

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CS(OS) 2354/2010 & CS(OS) 1671/2009

Date of Reserve: 23.5.2011

Date of Pronouncement: 15.7.2011

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CS(OS) 2354/2010

SHRI M.K. SHARMA & ANR Plaintiffs
Through : Mr. N.S. Dalal, Adv.

versus

SHRI SH TEK CHAND & OTHERS Defendants
Through : None.

AND

CS(OS) 1671/2009

MST. KIRAN CHHABRA AND ANR. Plaintiffs
Through : Mr. Shams Khwaja, Adv.

versus

MR. PAWAN KUMAR JAIN AND ORS. Defendants
Through : Mr. Shankar Divate, Adv.

CORAM :-

HON'BLE MR. JUSTICE J.R. MIDHA

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| 1. Whether Reporters of Local papers may be allowed to see the Judgment? | YES |
| 2. To be referred to the Reporter or not? | YES |
| 3. Whether the judgment should be reported in the Digest? | YES |

JUDGMENT

1. The following common legal question arises for consideration in CS (OS)Nos.2354/2010 and 1671/2009:-

“Whether this Court has territorial jurisdiction to entertain and try a suit for specific performance relating to a property situated outside Delhi?

2. Facts in CS (OS)No.2354/2010

2.1 The plaintiffs are seeking specific performance of agreements to sell, receipts and MOU dated 24th February, 2009 relating to the property ad-measuring 511 sq. yds. bearing No.541, comprised in Khasra No.798, Old Abadi, Village Harola Makanpur, Sector-5, Noida, Gautam Budh Nagar, U.P. 200301.

2.2 The agreements to sell, receipts and MOU dated 24th February, 2009 were executed at Delhi.

2.3 The defendants are residents of Noida, Gautam Budh Nagar, U.P.

2.4 The plaintiffs have, in para 22 of the plaint averred that this Court has jurisdiction to entertain and try this suit as the agreements to sell were executed at Delhi and the payments were also made to the defendants at Delhi.

2.5 On 23rd May, 2011, the plaintiffs gave up prayer (b) relating to the possession of the suit property. The plaintiffs are now seeking specific performance, injunction and damages relating to the suit property.

3. Facts in CS(OS)No.1671/2009

3.1 The plaintiff is seeking specific performance of agreement to sell dated 12th May, 2005 relating to the property bearing No.B-46, Sector 5, Noida.

3.2 The agreement to sell dated 12th May, 2005 was executed at Noida.

3.3 The defendants are the resident of Delhi.

3.4 The plaintiff initially instituted a suit for specific performance before the Civil Judge (Senior Division), Gautam Budh Nagar being original Suit No.1029/2007 which was withdrawn on 11th August, 2008 with liberty to institute a fresh suit. The plaintiff thereafter instituted this suit.

4. Relevant Provisions of Law

4.1 Section 16 of the Code of Civil Procedure, 1908.

Suits to be instituted where subject-matter situate.-

Subject to the pecuniary or other limitations prescribed by any law, suits-

(a) for the recovery of immovable property with or without rent or profits,

(b) for the partition of immovable property,

(c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property,

(d) for the determination of any other right to or interest in immovable property,

(e) for compensation for wrong to immovable property,

(f) for the recovery of movable property actually under distraint or attachment, shall be instituted in the Court within the local limits of whose jurisdiction the property is situate :

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant, may where the relief sought can be entirely obtained through his personal obedience be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose

jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

4.2 Section 20 of the Code of Civil Procedure, 1908.

Other suits to be instituted where defendants reside or cause of action arises.- Subject to the limitations aforesaid, every suit shall be instituted in Court within the local limits of whose jurisdiction-

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

4.3 Section 22 of the Specific Relief Act, 1963. Power to grant relief for possession, partition, refund of earnest money, etc.-

(1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 (5 of 1908), any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for-

(a) possession, or partition and separate possession, of the property, in addition to such performance; or

(b) any other relief to which he may be entitled, including the refund of any earnest money or deposit

paid or 1[made by] him, in case his claim for specific performance is refused.

