenience
c) Nature of loss - reparable or not,
decides whether an injunction shall be granted or denied.

According to section 36 of the Specific Relief Act, (hereinafter referred to as 'SRA'), there a two types of Injunction - Temporary and Perpetual.

Temporary Injunction:
Where the court injuncts for a limited period of time it is called temporary injunction. On filing of application under O39 of Code of Civil Procedure, the court passes an order of Temporary Injunction to save the subject matter of suit. It does not decide rights of the parties.

Perpetual Injunction:
Where the court injuncts a party from doing

Cricket betting Company Ltd vs Coca Cola Company

regulated by the Codes of civil Procedure

An act or omission for unlimited period, it is called perpetual injunction.

For getting perpetual injunction, a suit is filed u/s 37 of the SRA and decree is passed granting or refusing the relief of perpetual injunction. The decree is based on merits of the case and decides rights of the parties to the suit.

Mandatory Injunction:

Where the Court orders a party to do something it is called mandatory injunction. It is a direction to a party to mandatorily do some act or omission. Sometimes it becomes necessary to give positive direction for complete justice. for example, 'A' files suit against 'B' for perpetual injunction directing B to stop constructing a wall. 'B' had already constructed half of the wall. Here, for complete justice the Court shall injunct from further construction and by mandatory injunction order demolition of already constructed portion. Section 40 of SRA provides for mandatory injunction.

Refusal of Injunction:

Section 41 provides for some grounds where the Court shall refusing injunction. They are:

a) Injunction to file criminal proceedings
b) Injunction to approach legislative body
c) where specific performance of such contract not allowed

(ha) equally effiacious relief can ceasively be obtained

Added by 2018 Amendment

d) where another efficacious remedy is available
e) where plaintiff has himself acquiesced
f) where it would cause delay in infrastructure project
g) where plaintiff's conduct disentitle him from getting relief from Court
h) where plaintiff has no personal interest.

mention all in ground U/O 41

Q3. (3)

Explain the maxim "Vigilantibus non dormentibus jura subservient." To what extent the doctrine is incorporated in the law of limitation in India? Explain.

Ans:

The maxim "Vigilantibus non dormentibus jura subservient" means "law favour those who are vigilant and not who is sleeping over his rights". Thus, a person who has been vigilant, i.e, not neglient but has been attentive shall be favored by law above the one who has been negligent about his rights.

The Limitation Act, 1963 (hereinafter referred to as 'the Act') is based on the same maxim. The Schedule I of the Act provides for different periods of limitation for different cause of actions. If the person to whom the cause of action arose does not take any action to enforce his right, i.e, does not file a suit, appeal or application within prescribed period, then his ~~remedy~~ right to enforce the same is extinguished.

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Section 3 of the Act provides that if a suit, appeal or application is filed after expiry of prescribed period, the same shall be dismissed. Thus, law does not favour the one who has slept over his rights and suddenly after long period of time approaches the Court to disturb other in whom some right has been vested.

However, if there is sufficient cause explaining the delay then Court may condone the same. u/s 5 but not delay in filing suit or application for execution. In the interest of justice Court may condone the delay but same shall not be arbitrary but vide reasoned order.

Section 27 of the Act is also based on the same maxim, i.e, 'vigilantibus non dormentibus jura subserviunt'. As per Section 27, where a person entitled to file suit for recovery of possession of a property fails to do so within prescribed period shall lose his right over such property. The person in adverse possession shall get right to possession of property because owner was negligent.

Conclusion:

Each and every section of the Act carries forward the maxim of 'vigilantibus non dormentibus jura subserviunt' and thus expects every individual to remain vigilant about his rights and not cause delay in ascertaining the same.

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N Nishtha Singh

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Garvit Dave

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