

## **DECLARATION AND INJUNCTION SUITS**

**(A) Parties eligible to seek declaratory & injunctive relief**

**(B) Limitation governing the seek declaratory & Injunctive relief**

*by*

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**(A) Parties eligible to seek Declaratory Relief**

### **INTRODUCTION:**

The General power vested in the courts in India under the Civil Procedure Code is to entertain all the suits of a civil nature, excepting suits of which cognizance is barred by any enactment for the time being in force. However, courts do not have the general power of making declarations except in so far as such power is expressly conferred by statute. The utility and importance of the remedy of declaratory suits are manifest, for its object is to prevent future litigation by removing existing cause of controversy. It is certainly in the interest of the state that this jurisdiction of court should be maintained, and the causes of apprehended litigation respecting immovable property should be removed. However, a declaratory decree confers no new right, it only clears up the mist that has been gathering round the plaintiff's status or title.

Chapter VI of the Specific Relief Act 1963 provides for Declaratory Decrees under Section 34 of the Act and is the present law which governs declaratory reliefs in India. It reads:

#### **34. Discretion of Court as to declaration of status or right:**

Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

**PROVIDED** that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

**Explanation:** A trustee of property is a "person interested to deny" a title adverse to the title of someone who is not in existence, and for whom, if in existence, he would be a trustee.

Section 34 of the present Act corresponds to Section 42 of the old Act.

In a welfare state, there is a possibility of casting a cloud upon the legal character or right of the citizens by the actions of administration. In such cases, the Section enables a person to have his right or legal character declared by a Court of law and thus get rid of the cloud from the legal character or right. It has been held that it was merely to perpetuate and strengthen testimony regarding the title of the plaintiff so that adverse attacks might not weaken it. But, this does not mean that the Section sanctions every form of declaration, but only a declaration that the plaintiff is entitled to any legal character or to any right as to any property.

It is in the interest of the individual and also for the development of economy that there should be smooth transactions with regard to property. However, there is always a possibility of casting a cloud upon the legal character or right to property of the citizens. It is manifestly for the interest of community that conflicting claims to the property should be settled. In such cases the Section 34 of the Specific Relief Act, 1963 enables a person to have his right or legal character declared by a Court of law and thus get rid of the cloud from his legal character or right.

The declaratory relief under Section 34 of the Specific Relief Act, 1963 is in the nature of equitable relief for granting of an already existing right which has been denied by the other party. It does not seek anything to be paid or performed additionally by the defendant. In simpler terms, this section does not warrant every declaration but that the plaintiff is entitled to such legal character or right and only under special circumstances.

**OBJECT OF DECLARATORY DECREE:**

The object of such decrees is that where a person's status or legal character has been denied or could have been cast upon the plaintiff and the

plaintiff can sue to get the declaration. So that he can get the declaration as to the status of legal character or legal right of him. But such declaration is the discretionary power of the Court, which would be sound, judicious and based on the judicial principles.

The objects of the declaratory decrees are:

- (a) To protect the legal right and legal character of the owner from the adverse attack
- (b) To enjoy the legal character and legal right peacefully by owner
- (c) To protect the law and peace where the adverse possession is noticed

### **CONDITIONS:**

To maintain a suit under section 34 of Specific Relief Act, the following conditions are to be fulfilled.

- (a) The plaintiff must be a person entitled to any legal character to any right as to any property
- (b) The defendant must be a person denying or interested to deny the plaintiff's title to such legal character or right
- (c) The declaration issued for must be a declaration that the plaintiff is entitled to a legal character or to any right to the property; and
- (d) Where the plaintiff is able to seek further relief than a mere declaration, he must seek such relief.

**To obtain the relief of declaration:** the plaintiff must establish that (1) the plaintiff is at the time of the suit entitled to any legal character or any right to any property, (2) The defendant has denied or is interested in denying the character or title of the plaintiff, (3) The declaration asked for is a declaration that the plaintiff is entitled to a legal character or to a right to property, (4) The plaintiff is not in a position to claim a further relief from a bare declaration of his title. Even if all these conditions are fulfilled, the Court has still to grant or not to grant a declaratory relief depending on the circumstances of each case.

**LEGAL CHARACTER:**

A man's status or legal status or 'legal character' is constituted by attributes, which the law attaches to him in his individual or personal capacity, the distinctive mark or dress as it were, with which the law clothes him. Legal character means a position recognized by law. According to Holland the chief variety of status among natural persons may be referred to the following causes: sex, minority, mental defect, rank, caste, official position, civil death, illegitimacy, profession, etc. Any person who has been denied of the legal character and not necessarily the legal right may sue against the person denying. A legal character constitutes of the attributes that the law attaches to him in his personal capacity such as marriage, adoption, divorce, legitimacy etc. Thus, the character or status should have been conferred by law on persons i.e. created by birth and not by contract.

**PERSON ENTITLED TO A RIGHT TO ANY PROPERTY:**

The second requirement is that the person who seeks the remedy must have a right to any property. A right in Holland's proposition is a man's capacity of influencing the acts of another, by means, not of his own strength, but of the opinion or the force of society. The Bombay High Court has observed that every interest of right which is recognized and protected by the State is a legal right. The Courts have made a distinction between "right to property" and "a right in property" and it has been held that in order to claim a declaration the Plaintiff need not show a right in property.

**CLOUD UPON TITLE:**

A dispute between the parties may relate either to a person's legal character or rights or interest in the property. A cloud upon the title is something which is apparently valid, but which is in fact invalid. It is the semblance of the title, either legal or equitable, or a claim of an interest in property, appearing in some legal form, but which is in fact unfounded, or which it would be inequitable to enforce.

**CONSEQUENTIAL RELIEF:**

There may be real dispute as to the plaintiffs legal character or right to property, and the parties to be arrayed, yet the Court will refuse to make any

declaration in favour of the plaintiff, where able to seek further relief than a mere declaration, he omits to do so.

The object of the proviso is to avoid multiplicity of suits. What the legislature aims at is that, if the plaintiff at the date of the suit is entitled to claim, as against the defendant to the cause some relief other than and consequential upon a bare declaration of right, he must not vex the defendant twice; he is bound to have the matter settled once and for all in one suit.

### **IT IS A DISCRETIONARY RELIEF:**

Even though if the essential elements are established, yet it is a discretion of the Court to grant the relief. The relief of declaration cannot be claimed as a matter of right. In cases where the necessary parties are not joined the Court can reject the suit for declaration. Under Section 34 of the Act, the discretion which the Court has to exercise is a judicial discretion. That discretion has to be exercised on well-settled principles. The Court has to consider the nature of obligation in respect of which performance is sought. No hard and fast rule can be laid down for determining whether this discretionary relief should be granted or refused. The exercise of the discretion depends upon the chances of each case. A remote chance of succeeding an estate cannot give a right for obtaining a declaration that alienation by a limited owner is void.

The Hon'ble Supreme Court in the matter of **Dalpat Kumar Vs Prahlad Singh and Ors, [(1992) 1 SCC 719]**, has provided the manner in which a temporary injunction can be granted under Order 39 Rule 1(c) of the Civil Procedure Code, 1908 in a suit for Declaration and Injunction, which is reproduced as under:

*Para 4- Order 39, Rule 1(c) provides that temporary injunction may be granted where, in any suit it is proved by affidavit or otherwise, 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 otherwise may by order grant temporary injunction to restrain such act or make such other order for the purpose of staying and preventing or dispossession of the plaintiff or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as Court*

*thinks fit until the disposal of the suit or until further orders. Rule 1 primarily concerns with the preservation of the property in dispute till legal rights are adjudicated. Injunction is a judicial process by which a party is required to do or refrain from doing any particular act. It is in the nature of preventive relief to a litigant to prevent future possible injury. It is settled law that grant of injunction is a discretionary relief. The exercise thereof is subject to the Court satisfying that,*

*1. There is serious disputed question to be tried in the suit and that an act, on the facts before the Court, there is probability of his being entitled to the relief asked for by the Plaintiff/defendant;*

*2. The Courts interference is necessary to protect the party from the species of injury. In other words, irreparable damage or injury would ensue before the legal right would be established in trial and*

*3. That comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than would be likely to arise from granting it.*

In a suit for declaration of rights or character and injunction the Plaintiff will have to substantiate/prove his rights as claimed thereof. Accordingly, the Court may in its discretion award the rights so prayed along with permanent injunction, if deemed fit and necessary in the facts of the case. The utility and importance of the remedy of declaratory suits are manifest, for its object is 'to prevent future litigation by removing existing cause of controversy.