(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed: Provided that where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

(3) The power of the court to grant relief under clause (b) of sub- section (1) shall be without prejudice to its powers to award compensation under section 21.

4.4. Section 55(1) of the Transfer of Property Act, 1882.

Rights and liabilities of buyer and seller.- In the absence of a contract to the contrary, the buyer and the seller of immoveable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following, or such of them as are applicable to the property sold:

(1) The seller is bound--

(a) to disclose to the buyer any material defect in the property 2[or in the seller' s title thereto] of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover;

(b) to produce to the buyer on his request for examination all documents of title relating to the property which are in the seller' s possession or power;

(c) to answer to the best of his information all relevant questions put to him by the buyer in respect to the property or the title thereto;

(d) on payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place;

(e) between the date of the contract of sale and the delivery of the property, to take as much care of the property and all documents of title relating thereto which are in his possession as an owner of ordinary prudence would take of such property and documents;

(f) to give, on being so required, the buyer, or such person as he directs, such possession of the property as its nature admits;

(g) to pay all public charges and rent accrued due in respect of the property up to the date of the sale, the interest on all incumbrances on such property due on such date, and, except where the property is sold subject to incumbrances, to discharge all incumbrances on the property then existing.

5. Relevant judgments

5.1 Harshad Chiman Lal Modi v. D.L.F. Universal Ltd., AIR 2006 SC 464

A suit for specific performance relating to a property in Gurgaon was filed in this Court on the ground that the defendants had their Head Office in Delhi, the agreement was entered into at Delhi and partial payments were also made at Delhi. The Supreme Court held that Delhi Court does not have jurisdiction to entertain and try the suit as the property was situated outside the jurisdiction of this Court. The relevant findings of the Supreme Court are as under:-

“14. Section 16 thus recognizes a well established principle that actions against *res* or property should be brought in the forum where such *res* is situate. A court within whose territorial jurisdiction the property is not situate has no power to deal with and decide the rights or interests in such property. In other words, a court has no jurisdiction over a dispute in which it cannot give an effective judgment. Proviso to Section 16, no doubt, states that though the

court cannot, in case of immovable property situate beyond jurisdiction, grant a relief *in rem* still it can entertain a suit where relief sought can be obtained through the personal obedience of the defendant. The proviso is based on well known maxim "*equity acts in personam*", recognized by the Chancery Courts in England. The Equity Courts had jurisdiction to entertain suits respecting immovable properties situated abroad through personal obedience of the defendant. The principle on which the maxim was based was that courts could grant reliefs in suits respecting immovable property situate abroad by enforcing their judgments by process *in personam*, i.e. by arrest of defendant or by attachment of his property.

15. In *Ewing v. Ewing*, (1883) 9 AC 34 : 53 LJ Ch 435, Lord Selborne observed:

"The Courts of Equity in England are, and always have been, courts of conscience operating *in personam* and not *in rem*; and in the exercise of this personal jurisdiction they have always been accustomed to compel the performance of contracts in trusts as to subjects which were not either locally or *ratione domicilli* within their jurisdiction. They have done so, as to land, in Scotland, in Ireland, in the Colonies, in foreign countries."

16. The proviso is thus an exception to the main part of the section which in our considered opinion, cannot be interpreted or construed to enlarge the scope of the principal provision. It would apply only if the suit falls within one of the categories specified in the main part of the section and the relief sought could entirely be obtained by personal obedience of the defendant.

17. In the instant case, the proviso has no application. The relief sought by the plaintiff is for specific performance of agreement respecting immovable property by directing the defendant No. 1 to execute the sale deed in favour of the plaintiff and to deliver possession to him. The trial court was, therefore, right in holding that

the suit was covered by Clause (d) of Section 16 of the Code and the proviso had no application.

18. In our opinion, the submission of the learned Counsel for the appellant that the parties had agreed that Delhi Court alone had jurisdiction in the matters arising out of the transaction has also no force. Such a provision, in our opinion, would apply to those cases where two or more courts have jurisdiction to entertain a suit and the parties have agreed to submit to the jurisdiction of one court.”

