

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.11/2023

Sri Kandarpa Narayan Paul, Son of Late Dhirendra Chandra Paul, resident of Durganagar, P.O. & P.S.-Khowai, District-Khowai, Tripura.

..... Petitioner(s).

V E R S U S

Sri Sudip Datta, Son of Sri Shyamal Datta, resident of North Jambura, P.O. & P.S.-Khowai, District-Khowai, Tripura.

.....Respondent(s).

For Petitioner(s) : Mr. Sankar Lodh, Advocate.

For Respondent(s) : None.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Date of hearing and judgment: **04th January, 2024.**

Whether fit for reporting : **YES.**

JUDGMENT & ORDER(ORAL)

Proof of notice through paper publication has been submitted by the learned counsel for the petitioner on 12.12.2023. The date of appearance of the respondent was 13.12.2023 but the respondent has not entered appearance despite valid service of notice.

Heard Mr. Sankar Lodh, learned counsel appearing for the petitioner.

2. The present revision petition under Article 227 of the Constitution of India arises out of the order dated 12.12.2022 passed by the learned Civil Judge (Senior Division), Khowai in case No. Title Suit 04 of 2020 whereby the learned trial Court has rejected the petition filed by the plaintiff/petitioner for correction of the judgment and decree dated 09.09.2022.

3. The plaintiff/petitioner had preferred T.S. No.04 of 2020 for the following reliefs:

"(i) Pass a decree directing the defendant to perform her part of obligation by executing the registration of the sale deed for the land, mentioned in the Schedule below.

(ii) In the event of non-compliance of the decree by the defendant, the Ld. Court would be pleased to execute the registration of the sale deed so presented in respect of the suit land in favour of the plaintiff on behalf of the defendant.

(iii) The Ld. Court would be pleased to direct the defendant to deliver possession of the suit land to the plaintiff within the period to be fixed by the Ld. Court and on the failure of the defendant, to deliver the possession of the suit land to the plaintiff through the process of Court.

(iv) Pass a decree for costs of the proceeding.

(v) Pass any other Decree/Order as may be deemed fit and proper for fair ends of justice."

4. The suit land appertains to Khatian No.4030, comprised in R.S. Plot No.6038/9098 measuring 0.005 acre according to the revenue record of Bastu (Nal) class of land as per the boundary described in the schedule. The learned trial Court framed the following issues for determination:

"(i) Whether the suit is maintainable in its present form and nature?

(ii) Whether the defendant had entered into an agreement with the plaintiff for selling the suit land described in schedule of the plaint in exchange of total sale consideration of Rs.4,000,00/- (Rupees four lakhs) only?

(iii) Whether the plaintiff is entitled to a decree directing the defendant to perform his part of obligation by executing the registration of the sale deed in respect of the suit land as mentioned in schedule of the plaint after taking balance consideration money from the plaintiff?

(iv) Whether the plaintiff is entitled to get any other relief or reliefs including cost of the proceedings and if so, up to what extent?"

All the issues were decided in favour of the plaintiff.

5. The suit was decreed without contest as the defendant did not appear. The operative part of the judgment was couched in the following terms:

"As a corollary to the discussion and decision made on all the foregoing issues I am of the considered opinion that the plaintiff is successful in proving that the defendant had entered into an agreement with the plaintiff for selling the suit land described in schedule of the plaint in exchange of total sale consideration of Rs.4,000,00/- (Rupees four lakhs) only. The plaintiff is also successful to prove that he is entitled to a decree directing the defendant to perform his part of obligation by executing the registration of the sale deed in respect of the suit land as mentioned in schedule of the plaint after taking balance consideration money from the plaintiff.

ORDER

In the result, the suit of the plaintiff is hereby decreed.

It is hereby declared that the plaintiff is entitled to a decree directing the defendant to perform his part of obligation by executing the registration of the sale deed in respect of the suit land as mentioned in schedule of the plaint after taking balance consideration money from the plaintiff.

Thus, the case is disposed of without contest.

Prepare a decree accordingly and place before me for my signature within 15 days from today.

PRONOUNCED IN OPEN COURT

Given under my hand and seal on this the 09th day of September, 2022 at Khowai."