With the detailed analysis of S.34 of the Act, it may be said that one can claim the declaratory relief only if one can show that one's 'legal character' or 'right to any property' is affected. If the plaintiff fails to fit his case within the ambit of the section, his suit necessarily fails. So a declaratory decree is one which resolves the legal uncertainty of the rights and status of the parties. However, passing of a declaratory decree is a matter of discretion of Court and it cannot be claimed as a right.

In declaratory suits, plaintiff's task is not over once he proves that he is entitled to the legal character or right to property, it is for him to convince the

Court that the defendant has denied or interested to deny that legal character or right of the plaintiff. Then only he can succeed in obtaining the declaration sought. The provision is a verbatim reproduction of Section 42 of the Specific Relief Act, 1877. It ensures a remedy to the aggrieved person not only against all persons who actually claim an adverse interest to his own, but also against those who may do so.

### **EFFECT OF DECLARATION**

The provision for the effect of declaration has been provided under section 35 of Specific Relief Act, which reads as under:

*“A declaration made under this Chapter is binding only on the parties to the suit, persons claiming through them respectively, and, where any of the parties are trustees, on the persons for whom, if in existence at the date of declaration, such parties would be trustees”.*

So, declaratory decree is “in personam” and not “in rem”. Thus a declaratory decree binds (a) the parties to the suit; (b) persons claiming through the parties; (c) where any of the parties are trustees, on the persons for whom, if in existence at the date of the declaration, such parties would be trustees. It is only the parties to the suit and the representatives in interest, but not the strangers who are bound by the decree. By virtue of this Section, a judgment is binding only if it is inter parties, which is not in rem, and does not operate as res judicata, may be admissible under Section 13 of the Evidence Act.

### **BURDEN OF PROOF**

It is a settled law that in a suit for declaration of title, the burden is heavily lies on the plaintiff, the plaintiff is not supposed to depend upon the weakness in the case set up by defendant. It was held by the Hon’ble Apex Court in the decision in between Moran mar Basselious Catholicos Vs. The Most Rev. Mar Poulouse Athanasius and Others reported in **AIR 1958 SC 31** and another Judgment in between Union of India Vs. Vasavi Cooperation Housing Society Limited reported in **AIR 2014 SC 937** and the Hon’ble High Court in the Judgment in between Paturu Sundaraiah Suri Vs. Ranganayakamma and another and also in between **A.Panjurangam since**

**deceased per L.Rs., and others Vs. Darshanala Swamy since deceased per L.Rs., and others, reported in 2011 Law Suit (A.P.) 643.**

*"In a suit for declaration, heavy burden rests upon the plaintiff to prove the title, particularly when it is in respect of an item of immovable property. There are certain known sources of acquisition of title, such as by way of succession, purchase, assignment from the Government, or even by perfecting the title by adverse possession. To prove the title, what becomes essential is to identify the erstwhile owner of the property and then to explain the manner in which it has accrued to the plaintiff. Even if there exists certain missing links in the chain of events that connect the original owner and plaintiff, the title can be said to have been established, in the absence of any stronger claim by the defendant".*

It was held by the Hon'ble Supreme Court in **Maran Mar Basselios tholicos Vs. Thukalan Paulo Avira, reported in AIR 1959 SC 31.**

*"In a suit for declaration if the plaintiffs are to succeed, they must do so on the strength of their own title."*

***In Nagar Palika, Jind v. Jagat Singh, Advocate (1995) 3 SCC 426, this Court held as under:***

*"the onus to prove title to the property in question was on the plaintiff. In a suit for ejectment based on title it was incumbent on the part of the court of appeal first to record a finding on the claim of title to the suit land made on behalf of the plaintiff. The court is bound to enquire or investigate that question first before going into any other question that may arise in a suit."*

*"The legal position, therefore, is clear that the plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the defendants have proved their case or not. We are of the view that even if the title set up by the defendants is found against, in the absence of establishment of plaintiff's own title, plaintiff must be non-suited."*



**WHETHER THE SUIT FOR DECLARATION IS MAINTAINABLE WITHOUT SEEKING ANY CONSEQUENTIAL RELIEF**

It was held by **Hon'ble Supreme Court in Venkata Raja and Others Vs. Vidyane Doureradja Perumal, reported in 2013 Law Suit SC 313.**

In *Deo Kuer & Anr. v. Sheo Prasad Singh & Ors.*, 1966 AIR(SC) 359, this Court dealt with a similar issue, and considered the provisions of Section 42 of the Specific Relief Act 1877, (analogous to Section 34 of the Act 1963), and held, that where the defendant was not in physical possession, and not in a position to deliver possession to the plaintiff, it was not necessary for the plaintiff in a suit for declaration of title to property, to claim the possession. While laying down such a proposition, this Court placed reliance upon the judgments of Privy Council in *Sunder Singh Mallah Singh Sanatan Dharam High School Trust v. Managing Committee, Sunder Singh Mullah Singh Rajput High School*, 1938 AIR (PC) 73; and *Humayun Begam v. Shah Mohammad Khan*, 1943 AIR (PC) 94.

In *Vinay Krishna v. Keshav Chandra & Anr.*, 1993 AIR(SC) 957, this Court while dealing with a similar issue held:

*"It is also now evident that she was not in exclusive possession because admittedly Keshav Chandra and Jagdish Chandra were in possession. There were also other tenants in occupation. In such an event the relief of possession ought to have been asked for. The failure to do so undoubtedly bars the discretion of the Court in granting the decree for declaration."*

The very purpose of the proviso to Section 34 of the Specific Relief Act 1963 is to avoid the multiplicity of the proceedings.

**EVIDENTIARY VALUE OF REVENUE RECORDS:**

The Hon'ble Supreme Court held in several Judgments that revenue records does not confer title. **In Corporation of the City of Bangalore Vs. M.Papaiah and another, reported in 1989(3) SCC 612** held that

*"It is firmly established that the Revenue Records are not documents of title and the question of interpretation of*

*document not being a document of title is not a question of Law."*

In **Guru Amarjit Singh Vs. Rattan Chand and others**, reported in 1993 (4) SCC 349, the Hon'ble Supreme Court held that

*"the entries in Jamabandhi are not proof of title"*

In **State of Himachal Pradesh Vs. Keshar Ram and others**, reported in 1996 (11) SCC 257 the Hon'ble Supreme Court held that

*"the entries in the revenue papers, by no stretch of imagination can form the basis for declaration of title in favour of the plaintiff".*

The Hon'ble Supreme Court further held that,

*"they are of the view that even if the entries in record of rights carry evidentiary value, that itself would not confer any title on the plaintiff on the suit land in question".*

### **PARTIES ELIGIBLE TO SEEK DECLARATORY RELIEF**

#### **In the following cases, parties eligible to seek declaration reliefs:**

Any person who has any legal character or any legal rights as to any property by virtue of title deeds or otherwise may file a suit for declaration of those rights and for injunction against any person denying or interested to deny his title to such character or right.