(Emphasis supplied)

5.2 Vipul Infrastructure Developers Ltd. and Anr. v. Rohit Kochhar, 2008 (102) DRJ 178 (DB)

A suit for specific performance relating to a property in Gurgaon was filed in Delhi on the ground that the agreement was executed at Delhi and the defendants also carried on business at Delhi. The learned Single Judge held the suit to be maintainable on the ground that only a declaration of right and title in the property was sought and not the delivery of possession. The Division Bench overruled this judgment holding that Delhi Court had no jurisdiction to entertain and try the suit. The Division Bench was of the opinion that even when no prayer for declaration or delivery of possession of the suit was made, the relief of possession was inherent in the relief of specific performance. The Division Bench further held that the execution and registration of the sale deed would take place at Gurgaon for which the direction will have to be given to the defendant to move out of Delhi to Gurgaon for registration of sale deed and, therefore, the

case would not fall within the purview of the proviso to Section 16. This Court held as under:-

“12. Section 22 of the Specific Relief Act, on the other hand, provides that any person suing for specific performance of a contract for transfer of immovable property may, in an appropriate case sue, for possession, or partition and separate possession, of the property, in addition to such performance. It is further provided in the said provision that no relief under the said provision shall be granted by the court unless it has been specifically claimed, provided that where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

13. The aforesaid provisions of Section 22 of the Specific Relief Act came to be considered by the Supreme Court in the decision of Babu Lal (supra). In the said decision it was held by the Supreme Court that Section 22 of the Specific Relief Act provides that a person in a suit for specific performance of a contract for the transfer of immovable property, may ask for appropriate relief, namely, he may ask for possession, or for partition, or for separate possession including the relief for specific performance. The Supreme Court also took note of Sub-section (2) of this section which specifically provides that these reliefs cannot be granted by the Court, unless they have been expressly claimed by the plaintiff in the suit. The Supreme Court further went on to hold that the proviso to Sub-section (2), however, says that where the plaintiff has not specifically claimed these reliefs in his plaint at the initial stage of the suit, the court shall permit the plaintiff, at any stage of the proceedings, to include one or more of the reliefs mentioned above by means of an amendment of the plaint on such terms as it may deem proper. The Supreme Court examined the object and purpose of enacting the aforesaid provision and thereafter held that the said provision has been enacted to avoid multiplicity of suits and that the plaintiff may get appropriate relief without being hampered by procedural complications.

In the said decision the Supreme Court also took note of the expression "in appropriate cases" as appearing in Section 22(1) which was found to be most significant. While interpreting the said provision it was held by the Supreme Court that the said expression only indicates that it is not always incumbent on the plaintiff to claim possession or partition or separate possession in a suit for specific performance of a contract for the transfer of the immovable property. That has to be done where the circumstances demanding the relief for specific performance of the contract of sale embraced within its ambit not only the execution of the sale deed but also possession over the property conveyed under the sale deed. **The aforesaid proposition laid down by the Supreme Court was further explained holding that it may not always be necessary for the plaintiff to specifically claim possession over the property, the relief of possession being inherent in the relief for specific performance of the contract of sale.** The Supreme Court went on to hold that in a case where exclusive possession is with the contracting party, a decree for specific performance of the contract of sale simplicities without specifically providing for delivery of possession, may give complete relief to the decree-holder. In order to satisfy the decree against him completely the judgment debtor is bound not only to execute the sale-deed but also to put the property in possession of the decree-holder. This is also in consonance with the provisions of Section 55(1) of the Transfer of Property Act, 1882 which provides that the seller is bound to give, on being so required, to the buyer or such person as he directs, such possession of the property as its nature admits."