6. Apparently, the learned trial Court did not direct delivery of possession in favour of the plaintiff though such a relief was claimed for and despite the Court granting relief of specific performance of the agreement for sale by directing execution of registration of the sale deed by the defendant in respect of the suit land after taking balance consideration money from the plaintiff. The plaintiff, therefore, sought correction of the decree under Sections 151 and 152 of the CPC by directing complementary relief of handing over of

the possession of the suit land. The learned trial Court after noticing the provisions of the Section 152 of the CPC, however, rejected the prayer holding that such amendment in the judgments, decrees or orders contemplated under Section 152 of the CPC is confined to correction of clerical or arithmetical mistakes therein arising from accidental slip or omission.

7. In this regard, learned counsel for the petitioner has relied upon the decision of the Apex Court in the case of *Manickam alias Thandapani and another vrs. Vasantha* reported in *2022 SCC OnLine SC 2096*. Learned counsel for the petitioner has taken this Court to the discussion on the newly added provisions of Section 22 of the Specific Relief Act, 1963 and the decisions on this point. He submits that the Apex Court has in a similar situation relating to delivery of possession at the stage of execution arising out of a decree for specific performance of the contract discussed the divergence of opinions in the regime prior to the enactment of the Act as to whether relief of possession is to be specifically claimed and the judgments of the Apex Court and thereafter come to a conclusion that the provisions of Section 22 though couched in a negative language are not mandatory in view of the proviso of sub-section (2) which allows the plaintiff to amend the plaint on such terms as may be just for including a claim for such relief "at any stage of the proceeding". The Apex Court also held that the expression "at any stage of the proceeding" would include plaintiff to seek relief of possession even at the appellate stage or in execution even if such prayer was required to be claimed. It is submitted that in similar circumstances, the Apex Court set aside the order passed by the High Court denying relief at the execution stage and directed the Executing Court to ensure that decree is executed even if there is a construction on any part of the land agreed to be sold, and the possession is delivered in

accordance with law. It is submitted that the learned trial Court was oblivious of the legal position and as such, committed an error of jurisdiction which requires to be corrected in exercise of the powers under Article 227 of the Constitution of India.

8. I have considered the submission of learned counsel for the petitioner in the background of the relevant facts, pleadings, relief claimed by the plaintiff/petitioner and the judgment rendered by the learned trial Court in T.S. No.04 of 2020 granting the decree of specific performance of the agreement for sale in favour of the petitioner.

9. It, however, appears that though a relief for delivery of possession was specifically claimed by the plaintiff/petitioner but no specific relief was granted in favour of the petitioner. The suit was decreed without contest. The petitioner has thereafter sought correction of the decree invoking Sections 151 and 152 of the CPC for incorporating the relief of handing over the possession of the suit land though it was not specifically granted by the learned trial Court. In this regard, the opinion of the Apex Court in the cited case of ***Manickam alias Thandapani and another*** (supra) is profitable to be quoted hereinafter. The facts of the case of ***Manickam alias Thandapani and another*** (supra) indicate that the appellants had approached the Apex Court against the order dated 14.03.2017 passed by the High Court of Judicature at Madras whereby the Execution Petition filed by the appellants/decreed holders to seek possession of the property of which sale deed was executed in their favour was found to be not maintainable. The respondent-defendant being the owner of the vacant plot measuring 2400 sq. feet had entered into a sale agreement with the appellants. One of the conditions in the agreement was that the respondent would

handover vacant possession of the suit property to the appellants. The appellants filed a suit seeking specific performance of the said agreement and directing the respondent to execute the sale after receiving the balance sale consideration, failing which the Court may execute the sale deed in favour of the appellants. The respondent filed a written statement claiming that there cannot be a sale of any vacant plot unless the competent authority under the Urban Land Ceiling enactment gives the necessary permission. The respondent admitted the agreement and averred that the appellants had failed to take steps for permission from the competent authority. In the additional statement filed on 29.03.1985, the respondent pleaded that she sold another plot to one Lakshmipathy in order to discharge the debt of Lakshmipathy. The learned trial Court vide order dated 27.11.1985 declined to grant decree for specific performance but granted nominal damages of Rs.5,000/- to the appellants and recovery of the amount deposited. The First Appellate Court decreed the suit while setting aside the decree passed by the learned trial Court and the appellants were given time for depositing the balance sale consideration. The intra-court appeal preferred by the respondent was also dismissed. The Special Leave Petition against the said order was also dismissed. The appellants deposited the balance sale consideration but the respondent did not come forward to execute the sale deed. Thereafter, the representative of the learned Executing Court executed the sale deed on 26.04.2007 with the following assertions:

"NOW by this deed of sale the property fully described in the schedule hereunder is hereby transferred, conveyed and assigned to the purchasers with all privileges, easements and advantages whatsoever to the said property to be occupied and enjoyed with

absolute right, title and interest without any claim of demand whatsoever to any one, free from all encumbrances.