**This Section is not exhaustive**: This section is not exhaustive and the Courts have power to grant the relief declaration independent of this section. In **Vema Reddy Raghava Reddy Vs. Konduru Seshu Reddy reported in AIR 1967 S.C. 436**, Their Lordship of the Hon'ble Supreme Court held on this aspect,

*"In our opinion section 42 of the Specific Relief Act is not exhaustive of the cases in which a declaratory decree may be made and the Courts have power to grant such a decree independently of the requirements of the section. It follows therefore, in the present case that the suit of the plaintiff for declaration that a compromise decree is not binding on the deity is maintainable as falling outside the purview of section 42 of*

*Specific Relief Act”.*

The power of the Court to grant declaratory decrees is not limited to this section and they can/will be made by the Courts under the general provisions of the Civil Procedure Code as Section 9 or Order 7 Rule 7 C.P.C.

**1. Declaration relating to adoptions:**

A suit for declaration that the plaintiff is the adopted son of the defendant<sup>1</sup> or the defendant is not the adopted son of the plaintiff<sup>2</sup> is maintainable. A declaratory decree that the deeds of adoption are null and void can be prayed for, but in case a consequential relief is necessary, it should also be prayed for since without such a relief the suit is not maintainable<sup>3</sup>.

**2. Declaratory suits by reversioners:**

A Reversioner has a right to challenge an improper alienation made by a widow or an adoption made by her. It was held in the Judgment in Jeka Dula Vs. Bai Jivi reported in AIR 1938 Bom. 37.

**3. Declaration of legitimacy or illegitimacy:**

A suit for the relief of declaration regarding the legitimacy of a person is maintainable. A suit for declaration that the plaintiff is the legitimate son of the defendant or a suit for such relief that the plaintiff is not the father of the defendant can be maintained. A Civil suit for declaration that the petitioner under Sec.488 Cr.P.C. is the illegitimate child of the respondent is competent in a Civil Court and a decree passed by the Civil Court cannot be ignored by the Magistrate.

**4. Declaration regarding marriage:**

A suit for a declaration that the defendants are not wife and son of the plaintiff is perfectly maintainable. A suit for a declaration that the plaintiff is the legally wedded wife of the defendant<sup>4</sup> or the plaintiff had not married the

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<sup>1</sup> AIR 1933 Nag 292 Bansilal Vs. Rampal

<sup>2</sup> Chinna Swami Vs. Ambalavana-(1906) 29 Madras 48

<sup>3</sup> Pirthi Vs. Guman – 17 Calcutta 933 (PC)

<sup>4</sup> AIR 1958 Supreme Court 886 Cf Raziya Vs. Sahebzadi

defendant or defendant is not the wife of a deceased person<sup>1</sup> can be entertained by a Civil Court.

In a Judgment in between Noorjehan Begum Vs. Engene Tiscenko reported in AIR 1942 Calcutta 325 at Page 329, wherein His Lordship Nasim Ali held that

*“U/Sec.42 of Specific Relief Act, the Court has power to declare that the plaintiff is entitled to a certain legal character. The words “Legal Character” have not been defined in the specific relief act. These words in my opinion are wide enough to include the status of a person. In order to entitled the plaintiff to bring a suit under section 42 of Specific Relief Act, it is not necessary that the defendant should actually deny the plaintiffs legal character. If the defendant is interested to deny the plaintiffs legal character, plaintiff may come to Court for declaration that he or she is entitled to the legal character”.*

#### **5. Declaration regarding contracts**

A suit for a declaration of an illegality of breach of contract resulting in wrongful dismissal of the plaintiff from defendant's service will lie since no Court should throw out a declaratory suit unless its maintainability or the expediency of its entertainment is strictly made out beyond the least shadow of doubt<sup>2</sup>.

#### **6. Declaration regarding construction of a statue**

A suit for the relief of declaration for proper construction of a statue is maintainable in law though a declaratory suit to the effect that the ordinance or the Act is ultravires, is not maintainable<sup>3</sup>.

#### **7. Declaration that the dismissal from service is illegal**

A suit for a mere declaration that the wrongful dismissal is illegal is maintainable especially where such order was made to vindicate the character of the plaintiff<sup>4</sup>, but in the under mentioned case it was held that a suit for a

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<sup>1</sup> 1957 MP 211 Mankuar Vs. Badha

<sup>2</sup> AIR 1951 Madras 870 Andhra University Vs. Lakshmi

<sup>3</sup> AIR 1953 Calcutta 695 Narayana Prasad Vs. Indian Iron and Steel company

<sup>4</sup> 1951 (1) MLJ 518 Andhra University Vs. Lakshmi Manoharan

mere declaration that the dismissal is illegal without praying for the relief of damages, is not maintainable<sup>1</sup>.

#### **8. Declaration that the plaintiff is a director of the company**

Where a Managing Director was removed by an invalid resolution, he can seek a declaration that he continues to be the Managing Director but he can be removed from that office by a valid resolution.

#### **9. Declaration that an act is beyond the powers of the company**

If the declaration of dividend is beyond the competency and power of the company a share holder is entitled to such a declaration and there cannot be an estoppel by words or by deeds against the provisions of the companies Act<sup>2</sup>.

#### **10. Declaration regarding the benami transaction**

A suit for declaration that the defendant is a benamidar and such transfer was made to defraud the creditors, is maintainable, but if the defendant is in possession, the consequential relief of recovery of possession also must be prayed, for since the suit will fail in the absence of such a prayer. A benamidar's possession is well recognized in law and he enjoys a distinct legal character and has the attributes in his representative capacity which would constitute his own legal character which when denied will always furnish him with a cause of action file a declaration suit, but in the absence of any legal character or to any right in the property, a suit will not lie.

#### **11. Declaration in case of co-owners**

A Co-owner can maintain a suit for declaration of his title as joint owner and for an injunction restraining the other co-owners from interfering with the enjoyment of his right. A suit for declaration by certain co-shares in an undivided Mahal that they are entitled to receive the proportionate share of rent is maintainable under this section.

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<sup>1</sup> AIR 1954 Madras 113 Krishna Rao Vs. Anjaneyulu

<sup>2</sup> AIR 1961 Calcutta 247 Raghunandan Vs. Swadesi cloth dealers limited

### **12. Declaration of mother's half share purchased by the plaintiff**

Where the plaintiff purchased mother's half share and defendant disputed the title of the plaintiff, a suit for declaration of title and permanent injunction is not by the proviso hit to Sec.34 of the Specific Relief Act, 1963.

### **13. Declaration regarding right of franchise**

The expression "legal character" is wide enough to include the right of franchise and also the right to be elected as an elected member of local body. The right to exercise franchise or the right to be elected is very valuable rights coming within the purview of legal character and hence declaratory suits for such reliefs are maintainable.

### **14. Declaration that rejection of nomination is not valid**

Where the returning officer rejected the nomination paper without making any real enquiry at all, such arbitrary order can be challenged by way of a declaratory suit under this section<sup>1</sup>.

### **15. Declaration to officiate as priest**

A suit for a declaration that the plaintiff is entitled to officiate as priest in alternate years is maintainable. A hereditary right to be appointed as a swamyar<sup>2</sup> or a priest of a temple may come within the meaning of "legal character" and a suit for declaration as such can be maintained. A declaratory suit for the office and also to the offerings and emoluments can be sustained.

### **16. Declaratory suit by worshippers**

The worshippers of a temple can sue for declaration that a permanent lease of temple property is invalid. The worshippers in a representative capacity, can sue the Devasthanam Committee for a declaration that the perpetual alienation of money offerings is invalid even without the sanction of the Advocate-General of the Court under Religious Endowment Act.

**17. Declaratory suit for a religious office:** A suit for declaration that he is the trustee of a temple or a Mahant<sup>3</sup> or a mutawalli can be maintained. If the

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<sup>1</sup> AIR 1933 Patna 155 – Kalu Prasad Vs. Mukuthdhari

<sup>2</sup> AIR 1929 PC 53 – Manucka Vachaga Desikar Vs. Parama Sivam

<sup>3</sup> AIR 1941 Madras 822 – Kandaswami Thambiral Vs. Vageshan Pillai

object of the educational institution or the school is such as is recognized as charitable or religious under the Hindu Law, such an educational institution or school will be regarded as possessing a juristic personality and will be capable of holding property. A suit for declaration that the plaintiff has a right to manage the school and for injunction restraining the defendant from interfering with the plaintiff's possession and management of school is maintainable<sup>1</sup>.