"18. In the present case, it is an admitted position that the appellant had entered into the aforesaid alleged contract at its Corporate office at Delhi. It is the specific stand of the appellant that they were initially residents of Delhi and that they had moved to Gurgaon and their corporate office is now also located at Gurgaon. It is the contention of the counsel appearing for the respondents that the proviso to Section 16 of Code of Civil Procedure is applicable which is sought to be invoked, for, the relief which is

sought for could be entirely enforced through the personal obedience of the defendants in Delhi. There is however not only a prayer in the plaint for declaration of the right and title, but also to transfer the right, title and interest in the suit premises situate at Gurgaon. **As, in our opinion, the suit can be decreed in favour of the plaintiff only when the Court can get the sale deed executed and registered in favour of the plaintiff which would confer the title of the suit premises on the plaintiff, and the execution and the registration of the sale document would have to take place at Gurgaon and, for this the Court will also have to pass a decree directing the defendant to get the sale deed executed and registered at Gurgaon, implication of the same will be that a direction will have to be given to the defendant that he shall have to move out of Delhi and go to Gurgaon and get the same registered. No sale deed is sought to be registered at Delhi and, therefore, in our considered opinion such a relief cannot be entirely obtained through the personal obedience of the defendant, who in this case has to go to the jurisdiction of another court to get the decree executed and the sale deed registered.**

19. Accordingly, we are of the considered opinion that the submissions of the learned Counsel for the respondent and the findings recorded by the learned Single Judge that the present case is covered by the proviso of Section 16 of the Code of Civil Procedure are misplaced. **In the facts and circumstances of the case as delineated, the relief in the present suit cannot be entirely obtained through the personal obedience of the defendants. The proviso to Section 16 of the Code of Civil Procedure would be applicable to a case where the relief sought for by the plaintiff was entirely obtainable through the personal obedience of the defendant, i.e., the defendant has not at all to go out of the jurisdiction of the Court for the aforesaid purpose. The present case is not a case of the aforesaid nature. In the present case for execution of the sale deed the defendants will have to go out of the**

jurisdiction of this Court and get the same executed and registered in Gurgaon.

20. In the present case also it is an admitted position that possession of the said property was with the seller and, therefore, in terms of the provisions of Section 55(1) of the Transfer of Property Act, 1882, the relief of possession is inherent in the relief of specific performance of the contract. In our considered opinion the ratio of the decision of the Supreme Court in Babu Lal (supra) and the principles laid down in the case of Harshad Chiman Lal Modi(supra) are applicable to the facts of the present case. In Harshad Chiman Lal Modi (supra) it was found that in addition to passing decree, the court was also required to deliver possession of the property. It was held that such a relief can be granted only by sending the concerned person responsible for delivery of possession to Gurgaon and the court at Delhi does not have the jurisdiction to get the aforesaid decree enforced for the property situate outside territorial jurisdiction of Delhi High Court. The Court while referring to the provisions of Section 16 of the CPC held that the location of institution of a suit would be guided by the location of the property in respect of which and for determination of any right or interest whereof the suit is instituted. The proviso to Section 16 CPC is also not applicable to the case, as the relief sought for cannot be entirely granted or obtained through the personal obedience of the respondent.

21. The decision of the Supreme Court in the case of Adcon Electronics Pvt. Ltd. v. Daulat and Anr., AIR 2001 SC 3712, relied upon by the respondents, would also not be applicable to the facts of the present case. The said decision was rendered in the context of the expression "suit for land". The Supreme Court in the said decision held that suit for specific performance of an agreement for sale of the suit property, without a claim for delivery of possession, cannot be treated as a "suit for land" and is, Therefore, triable under Clause 12 if the other conditions there under are fulfilled. **The facts of the said**

case are, therefore, distinguishable and are not applicable to the case in hand. The said decision was rendered due to specific provision therein and it is also apparent from the fact that the case of Babu Lal(supra) was not even referred to in that case.

