Subject Name: SRA
Topic Name: Part Performance

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Conditions and Exceptions under Section 12

Section 12 of the Specific Relief Act outlines the circumstances under which the court may allow the specific performance of a part of a contract.

According to Section 12(1), the general rule is against the specific performance of part of a contract. However, exceptions to this rule are provided in Section 12(2) which delineates three specific cases:

Unperformed Small Part: This provision applies when a party to a contract is unable to fulfil the entire contract, but the unfulfilled portion is of insignificant value compared to the whole and can be adequately compensated monetarily.

In such cases, the court, upon the request of the other party, may direct the specific performance of the performable part of the contract while also awarding compensation for any deficiency.

Incurable Defect in Title or Quantity: Section 12(2) also applies when a party is unable to perform the contract due to an incurable defect in title, deficiency in quantity of the subject matter, or some legal impediment.

Here, the court may, at the suit of either party, direct the performance of the portion of the contract that can be fulfilled and award compensation in money for any deficiency or proportional abatement of the purchase price.

An illustrative example provided under this section involves a land transaction where, out of 100 bighas contracted to be sold, two bighas belong to a third party who refuses to sell them.

If the two bighas are not essential for the use or enjoyment of the remaining 98 bighas and their loss can be compensated monetarily, the court may direct the specific performance of the sale of the 98 bighas and award compensation for the two bighas.

In the case of **Rutherford v Acton Adams (1915 AC 866),** the court established that specific performance may be decreed even if there is a small deficiency, provided that the vendor is capable of conveying substantially what the purchaser has contracted for, and the deficiency is immaterial. This is subject to the condition that the vendor has not disentitled himself to the remedy through misrepresentation or other misconduct.

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Provisions and Conditions under Section 12(3)

Section 12(3) of the Specific Relief Act addresses situations where a party to a contract is unable to perform the entire contract. In such cases, if the unfulfilled part of the contract either forms a significant portion of the whole contract, even though compensation in money is possible, or if it cannot be compensated in money, the party in default is not entitled to a decree for specific performance.

However, the court, upon the suit of the other party, may direct the defaulting party to specifically perform the part of the contract that they can fulfil.

For instance, if a purchaser relinquishes all claims to further performance and compensation for any deficiency or loss sustained, they can sue for specific performance. In a hypothetical scenario where a portion of land belonging to a stranger, say 50 bighas, out of a total of 100 bighas, A cannot obtain a decree against B for the specific performance of the contract.

However, if B fulfils certain conditions laid down in the statute, B is entitled to a decree directing A to convey those 50 bighas.

Similarly, if one of two brothers agrees to sell a house belonging to both of them, and the other brother refuses to sell, the buyer may sue for specific performance. In such a case, the buyer may be entitled to possession of half of the house upon payment of the agreed consideration, adjusted for the unperformed part of the contract, if compensable, or without abatement if not compensable.

The buyer must also relinquish all claims to the remaining part of the contract and any compensation for deficiency or loss sustained.

The term "unable to perform" implies that a party cannot fulfil their promised obligations for any reason, including statutory limitations, deficiency in quantity or quality of the subject matter, defects in title, legal prohibitions, or other causes.

Additionally, the term "considerable part" suggests that the unperformed portion of the contract is significant in quantity or quality.



Specific Performance of Divisible Contracts

Section 12(4) of the Specific Relief Act deals with situations where a contract contains parts that are separate and independent, allowing the court to direct specific performance of the part that can be enforced separately.

In such cases, where a part of the contract can and ought to be specifically performed, and stands on a separate and independent footing from another part that cannot or should not be specifically enforced, the court may direct specific performance of the former part.

This provision recognizes that certain contracts may have divisible components, where specific performance of one part does not necessarily depend on the performance of the other part. The determination of whether a contract is divisible or indivisible depends on the nature and terms of each individual contract. Generally, contracts are presumed to be entire, and courts cannot enforce them piecemeal unless the parts are distinct wholes in themselves.

For instance, if a contract involves illegal considerations, the entire agreement is void. However, if only some parts of the contract are illegal and can be separated from the legal parts, the legal portions may still be enforced.

The explanation to Section 12 clarifies that a party to a contract shall be deemed unable to perform the whole of their part if a portion of its subject matter has ceased to exist at the time of performance.

In cases where a purchaser seeks specific performance of a smaller part of the contract that is still performable, the court may grant or refuse it, and may award compensation for the non-performance of that part. However, compensation cannot be awarded for the part that has become incapable of performance by the defendant.