**18. Declaratory suit regarding customary rights:** A declaratory suit regarding customary right is maintainable provided it is not against public policy or public morals.

**19. Declaration of right to offer prayers in a mosque:** A suit for declaration of right to offer prayers in a mosque is maintainable. The plaintiffs can maintain an action as Mohammadans of a district for a declaration that a certain idgah and the adjoining lands are wakf property and they have a right to frequent use of the mosque for devotion even without the permission of legal remembrance.

**20. Declaration of tenancy rights:** A declaratory suit in respect of the right of the plaintiff as a tenant is maintainable<sup>2</sup>.

**21. Declaration regarding entries in record of rights:** A suit for declaration that the entries in record of rights were not currently made and hence such entries are to be corrected is maintainable under this section since such wrong entries will affect the rights of the plaintiff. But such suit may not lie if it is barred by a special statute.

**22. Declaration regarding wrong survey and demarcation:** Declaratory suits regarding wrong survey and demarcation of lands were held to be maintainable in the under mentioned cases.

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<sup>1</sup> AIR 1972 Punjab and Haryana 245 DAV college Vs. Sarvadanand Angel Sanskrit Higher Secondary school

<sup>2</sup> AIR 1924 Patna 560 – Haranarayana Vs. Darshan Dev

**23. Declaration in matters of insolvency**

A creditor of an insolvent on behalf all the other creditors, can file a suit for declaration that a partition decree obtained by the insolvent is not binding on him<sup>1</sup>. A creditor can file a suit for declaration that certain property belongs to the insolvent and such property forms part of his estate. A creditor can maintain a suit for a declaration that his mortgage is entitled to priority under the provisions of the Provincial Insolvency Act. A declaratory suit that certain properties belonging to the plaintiff is not liable to be sold by the Insolvency Court, was held to be maintainable in the under mentioned case<sup>2</sup>.

**24. Declaration in case of decrees**

A person, who was not a party to the prior suit, can maintain a declaratory suit that the decree is void or fraudulent even without claiming any consequential relief. But in a case where he was a party to the prior suit he must pray for further relief too. Where a decree was passed against a minor without proper representation, such a minor can sue for a declaration that such a decree is a nullity. A minor has a right to sue to avoid a decree obtained against him because of the gross negligence of the guardian but a suit for a mere declaration that a decree is void as against the minor is maintainable in a case where the property concerned with the decree is not in possession of the plaintiff without a prayer for further relief<sup>3</sup>. In the case of avoiding a decree the particulars of fraud must be alleged and established.

**25. Declaration that plaintiffs are legal heirs and for revocation of succession certificate**

The plaintiffs instituted a suit for a declaration that they are the only legal heirs of the deceased and have not asked for consequential relief of revocation of the succession certificate granted in favour of the defendant, it was held that once such declaration was granted it will be sufficient as that decision will prevail the summary decision given under the Indian Succession

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<sup>1</sup> AIR 1972 Delhi 122 – Kishan das Vs. Adeswar Lal

<sup>2</sup> Rajani kanta Vs. Ramani Mohan

<sup>3</sup> AIR 1938 Bombay 206 – Suresh Chandra Vs. Bai Iswari



Act, 1925 and hence an order for the revocation of the succession certificate in the suit was not at all necessary<sup>1</sup>.

### **26. Declaration of right to take possession**

A declaratory suit for taking a non-religious possession even without establishing any special damage was held to be maintainable but the exercise of such right should be subject to the rights of other citizens also<sup>2</sup>.

### **27. Declaration of right to use trade-mark**

A person seeking for a declaration that he has a right to use the trade-mark must establish his right to use such a trade-mark as his "exclusive right of property" and that he has acquired it to the exclusive of everyone else and if he fails to establish the same, he cannot get such a relief<sup>3</sup>.

### **28. Declaratory suit by minors**

Where a decree was passed against a minor in the absence of proper representation or due to the gross negligence of the guardian he can sue for a declaration that such a decree is a nullity or not binding on him.

### **29. Declaratory suits and orders of criminal court**

A suit for declaration of title even without a prayer for possession is maintainable where property had been attached by a Magistrate and a receiver was appointed under Sec.146 (2) Cr.P.C. Where an order is made by a Criminal Court against the plaintiff to pay maintenance to an illegitimate son, such person can sue for a declaration that he had no illicit intimacy with the mother of such a person. In the same way declaratory suits can be maintained despite the orders of Criminal Courts.

### **30. Declaration of an alleged marriage between a Hindu and a Christian as invalid**

A right to Specific Relief Act such as a right to declaration or injunction under section 34 of the Specific Relief Act, 1963 is undoubtedly a suit of a civil nature entertainable by Civil Courts and the Courts have power to grant such

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<sup>1</sup> AIR 1977 Orissa 88 – Indramani Vs. Hema

<sup>2</sup> AIR 1950 Bombay 192 – Chandu Vs. Nyabal Chand

<sup>3</sup> AIR 1933 Allahabad 495 – Ganesh Lal Vs. AKM and company

a decree. A litigant having a grievance of a civil nature has independently of any statute of a right to institute a suit in some Court or other unless its cognizance either expressly or impliedly barred. Hence where a suit was filed for declaration of an alleged marriage between a Hindu and a Christian as invalid having not been performed according to Hindu rites and rituals, the Civil Court within whose jurisdiction the parties were residing would have jurisdiction to entertain the suit irrespective of the fact that the marriage was alleged to have taken place at a different place, not within the jurisdiction of the said Civil Court.

**31. Sec.34 and sections 11 and 12 of Hindu Marriage Act**

A suit seeking declaration that the marriage of the plaintiff and defendant-wife is illegal and void on the ground that the wife and her parents are not Hindus is not one under section 11 or section 12 of the Hindu Marriage Act or under any other provisions of Hindu Marriage Act but for a declaration relating to status and hence a suit in a Civil Court is maintainable.

**32. Declaration regarding date of birth or alteration of age:**

The civil Court has jurisdiction to make a declaration regarding the date of birth or alteration of age of the Government servant in matters not relating to his conditions of service. That being so, either on principle or an authority, the jurisdiction of the Civil Court cannot be questioned in the case of non-governmental employees or persons. Even in the case of Government servants, a suit for declaration of age or date of birth could be maintained, if the relief claimed does not relate to his conditions of his service. The same is held in State Vs. T.Srinivas, reported in **AIR 1988 Karnataka 67**.

**33.** Even a Third party wants to file a suit for declaration to question any sale deed, he can maintain a suit to declare that the alleged sale deed is null and void.

**34. Declaration of ownership and injunction is maintainable on the plea of adverse possession;**

The plaintiff can maintain a suit for declaration on the basis of adverse possession. In such cases burden lies on such party to adduce satisfactory evidence to prove his title and possession. It was held in the Judgment in

Gorige Allamma Vs. Utkoori Somaiah and Others reported in 2015 (2) ALT 467. (A.P. High Court)

### **Section 35**

#### **Effect of declaration**

A declaration made under this Chapter is binding only on the parties to the suit, persons claiming through them respectively, and, where any of the parties are trustees, on the persons from whom, if in existence at the date of the declaration, such parties would be trustees.

### **LIMITATION GOVERNING TO SEEK DECLARATORY RELIEF**

#### **LIMITATION:**

Suit for declaration	Three (3) years (from the date when right to sue accrues)	Article 58 of Limitation Act, 1963
Suit for declaration and possession	Twelve (12) years from the date from which the possession of the defendant become adverse to the plaintiff.	Article 65 of the Limitation act, 1963.

In a suit for declaration of title to property, the period of limitation is 3 years under Art.58 of Limitation Act, it commences from the date of denial (oral or written, express or implied) of his title and not from the date of commencement of the defendant's name in revenue records. The cause of action arises only when the denial occurs, or when the plaintiff apprehends that the defendant may actually deny. In that case, the cause of action arises only when the denial occurs by a formal act, or an oral denial made to a third person or a denial made in writing. If, however, such denial is not communicated to the plaintiff, when cause of action will arise in that case? Normally, the right to sue accrues when the right in respect of which the declaration is sought is denied or challenged and the person who seeks the declaration has knowledge there about.