22. Another decision of the Supreme Court which needs reference at this stage is the case of Begum Sabiha Sultan v. Nawab Mohd. Mansur Ali Khan and Ors., AIR 2007 SC 1636. In para 12 of the said judgment it was held by the Supreme Court that reading the plaint as a whole in this case, there cannot be much doubt that the suit is essentially in relation to the relief of partition and declaration in respect of the properties situate in Village Pataudi, Gurgaon, outside the jurisdiction of court at Delhi. In that view of the matter it was also held that the Delhi Court will have no jurisdiction to try and decide the aforesaid suit. It was also held in the said decision by following the decision of Harshad Chiman Lal Modi(supra) that the relief of partition, accounting and declaration of invalidity of the sale executed in respect of immovable property situate in Village Pataudi, Gurgaon, could not entirely be obtained by personal obedience to the decree by the defendants in the suit. It was further held that applying the test laid down therein, it is clear that the present suit could not be brought within the purview of the proviso to Section 16 of the Code or entertained relying on Section 20 of the Code on the basis that three out of the five defendants are residing within the jurisdiction of the court at Delhi.”

(Emphasis supplied)

5.3 Pantaloon Retail India Ltd. v. DLF Limited, 2009 (107) DRJ 228 (DB)

A suit for mandatory injunction relating to a property in Gurgaon was filed in this Court. The Division Bench of this Court following the judgments of the Supreme Court in **Babu Lal Vs. Hazari Lal Kishori Lal & Ors. 1982 (3) SCR 94** and **Harshad Chiman Lal**

Modi (supra), held that this Court had no jurisdiction to entertain and try the suit. The relevant portion of the said judgment is reproduced hereunder:-

“7. It is clear from a plain reading of Section 16 that in any suit where the relief claimed is of the nature described in Clauses (a) to (f), such a suit in respect of immovable property is to be instituted in the Court within the local limits of whose jurisdiction the property is situate. In the present case, immovable property is located in Gurgaon, Haryana, which is outside the local limits of Delhi. Clause (a) deals with recovery of immovable property and Clause (d) is about those suits where determination of any other right to or interest the property is called for. We are not concerned with other clauses in the present case. On the other hand, proviso to Section 16 lays down certain circumstances in which suit can be instituted even within the local limits of whose jurisdiction the defendant actually and voluntarily resides or carries on business or personally works for gain. Thus, normally a suit in respect of immovable property is to be filed where the subject-matter, i.e., the immovable property is situate. However, in the proviso an exception is laid down by providing that relief respecting or compensation for wrong to, immovable property can be obtained through the personal obedience of the defendant, the suit can also be instituted where the defendant resides etc. If the proviso is applicable, the principles stipulated in Section 20 of the Code would determine the territorial jurisdiction. In any case, in so far as the Court within local limits of whose jurisdiction the property is situate shall always have the jurisdiction even when case is covered by the proviso.

8. The question, therefore, is as to whether present case is covered by clause (a) or (d) of Section 16 of the Code on the one hand or proviso thereof is applicable and therefore, provisions of Section 20 of the Code can also be invoked.

9. To find answer to this question, we refer to certain precedents of the Apex Court as well as this Court. First case which needs mention is the

judgment of the Supreme Court in **Adcon Electronics Pvt. Ltd. v. Daulat and Anr., AIR 2001 SC 3712**. In that case, vide agreement dated 12.7.1986 immovable property situate in Indore, MP, was agreed to be sold by the defendant to the plaintiffs. Suit for specific performance was filed in the High Court of Judicature at Bombay (now Mumbai) praying, inter alia, for a declaration that agreement dated 12.7.1986 and Memorandum of Understanding dated 1.8.1987 was still subsisting and binding on the defendant and a decree for specific performance of the said agreement and the memorandum was sought. The defendant took objection to the maintainability of that suit in Mumbai on the ground that immovable property was situate in Indore, MP. This plea was not accepted by either the Single Judge or the Division Bench of the Bombay High Court. It is in these circumstances the appeal came to be filed against the judgment of the Bombay High Court, before the Supreme Court, by the defendant. The Supreme Court held that a suit for specific performance simplicitor, in the absence of an explicit prayer for delivery of possession of the suit property, would not be treated as a “suit for land.” After taking note of certain judgments of the High Courts as well as that of Federal Court, the Supreme Court summed up the legal position, with approval, in the following words:-

“14. In Debendra Nath Chowdhury v. Southern Bank Ltd., AIR 1960 Cal. 626, a Division Bench of the Calcutta High Court took the view that the suit for specific performance of the contract to execute and register a lease with alternative claims for damages is not a “suit for land” within the meaning of Clause 12 of the Letters Patent.

15. From the above discussion it follows that a “suit for land” is a suit in which the relief claimed relates to title to or delivery of possession of land or immovable property. Whether a suit is a “suit for land” or not has to be determined on the averments in the plaint with reference to the reliefs claimed therein; where the relief relates to adjudication of title to land or immovable property or delivery of

possession of the land or immovable property, it will be a “suit for land”. We are in respectful agreement with the view expressed by Mahajan, J. in **Moolji Jaitha** case (supra).”

10. The Court further observed that though in a suit for specific performance of contract for sale of immovable property containing a stipulation that on execution of the sale deed the possession of the immovable property will be handed over to the purchaser and because of that it is implied that delivery of possession of immovable property is a part of the decree of specific performance of the contract but having regard to the provisions of Section 22 of the Specific Relief Act, unless relief for possession is specifically asked for, no court can grant that relief. Discussion on this aspect is contained in para 17 of the judgment, which is reproduced below:

“17. It may be seen that Sub-section (1) is an enabling provision. A plaintiff in a suit for specific performance may ask for further reliefs mentioned in Clauses (a) and (b) thereof. Clause (a) contains reliefs of possession and partition and separate possession of the property, in addition to specific performance. The mandate of Sub-section (2) of Section 22 is that no relief under Clause (a) and (b) of Sub-section (1) shall be granted by the court unless it has been specifically claimed. Thus it follows that no court can grant the relief or possession of land or other immovable property, subject-matter of the agreement for sale in regard to which specific performance is claimed, unless the possession of the immovable property is specifically prayed for.”

11. On this basis, the Court held that as in the case before it relief for possession was not specifically claimed, suit for specific performance was not to be treated as “suit for land” and therefore, Bombay High Court had the jurisdiction to entertain the suit on the basis of

“cause of action”. Thus, the Court, in essence, held that where the suit filed is one for specific performance only without claim relief for possession, provision like Section 16 will have no application and the principle contained in Section 20 of the Code would be attracted for the purpose of determination of the territorial jurisdiction of a court.

12. We may point out at this stage itself that earlier judgment of the Supreme Court in the case of Babu Lal v. Hazari Lal Kishori Lal and Ors., [1982] 3 SCR 94 was not taken note of by the Supreme Court. In that case, the decree for specific performance simplicitor was passed by the Court. In the execution of the said decree, the decree holder wanted possession as well. In view of Section 22 of the Specific Relief Act, 1963 question arose before the Court as to whether decree for possession had to be specifically sought for. Referring to the provisions of Section 22 of the Specific Relief Act the contention of the judgment debtor was that as the plaintiffs had not claimed any relief for possession in the suit, they were precluded from claiming that relief at a subsequent stage. **This contention of the judgment debtor was not accepted holding that Section 22 was an enabling provision. The legislative history behind enacting Section 22, Specific Relief Act, 1963, was noted and the Court opined that even if such a relief was not claimed at the initial stage of the suit, the Court could permit the plaintiff to include this relief at the subsequent stage.** We may extract the following discussion in this behalf from the said judgment:-

“Section 22 enacts a rule of pleading. The Legislature thought it will be useful to introduce a rule that in order to avoid multiplicity of proceedings the plaintiff may claim a decree for possession in a suit for specific performance, even though strictly speaking, right to possession accrues only when suit for specific performance is decreed. The Legislature has now made a statutory provision enabling the plaintiff to ask for possession in the suit for specific performance and empowering the court to provide the

decree itself that upon payment by the plaintiff of the consideration money within the given time, the defendant should execute the deed and put the plaintiff in possession.