## **INJUNCTIONS**

### **PARTIES ELIGIBLE TO SEEK INJUNCTIVE RELIEF**

#### **The Basic Principles of law of Injunctions:**

The law of injunction in our country is having its origin in the Equity Jurisprudence of England from which we have inherited the present administration of law. England too in its turn borrowed it from the Roman Law wherein it was known as Interdict. The Roman Interdicts were categorized in three parts such as prohibitory, restitutory and exhibitory. Law courts were divided by their development of the common law. Equity courts had a more flexible approach to cases and provided for broad remedies. In our country, the Specific Relief Act, 1963 provides a large number of remedial aspects of Law. This Act came in force in the replacement of earlier Act of 1877.

**Definition:** -"An injunction is a judicial process whereby a party is required to do, or to refrain from doing, any particular act. It is a remedy in the form of an order of the Court addressed to particular person that either prohibits him from doing 'or continuing to do a particular act (prohibitory injunction); or orders him to carry out a certain act (mandatory injunction)".

In India the law of injunctions is broadly governed by Order XXXIX of the Code of Civil Procedure, 1908 and Sections 36 to 42 of the Specific Relief Act, 1963. Moreover, Section 94 (c) of the Code of Civil Procedure, 1908 states that in order to prevent the ends of justice from being defeated the court may, if it is so prescribed, grant a temporary injunction and in case of disobedience commit the person guilty thereof to the civil prison and order that his property be attached and sold. Also, it is a settled law that under Section 151 of the Code of Civil Procedure, 1908 there is no bar on a court of law in granting injunction or supplementary orders in just cases.

"An injunction is an equitable remedy; the party, who seeks relief, must come with clean hands".

Judicial process operating in personam, and requiring the person to whom it is directed to do or refrain from doing a particular thing."

**Principles governing for grant of injunction orders:**

- i. Ubi jus ibi remedium (For every wrong the law provides a remedy)
- ii. One who seeks equity must come with clean hands
- iii. One who seeks equity must do equity
- iv. Where equities are equal, the law will prevail
- v. Equity follows the law
- vi. Grant of injunction order is in the nature of an equitable relief, and the court has undoubtedly power to impose such terms and conditions as it thinks fit. Such conditions, however, must be reasonable so as not to make it impossible for the party seeking injunction order to comply with the same and thereby virtually denying the relief which the party would otherwise ordinarily be entitled to.

**An application for Injunction must be furnished if:**

The petitioner has a strong prima-facie case, which has the potential to succeed.

The balance of the convenience or that of inconvenience is in favour of the petitioner, Non-granting of a temporary or permanent injunction would force the petitioner to suffer an irreparable damage.

An injunction is an equitable remedy in the form of a court order that requires a party to do, or to refrain from doing, certain acts. A party that fails to comply with an injunction faces criminal or civil penalties and may have to pay damages or accept sanctions. In some cases, breaches of injunctions are considered serious criminal offenses that merit arrest and possible prison sentences.

It is a well settled principle of law that interim relief can always be granted in the aid of and as ancillary to the main relief available to the party on final determination of his rights in a suit or any other proceeding. Therefore, a court undoubtedly possesses the power to grant interim relief during the pendency of the suit. Temporary injunctions are, thus, injunctions issued during the pendency of proceedings.

**Object:**

The primary purpose of granting interim relief is the preservation of property in dispute till legal rights and conflicting claims of the parties before the court are adjudicated. In other words, the object of making an order regarding interim relief is to evolve a workable formula to the extent called for by the demands of the situation, keeping in mind the pros and cons of the matter and striking a delicate balance between two conflicting interests, i.e., injury and prejudice, likely to be caused to the plaintiff if the relief is refused; and injury and prejudice likely to be caused to the defendant if the relief is granted. The court in the exercise of sound judicial discretion can grant or refuse to grant interim relief.

The underlying object of granting temporary injunction is to maintain and preserve status quo at the time of institution of the proceedings and to prevent any change in it until the final determination of the suit. It is in the nature of protective relief granted in favour of a party to prevent future possible injury.

The need for such protection, however, has to be judged against the corresponding need of the defendant to be protected against injury resulting from exercising his own legal rights. The court must weigh one need against another and determine where the balance of convenience lies and may pass an appropriate order in exercise of its discretionary power.

**As stated above Injunctions are of three kinds:** - (I) temporary, (ii) Permanent and (iii) Mandatory. A permanent Injunction restrain a party forever from doing the specified act and can be granted only on merits at the conclusion of the trial after hearing the both party to the suit. It is governed by the Sections 52 to 57 of the Specific Relief Act, 1877. A temporary or interim injunction on the other hand restrains a party temporarily from doing the specified act and can be granted only until the disposal of the suit or until the further order of the Court. Regulated by the provision of the Order 39 of the Code of Civil Procedure, 1908 and may be granted at any stage of the suit. Mandatory injunction is an injunction which orders a party or requires them to do an affirmative act or mandates a specified course of conduct it is an extraordinary remedial process which is granted not as a matter of right,

but in the excess of sound judicial discretion. One must keep in mind that mandatory injunction are quite in practice.

**Coming to Interlocutory or Interim Injunction:**

Interlocutory injunction is a type of temporary injunction, which is operational during the pendency of the case before the court. Hence, an interlocutory injunction is used to compel or prevent a party from doing certain acts, pending the final determination of the case. The primary purpose of using a interlocutory injunction is to preserve matters in status quo.

**LAW OF INJUNCTIONS:** Temporary Injunction including Ex-parte Injunction, Perpetual Injunction and Mandatory Injunction.

**INGREDIENTS:** It is well settled that while granting injunction plaintiff must show: (i) existence of prima facie case, (ii) balance of convenience and (iii) the injury must be of an irreparable loss that cannot be compensated in terms of money.

The Court should act according to the justice, equality and conscience, when there is no specific rule applicable to the circumstances of the case.

Generally, as already stated supra, there are two types of injunctions under the act viz. 1. Temporary Injunction and 2. Perpetual/Permanent Injunction.

In brief Temporary Injunctions are the injunctions that are given for a specific period of time or until the court gives further order regarding the matter in concern as regulated by the Code of Civil Procedure (CPC), 1908 under Section 94;. Section 94(c); Section 94(e) and Section 95 and the affecting party can approach with Order XXXIX, Rule 1 to seek temporary injunction and one must see the ingredients of 1) Prima-facie case; balance of convenience and irreparable injury.

**Permanent Injunction**

A permanent Injunction can be granted by the court by passing a decree made at the hearing and upon the merits of the suit. Once such decree is passed, the defendant is permanently prohibited from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.

**MANDATORY INJUNCTION**: - According to the purport of Section 39 of the Specific Relief Act, 1963, mandatory injunction means when, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the court is capable of enforcing, the court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.

Mandatory injunction is an injunction which orders a party or requires them to do an affirmative act or mandates a specified course of conduct. It is an extraordinary remedial process which is granted not as a matter of right, but in the exercise of sound judicial discretion. One must keep in mind that the Mandatory injunctions are quite rare in practice.

**Against whom an order of injunction is binding:**

Ordinarily, an order of injunction binds the parties to the suit. It is also binding on the agent or servant of the defendant. Persons who were not party to the suit nor were named in the injunction order cannot be proceeded against for violation of the order of injunction. But a person who is aware of an order of injunction is bound to obey even though he was not a party to the suit when it affects the result of the earlier order.

**Against whom injunction can be granted:**

An injunction can be issued only against party to the suit and not against a stranger or against a Court. In a proper case an injunction may be issued even against a person outside the jurisdiction of the Court. No injunction will ordinarily be issued against government officer's bonafide exercising rights or alleged rights in the course of their duty, or against public bodies under similar circumstances.