The section enacts that a person in a suit for specific performance of a contract for the transfer of immovable property, may ask for appropriate reliefs, namely, he may ask for possession, or for partition, or for separate possession including the relief for specific performance. These reliefs he can claim, notwithstanding anything contained in the Code of Civil Procedure 1908, to the contrary. Sub-section (2) of this section, however, specifically provides that these reliefs cannot be granted by the Court, unless they have been expressly claimed by the plaintiff in the suit. Sub-section (2) of the section recognized in clear terms the well-established rule of procedure that the court should not entertain a claim of the plaintiff unless it has been specifically pleaded by the plaintiff and proved by him to be legally entitled to. The proviso to this Sub-section (2), however, says that where the plaintiff has not specifically claimed these reliefs in his plaint, in the initial stage of the suit, the court shall permit the plaintiff at any stage of the proceedings, to include one or more of the reliefs, mentioned above by means of an amendment of the plaint on such terms as it may deem proper. The only purpose of this newly enacted provision is to avoid multiplicity of suits and that the plaintiff may get appropriate relief without being hampered by procedural complications."

13. In first blush, one gets an impression that the judgment of the Supreme Court in *Adcon Electronics* (supra) is in conflict with *Babu Lal* (supra) in so far as the interpretation of Section 22 of the Specific Relief Act is concerned. Dr. Singhvi, learned senior advocate appearing for the appellant (plaintiff), however, made an endeavour to demonstrate that there was no

such contradiction and the two cases could be reconciled. His submission was that though it was necessary to make a prayer for decree of possession to claim that relief as held in Adcon Electronics (supra), at the same time it was only an “enabling” provision and therefore, even if this relief is not claimed at the initial stage, amendment at subsequent stage to include this relief was permissible. Though this argument is contentious, we refrain from expressing a final view since this aspect does not arise for consideration. However, we would refer to the judgment in Babu Lal (supra) for other purpose at the appropriate stage.”

5.4 Splendor Landbase Limited (M/S.) v. M/s. Mirage Infra Limited, 2010 V AD (Delhi) 19 (DB)

A suit for declaration and permanent injunction relating to a property situated at Chandigarh was filed at Delhi on the ground that the agreement was executed at New Delhi and payments were also made at New Delhi. The Division Bench of this Court following the judgments of the Supreme Court in **Harshad Chiman Lal Modi (supra)** and of Division Bench of this Court in **Vipul Infrastructure Developers Ltd. (supra)** and **Pantaloon Retails India Ltd. (supra)** held that this Court had no jurisdiction to entertain and try the suit. The relevant findings of this Court are as under:-

“25. Having considered the decisions referred by the parties and on a plain reading of the plaint as a whole, it is clear as we have indicated above that the present suit is one which comes within the purview of Section 16(d) of the CPC and the proviso of Section 16 of CPC is not applicable under the circumstances as the proviso of Section 16 of CPC is an exception to the main part of the Section which cannot be construed to enlarge the scope of the main provision. If the suit comes within

Section 16(d) of the CPC, it has been held by the Apex Court in Harshad Chiman Lal Modi's case (supra) that Section 20 of the Code would have no application in view of the opening words of Section 20 "subject to limitations aforesaid". The Apex Court has held that the proviso to Section 16 would apply only if the relief sought could entirely be obtained by personal obedience of the defendant. The proviso we feel will only apply if the suit falls within one of the categories specified in the main part of the Section. **In the present case, although specifically the relief for possession of the property has not been claimed by the Appellant in the prayer for the purpose of development, however, it is settled law that by clever drafting a party cannot be permitted to come within different meaning of relief claimed. Hence, no benefit can be derived by the Appellant either from the proviso of Section 16 or Section 20 of the Code of Civil Procedure."**

(Emphasis supplied)