**RELEVANT CASE LAWS**

1) In M.K.Setty Vs. M.V.L.Rao, AIR 1972 SC 2299, it was held that:

*"In a suit for injunction what is material, is only the aspect of possession."*

2) **Injunction shall not be granted against true owner:**

In Premji Ratansey Shah – Vs - Union of India, AIR 1994 SC 376, it was held that

*"It is equally settled law that injunction would not be issued against true owner. Therefore, the courts below have rightly rejected the*



*relief of declaration and injunction in favour of the petitioners who have no interest in the property. Even assuming that they had any possession, their possession is wholly unlawful possession of a trespasser and an injunction cannot be issued in favour of a trespasser or a person who gained unlawful possession, as against the owner. Pretext of dispute of identity of the land should not be an excuse to claim injunction against true owner".*

**3)** In Mohd. Abdul Samad @ Arif Vs. Mirza Basheer Baig, 2002(2) A.P.L.J 93 (SN), it was held that:

*"a) Plaintiff if loses his possession after filing of the suit cannot proceed further with an application for injunction without amendment seeking relief of recovery of possession.*

*b) Agreement of sale do not require registration and if the said documents are constrained as sale deeds they require registration. An unregistered document can be taken to consideration for collateral purpose.*

*c) It is no doubt true that proceedings have to be decided as per the facts existing on the date of filing of the suit, but it should not be forgotten that the court also is bound to take notice of the subsequent events and if the subsequent events that took place disentitle the plaintiff from granting the relief claimed, he cannot be granted the relief."*

**4)** In K.Ankaiah Vs Tirumala Tirupathi Devasthanams, 2002(2) A.P.L.J. 29 (SN), it was held that;

*"Person not having any legal right over disputed property, even if he is in possession of the disputed property, when such a person is not lawfully entitled to continue in possession of the disputed property and any person whose possession is to be treated as illegal or unlawful possession, will not be entitled to seek the relief of injunction against the true owner."*

**5)** In Sudhakar Reddy Vs. Lakshamma reported in 2014 (4) ALT 647, it was held that:

*"In a suit for perpetual injunction, the court has to consider who is in possession of the suit schedule property as on the date of filing of the suit. However, the court can incidentally look into the title of the*

*parties in an injunction suit if the circumstances so warranted."*

**6)** In Ramevath Hasala Naik Vs. Sabahavath Gomli Bai, 2011 (1) L.S. 32, it was held that:

*"Suit is filed for injunction, validity of gift deed not a germane consideration and court to have decided suit only on the basis of proof of possession by plaintiff on date of suit. In a suit for injunction, courts should concentrate on aspect of possession rather than issue of title."*

**7)** In Zarif Ahamad (D) Thr. Lrs and another V.Mohd Farooq, AIR 2015 SC 1236, it was held that:

*"(c) Specific Relief Act (47 of 1963) S.38 - Suit for permanent injunction - For several years plaintiff was paying house tax as was found by Trial Court on basis of house tax receipts and extracts of house tax register. Evidence is sufficient to prove that plaintiff was in possession on plot in question.. Advocate Commissioner's report that defendants were found in possession of disputed property cannot be accepted being contrary to evidence on record in oral and documentary evidence on record which is sufficiently proves that plaintiff was in possession over suit schedule property."*

**8)** In Dolla Subba Rao and another Vs. Eeda Amrutha Rao and others, 2017(5) ALT 245, it was held in para 14 that:

*"It is settled law that tax receipts are not evidence of possession. Also bank pass books, pension pass book and ration card also cannot be treated as evidence of possession of the plaint schedule property.*

*The appellants had not examined any neighbours or revenue officials or marked any revenue record which establishes their possession of the plaint schedule site."*

**9)** In Ashish Ashok Kuchewar Vs Vitthal Mahadeo Rao Kuchewar, and others, AIR -2017 (NOV) 969 (BOM), it was held that:

*"Suit for grant of injunction restraining defendants from interfering with possession of plaintiff claimed on basis of Will. Proof of Will, not matter in issue. Legal heirs of testator of Will, are not necessary parties. Dismissal of suit for their non-joinder, not proper."*

**10)** In *Balkrishna Dattatreya Galande Vs Gupta and another*, 2019 Law Suit (SC) 140 was held by the Hon'ble Supreme Court that: *Balkrishna Rambharose 2019 (2) ALT 7 (SC,)* it

*"In a suit filed under Sec.38 of the Specific Relief Act, Permanent Injunction can be granted only to a person who is in actual possession of the Property. The Plaintiff has to prove actual possession for grant of Permanent Injunction."*

### **PERPETUAL INJUNCTION - WHEN REFUSED**

Section 41 of the Specific Relief Act, 1963, provides various contingencies in sub section (a) to (j) in which the injunction cannot be granted. This section lays down the defences that can be raised against the prayer for grant of an injunction. It provides:

- a) To restrain any person from prosecuting a judicial proceedings unless such a restrain is necessary to prevent a multiplicity of the proceedings,
- b) To restrain any person from instituting or prosecuting any proceeding in a Court not subordinate to that from which the injunction is sought,
- c) To restrain any person from applying to any legislative body,
- d) To restrain any person from instituting or prosecuting any proceedings in criminal matter,
- e) To prevent the breach of a contract the performance of which would not be specifically enforced,
- f) To prevent on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance,
- g) To prevent a continuing breach in which the plaintiff has acquiesced,
- h) when equally efficacious relief can certainly be obtained by any other mutual mode of proceedings except in case of breach of trust,
  - (a) "if it would impede or delay the progress or completion of any infrastructure project or interfere with the continued provision of relevant facility related thereto or services being the subject matter of such project".
- i) When the conduct of the plaintiff or his agent has been such as to disentitle him to the assistance of the Court,
- j) when the plaintiff has no personal interest in the matter.

In AC Muthaiah - Vs 2011 Law Suit (SC) 427 Board of Control of Cricket in India and another, 2011 (6) SCC 617 the Hon'ble Supreme Court held that Section 41(1) of the Specific Relief Act provides that an injunction claimed should be refused when the plaintiff has no personal interest in the matter. The record does not indicate that any personal right of the appellant is infringed. Prima facie the appellant, who is claiming declaratory decrees against the respondents, would not be entitled to the same because no personal right of the appellant is infringed.

### **TO SUM UP**

Sec.36 to 42 relating to law of injunctions

### **Sec.36 explains Preventive relief how granted**

This section corresponds to Sec.52 of the old act. It says preventive relief can be granted at the discretion of the court by injunctions, temporary or perpetual. An injunction operates in personal and does not run with the land. The relief of injunction is discretionary relief but the exercise of such discretion must be a judicial one and to exercised in accordance with well established principles and not in a capricious or arbitrary manner.

### **Section 37: Temporary and perpetual injunctions:**

Temporary and perpetual injunctions are such as 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 Civil Procedure, 1908, whereas perpetual injunction can only be granted by the decree made at the hearing and upon 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.

The main object of granting temporary injunction is to maintain status quo pending litigation. Temporary injunction is a discretionary order generally granted for the purpose of maintaining status quo and with a view to protect the interests of the parties pending disposal of the suit. It is the duty of the Court to consider the affidavits and the relevant documents in the matter of granting or refusing to grant temporary injunction. The granting or refusing of a temporary is covered by three well established principles (1) whether the

petitioner has made out a prima-facie case (2) whether the balance of convenience is in his favour (3) whether the petitioner will suffer irreparable injury if temporary injunction is not granted.

Reasons need not be recorded for not granting interim injunction. The same was held in the decision in between **M/s. Paro Food Products Vs. Hyderabad Metropolitan Water supply and Sewerage Board reported in 1994 (1) ALT 172.**

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.

#### **Mandatory Injunction on an Interlocutory Application:**

Mandatory injunction is defined as an order requiring the defendant to do some positive act for the purpose of putting an end to a wrongful state of things created by him or otherwise in fulfillment of his legal obligations.