5.5 Adcon Electronics Pvt. Ltd. v. Daulat and Anr., AIR 2001 SC 3712

A suit for specific performance relating to a property at Indore was instituted at Mumbai. The Supreme Court held the suit to be maintainable on the ground that the suit for specific performance simplicitor in the absence of an explicit prayer for delivery of possession of the suit property would not be treated as a suit for land. However, the earlier judgment of **Babu Lal (supra)** was not taken note of in Adcon's case. In Babu Lal's case, the Supreme Court held that the relief of possession is inherent in the relief of specific performance under Section 22 of the Specific Relief Act, 1963 read with Section 55(1) of the Transfer of Property Act, 1882 and the plaintiffs can seek an amendment to claim delivery of

possession at any stage of the suit. Adcon's case was distinguished by the Division Bench of this Court in the case of **Vipul Infrastructure Developers Ltd. (supra)** and **Pantaloon Retail India case (supra)**. The findings of the Division Bench of this Court in **Vipul Infrastructure Ltd. (supra)** are reproduced hereunder:-

"16. In Babu Lal's case (supra) it was also held that in satisfaction of a decree for specific performance of a contract for sale, the handing over of the possession of the property is incidental. Thus the judgment debtor has to not only to execute the sale deed, but also to deliver the property to decree holder. Further reference was also made in the said case to a Division Bench decision of the Calcutta High Court in a case titled as Subodh Kumar Banerjee v. Hiramoni Dasi and Ors., AIR 1955 Cal. 267, wherein it was held that in view of Clause (1) of Section 55 unless there is a contract to the contrary, giving delivery of the possession to the buyer by the seller is an incident of a contract for sale, and that right springs out of the contract which is being specifically enforced and as a net result of the execution and completion of conveyance. The aforesaid provision has to be read harmoniously with the provisions of Section 22 of the Specific Relief Act. The decisions which are referred to in this judgment and relied upon by the counsel appearing for the parties at different stages also throw light on the aforesaid aspect. **It is established from the ratio of the aforesaid decisions that it could be possible by filing a suit not only to seek a declaration of the right and title and to enforce an agreement to sell, but an amendment thereto could also be obtained seeking for decree of delivery of possession at any stage of the suit, even at the execution stage."**

6. Findings

6.1 The principles laid down by the Supreme Court in the cases of **Babu Lal (supra)** and **Harshad Chiman Lal Modi (supra)** and three Division Bench judgments of this Court in **Vipul Infrastructure Developers Ltd. (supra)**; **Pantaloon Retail India case (supra)** and **Splendor Landbase Limited (supra)** are summarized as under:-

6.1.1 This Court has no jurisdiction to entertain and try a suit for specific performance relating to an immovable property situated outside Delhi because the relief cannot be entirely obtained through the personal obedience of the defendant under the proviso to Section 16 of the Code of Civil Procedure as the defendant will have to go out of the jurisdiction of this Court to get the sale deed registered outside Delhi.

6.1.2 The relief of possession is inherent in the relief of specific performance under Section 22 of the Specific Relief Act, 1963 read with Section 55(1) of the Transfer of Property Act, 1882 and the plaintiffs can seek an amendment to claim delivery of possession at any stage of the suit.

6.1.3 This Court has no jurisdiction to get the decree of possession enforced for the property situated outside Delhi.

6.1.4 The proviso to Section 16 cannot be interpreted or construed to enlarge the scope of the principal provision.

6.2 In CS(OS) No.2354/2010, the defendants are not even residing within the jurisdiction of this Court.

6.3 For the reasons as aforesaid, the proviso to Section 16 of the Code of Civil Procedure is not applicable to the present cases.

7. Conclusion

In the facts and circumstances of this case and following the judgments of the Supreme Court in **Babu Lal (supra)** and **Harshad Chaman Lal Modi (supra)** and three judgments of Division Bench of this Court in **Vipul Infrastructure Developers Ltd. (supra)**, **Pantaloon Retail India Ltd. (supra)** and **Splendor Landbase Limited (supra)**, it is held that this Court has no territorial jurisdiction to entertain and try the suits for specific performance relating to the properties situated outside Delhi (Noida, Gautam Budh Nagar, U.P. in CS(OS) No.2354/2010 and Noida in CS(OS) No.1671/2009). Consequently, both the suits are returned to the plaintiffs under Order VII Rule 10 of the Code of Civil Procedure for being presented to the proper Court.

J.R. Midha, J.

JULY 15, 2011
s.pal