#### **Consequences of disobedience or breach of injunction:**

In such case, the Court may order the property of the person guilty of such disobedience or breach to be attached and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Court directs his release. If the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court may award such compensation as it think fit to the injured party and shall pay the balance if any to the party entitled thereto. The penalty prescribed in Order 39 Rule 2-A and (2) CPC by way of detention in civil prison of the person committable a breach of an injunction applies to cases of injunctions issued under Order 39 Rule 1 also though there is no specific provision to that effect in that Rule.

#### **Suit for injunction by a person in possession without title:**

A person in possession can be evicted only by due process of law and hence even a rightful owner cannot eject him by force.

**WHEN A SUIT FOR INJUNCTION AND DECLARATION WOULD LIE?**

Any person who has any legal character or any legal rights as to any property by virtue of title deeds or otherwise may file a suit for declaration of those rights and for injunction against any person denying or interested to deny his title to such character or right.

The Hon'ble Supreme Court has in the matter of **Anathula Sudhakar vs. P Buchi Reddy & Ors [AIR 2008 SC 2033]**, clarified the general principles as to when a mere suit for permanent injunction will lie and when it is necessary to file a suit for declaration and or possession with injunction as consequential relief, which is reproduced as under:

*Para 11.1- When a Plaintiff is in lawful or peaceful possession of a property and such possession is disturbed or threatened by the defendant, a suit for injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.*

*Para 11.2- Where the title of the Plaintiff is not disputed, but he is not in possession his remedy is to file a suit for possession and seek in addition, if necessary an injunction. A person out of his possession cannot seek the relief of injunction simpliciter, without claiming the relief for possession.*

*Para 11.3- Where the plaintiff is in possession but his title to the property is dispute, or under a cloud, or where the defendant asserts title thereto and there is also threat of dispossession from the defendant, the plaintiff will have to sue for declaration of title and consequential relief of injunction. Where the title of the Plaintiffs is under cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction.*

## **PARTIES ELIGIBLE TO SEEK INJUNCTION RELIEFS**

**In the following cases, party is eligible to seek injunction reliefs:**

### **1. Injunction against a Lessee:**

A tenant must keep the property in as good condition as he found it and he must yield up the property in the same condition subject only to fair wear and tear and irresistible force. A tenant can not make structural additions and alterations without the consent of the land-lord and the alterations that are not authorized would amount to breach of the implied covenant. When a legal duty is imposed on a person in respect of another, that other is invested with a corresponding legal right. Hence an injunction can be granted to the plaintiff-landlord to prevent the breach of an obligation existing in his favour under the tenancy when the defendant-tenant invades or threatens to invade to plaintiff right by using the demised premises in a way not consistent with covenants of the lease or when he alters the structure of the building by making excavations or unauthorized constructions etc., on the leased premises<sup>1</sup>.

### **2. Injunction against a Lessor:**

The possession of a statutory tenant is protected by Courts of law<sup>2</sup>. Persons are not permitted to take forcible possession. They must obtain such possession as they are entitled to through a Court<sup>3</sup>. A tenant by sufferance also is entitled to an injunction<sup>4</sup>.

### **3. Injunction against an alien:**

In granting an injunction against an alien the Court acts in personal and it will so act only when the person against whom the relief is sought is within its reach and amenable to its jurisdiction. If the alien is in another country, the injunction will be inoperative against him.

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<sup>1</sup> AIR 1981 Delhi 77 – Parameswari Das Kanna Vs. Bhonath Parihar

<sup>2</sup> AIR 1961 SC 106 – Gangadutt Vs. Karthik Chandra das

<sup>3</sup> AIR 1924 PC 144 – Midnapur Zamindari company limited Vs. Naresh Narayan Roy

<sup>4</sup> 1980 (1) Andhra Weekly Reporter 28 – Sri Balaji Trading company Vs. Veera Swami Srinivasan

#### **4. Injunctions and Sec.53-A of the Transfer of Property Act, 1882:**

It is not the law that the non-alienating co-parceners can straight away walk into the land and recover possession of the property without regard to the rights of the purchaser. The plaintiff can maintain his possession so long as there is no attempt made by the non-alienating co-parceners to recover possession from him in due course of law. If the plaintiff entitled to the benefit of Sec.53-A of the Transfer of Property Act, he is entitled to protect his possession till the general suit for partition is filed<sup>1</sup>, but the above view expressed by his **Lordship Venkatarama Sastry J** was not accepted by the Division Bench and the Division Bench observed<sup>2</sup>.

*“Sec.53-A of the Transfer of Property Act cannot be invoked against non-alienating co-parceners. Sec.53-A does not confer any title on a person who has been put in possession under an agreement of sale. The right which section 53-A confers is available only as a defence to protect possession against the transferor. It imposes a bar on the transferor from enforcing any right other than that expressly provided under the contract. This right cannot be enforced against non-alienating co-parceners who are not parties to an agreement of sale. The right conveyed under the section can be relied upon only as shield and not as a sword but the protection is available to the transferee both as a plaintiff and as a defendant so long as he uses it as a shield”.*

Where the Kartha of a joint Hindu family enters into a contract of a sale and signs it himself without specifying that he was signing on behalf of other members of the family also and the contract is binding on members under the principles of Hindu law, then, the Kartha would have signed the contract on behalf of the other members also<sup>3</sup>. In a suit for specific performance of an agreement of sale injunction cannot be granted on the basis of Sec.53-A of the Transfer of Property Act, 1882<sup>4</sup>, but however a contrary view was expressed in the under mentioned case<sup>5</sup>.

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<sup>1</sup> AIR 1975 AP 250 – Nelli Narasimha Reddy Vs. Krishnaiah

<sup>2</sup> AIR 1976 AP 395 – Krishnaiah Vs. Narasimha Reddy

<sup>3</sup> AIR 1967 Supreme Court 574 – Radha Krishna Das Vs. Kaluram

<sup>4</sup> AIR 1981 Madras 310 – Krishna Murthy Vs. Paramsva

<sup>5</sup> AIR 1963 Bombay 413 – Venkat Vs. Viswanath



### **5. Injunction in case of co-owners:**

Where a co-owner intends to carry on with a material change in the user of joint property without the consent of the other co-owner, he may restrain the other from carrying on with such operations. A Co-owner can maintain an action for injunction for removal of obstruction put up by the other co-owner on the joint property.

### **6. Injunction in case of champertous agreements:**

An agreement to supply funds for litigation is not per se illegal and the Court while exercising jurisdiction can grant injunction to enforce the obligation arising from such a contract. In **Nuthaki Venkataswami Vs. Katta Nagi Reddy**<sup>1</sup>, the Division Bench of Andhra Pradesh High Court observed,

*“The important question for consideration, however, is with regard to the validity of the agreement. Initially it may be observed that the English Law in regard to champerty and maintenance does not apply to India for it has been laid down that the mere fact of an agreement being champertous is not of itself sufficient to render it void but it must be shown in addition that it is contrary to public policy. There is a long line of authority which establishes that a fair agreement to supply funds to carry on a suit in consideration of having a share in the property, if recovered, is not per se opposed to public policy and is not illegal”.*

### **7. Injunction in case of nuisance:**

A person has a right to enjoy his property in any way he pleased provided he does not create nuisance or interfere with the rights of others. A relief of injunction can be claimed to stop nuisance if in a noisy locality there is substantial addition to such noise by the introduction of some machine or instrument or some performance at the premises of the defendant which materially effect the physical comforts of the members or occupants of the plaintiff's house<sup>2</sup>. While claiming the relief of injunction the plaintiff must

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<sup>1</sup> AIR 1962 AP 457

<sup>2</sup> AIR 1978 Allahabad 86 – Radeshyam Vs. Guru Prasad

prove that the nuisance is an actionable one and it is apprehended to cause substantial injury to his property.

A man is entitled to the comfortable enjoyment of his dwelling house and to carry on ordinary conversations in that house without substantial interruptions from any abnormal noise. If his neighbor makes such a noise as to interfere with the ordinary use and enjoyment of his dwelling house so as to cause serious disturbance to that the ordinary conversation amongst the occupiers of that house, the owner or occupier can sustain an action for injunction.

### **8. Injunction in case of easementary rights:**

Where an invasion of a right to light acquired as easement is complained of section 28, 33 and 35 of the Indian Easements Act, 1882 have to be kept in view before granting an injunction and these sections have to be read together and so read, interference with light and air which is not substantial, does not give a cause of action to a person claiming such right. An injunction can be granted when the threatened disturbance materially interferes with the comfort of the owner.

### **9. Injunction against a trustee:**

A trusty making unauthorized changes in the case of a trust property affecting the very character of the institution will be restrained by means of an injunction. An injunction can always be granted in the case of breach of trust and to see that such acts which are detrimental to trust are prevented in the interests of the trust as such<sup>1</sup>.

### **10. Injunction to prevent waste:**

Waste means, in general, such damage to houses or land as tends to the permanent and lasting loss of the person entitled to the inheritance where a widow a limited owner had invested the money in stocks or shares without any need changing investment and also exposing the capital to depreciation, injunction restraining such waste was held to be a proper remedy. While granting an injunction on the ground of waste, this Court has to consider the

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<sup>1</sup> AIR 1957 SC 815 – Ranganathan Vs. Peria Karuppan

nature and also the extent of waste and whether granting injunction is necessary to prevent such a waste<sup>1</sup>.

#### **11. Injunction to prevent trespass:**

Where the trespass is in violation of an obligation, the trespass can be prevented by means of an injunction. The threatened trespass must not be a mere vague apprehension where there is a real threat of dispossession disturbing lawful possession of the plaintiff he can maintain an action for injunction. Thus the possession of statutory tenant or tenant by sufferance is protected by law.

#### **12. Injunction in case of infringement of copy right:**

Copying does not constitute an infringement of copy right unless a substantial part of the work is copied and the question whether the part taken is substantial is one of fact. In Judging this question, the value and the quantity taken must be considered, for if a vital part of a book has been taken for use in another publication although such part constitutes but a small proportion of the entire text, the sale of the author's original work may be prejudiced and the Court will not look merely at isolated passages but will consider the two works as a whole to see whether there has been any such prejudicial infringement.

#### **13. Injunction against trade unions:**

An injunction can be granted restraining the office bearers of a trade union from raising slogans and inciting acts of violence etc., but if such relief is otherwise barred like under sections 24 and 26 of the Industrial Disputes Act, 1947 or the provisions of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, the suit for an injunction cannot lie.

#### **14. Injunction against Government:**

A suit to obtain an urgent or immediate relief against the Government or any public officer in respect of any act purporting to be done by such public officer in his official capacity may be instituted with the leave of the Court

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<sup>1</sup> AIR 1952 Madras 181 – Govinda Swami Naidu Vs. Pushpalamma

without serving any notice but Court shall not grant relief in the suit, interim or otherwise except after giving to the Government or public officer a reasonable opportunity of showing cause in respect of such relief prayed for in the suit. Even the state is subject to the jurisdiction of the Court in the matter of injunction and its officers can be penalized for the violation of the order.

**Sec.39 - Mandatory Injunction:** When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the Court is capable of enforcing, the Court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.

**Parties eligible to seek Mandatory Injunction Relief in the following cases;**

**1. Trespass:**

Where a stranger constructs building on the land of another no doubt believing it to be his own, the real owner has a right to recover such land unless there are special circumstances amounting to a standing by so as to induce the belief that the owner intended to forego his right or to any acquiescence in building on the land.

**2. Highways:** A suit for removal of obstruction to a pathway was held to be maintainable without proof of special damage whether the pathway was highway or a village pathway which could not be raised to a dignity of a public high way<sup>1</sup>. Where the plaintiff's right had been affected by the encroachment as a member of the public, the plaintiff is entitled to the use of full width of the passage way and hence the plaintiff can maintain an action for the removal of such encroachment even without proof of any special damage<sup>2</sup>.

**3. Co-owners:** Since one co-owner has no right in law to appropriate land to himself out of a joint land against the consent of his co-owners, high handed action by one co-owner cannot be encouraged by Courts of law unless some special equity is shown in favour of the defendant in a suit for demolition of

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<sup>1</sup> AIR 1949 Madras 634 Subbamma Vs. Narayana Murthy

<sup>2</sup> AIR 1925 PC 36 – Manzur Hasan Vs. Mahammad Zaman

constructions which are in the process of being made by him without the consent of the co-owners and hence a decree for demolition should not be refused especially when the co-owners have come to Court at the earliest<sup>1</sup>.

In Chhedi lal Vs. Chhote lal reported in AIR 1951 Alahabad 199, a full Bench of the Allahabad High Court held on this aspect -

*"While, therefore a co-sharer is entitled to object to another co-sharer exclusively appropriating land to himself to the detriment of other co-sharer, the question as to what relief should be granted to the plaintiff in the event of the invasion of his rights will depend upon the circumstances of each case. The right to the relief for demolition and injunction will be granted or withheld by the Court according as the circumstances established in the case of justify".*

#### **4. Removal of Trees:**

Where the trees if allowed to remain and grow a portion of the plaintiff's land would be rendered barren and useless for cultivation and hence in such circumstances it was held in the under mentioned case that directing removal of trees alone is the appropriate remedy.

#### **5. Overhanging Branches:**

Where the overhanging branches cause a reasonable apprehension of damage of crops, the appropriate remedy is the relief of mandatory injunction to compel the owner to cut away such overhanging branches<sup>2</sup>.

#### **6. Demolition of Kothas:**

Where the land had been set apart for a specified purpose of burning the dead, the proprietors cannot build Kothas on such land substantially reducing the area and in such a case the plaintiffs of the locality in their representative capacity can maintain an action for mandatory injunction.

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<sup>1</sup> AIR 1978 Allahabad 178 – Prabhu Vs. Doodnath

<sup>2</sup> AIR 1935 Madras 31 – Putrayar Vs. Krishna

**7. License:**

The relief of mandatory injunction can be granted against a license after termination of his license direction him to vacate the premises.

**Sec.42 - Injunction to perform negative agreement:**

Where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement express or implied, not to do a certain act, the circumstances that the Court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement, not withstanding anything contained in Sec.41 (e) of the self same Act.

**Sec.40 - Damages in lieu of, or in addition to injunction:**

The plaintiff in a suit for perpetual injunction under sec.38, or mandatory injunction under section 39, may claim damages either in addition to, or in substitution for, such injunction and the Court may, if it thinks fit, award such damages.

The question of awarding damages will not arise in the absence of the claim, but the Court can allow the plaintiff at any stage of the proceedings to amend the plaint in that aspect.

**Limitation Governing to seek injunctive relief:**

As per Article 113 of Limitation Act, the limitation to file suit for injunction is three years from the date when the right to sue accrues.

Injunction suit	Three (3) years (from the date when right to sue accrues)	Article 113 of Limitation Act, 1963
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**Conclusion:**

The jurisdiction of Courts to grant a declaratory decree is salutary, and its recognition fills a real want. Section 34 of the Specific Relief Act, 1963 is wide enough in its scope as contemplated to settle not only conflicting claims to property, but also of disputes as to legal status. However, it must always be remembered that this provision is not a panacea of all types of legal disputes. The Courts must exercise their discretion while granting a declaratory decree and only in proper and fit cases this legal remedy should

be granted so as to avoid multiplicity of suits and to remove clouds over legal rights of a rightful person.

Regarding suit for mere injunction already it is mentioned above case law of **Anathula Sudhakar Vs. P. Buchi Reddy & Ors** reported in **2008 (4) SCC 594**, wherein the Hon'ble Apex Court held that unless there is serious cloud over the title of the plaintiff, there is no need to file suit for declaration of title and suit for mere possession by way of injunction is maintainable.

With these, I concluded.

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