THE PURCHASERS shall hereafter peacefully and quietly possess and enjoy the property, described hereunder without any interruption or disturbances whatsoever from the vendors or any person claiming through her."

10. Thereafter, the appellants filed Execution Petition No.60 of 2009 for directing the respondent to put the decree-holders in possession of the property conveyed. Such application was resisted on the ground that it had been filed under Order XXI Rule 35(3) of the Civil Procedure Code, 1908 which deals with delivery of possession of any building but does not include vacant site. The application was required to be filed under Order XXI Rule 35(4). It was also pointed out that as per the decree-holders the plot was not a vacant land and had a pucca brick built double-storey house property and the judgment debtor was only in possession of 750 sq. feet. Such application was allowed by the Executing Court holding that since the plaintiff/petitioner had already obtained a decree of specific performance and the sale deed was also executed in their favour and as per the sale deed, the Court was of the opinion that the petitioner/decreed holders are entitled for the relief of delivery of possession. Therefore, the respondent is liable to hand over possession of the property to the petitioners/decreed holders as per the decree. The appeal against the said order was dismissed. Thereafter, the respondent preferred a petition under Article 227 of the Constitution of India which was allowed by the High Court on the ground that no decree was granted to the appellants in respect of delivery of possession to the decree holders. Therefore, the execution for delivery of possession is not maintainable. The Apex Court after dealing with

the provisions of Section 22 of the Specific Relief Act which was added upon recommendation of the Law Commission in its 9th Report submitted on 19th July, 1958 also noticed the provisions of Section 28(3) & (4) and Section 55(1)(f) of the Transfer of Property Act, 1882. It also considered the divergence of opinions in the regime prior to the enactment of the Act as to whether relief of possession is to be specifically claimed and after discussing the decisions for and against on this proposition came to the following conclusion which are being profitably extracted hereunder:

"24. The learned Single Bench in the impugned judgment herein has not taken into consideration the judgment of the Madras High Court in *Krishnamurthy Gounder v. Venkatakrishnan*. The said judgment arose on the fact that the plaintiff filed the suit for Specific Performance of an Agreement of Sale and also for recovery of possession but the decree for possession was not granted. The Court held as under:

"6. In the Judgment of this Court reported in *S. Sampooram v. P.V. Kuppuswamy*, (2007) 3 CTC 529, also the same principles are reiterated and it was held that even in the absence of any prayer for possession once a Suit for Specific Performance is decreed the Court has got every power to order delivery of possession. Further, according to me, the Court has got power to grant the relief of possession even in the absence of any such prayer as per the proviso to Section 22(2) of the Specific Relief Act the Court shall at any stage of the proceedings allow the Plaintiff to amend the Plaint to include the relief. In my opinion, a discretion is vested on the Court to allow the amendment and even in the absence of any prayer and even in the absence of any Application for amendment, the Court can grant the relief of recovery of possession once the Suit is decreed for Specific Performance. These aspects were not properly appreciated by the Court below and the Court below approached the Application in a pedantic manner and dismissed the application without appreciating the Judgments of the Hon'ble Supreme Court and of our High Court."

25. A perusal of the aforesaid judgments would show that relief of possession is ancillary to the decree for specific performance and need not be specifically claimed. That was the position even under the Specific Relief Act, 1877. Section 22 of the Act was introduced in pursuance of the recommendation of the Law Commission to avoid

multiplicity of proceedings and to cut down the delay. Therefore, though the preponderance of judicial opinions under the Specific Relief Act, 1877 was in favour of the fact that relief of possession is ancillary to the decree for specific performance, it was further clarified by introducing Section 22 of the Act.

26. The matter can be examined from another angle as well. Section 22(2) of the Act, though is worded in negative language, “no relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed”, but the proviso takes out the mandatory nature from the substantive provision of sub-section (2) when the plaintiff is allowed to amend the plaint on such terms as may be just for including the plaint for such relief “at any stage of the proceeding”. “At any stage of the proceeding” would include the proceeding in suit or in appeal and also in execution. The proviso to sub-section (2) of Section 22 of the Act contemplates that the Court shall, at any stage of the proceedings, allow the plaintiff to amend the plaint on such terms as may be just for including a claim for such relief. The said proviso makes the provision directory as no penal consequences follow under sub-section (2) of Section 22. Therefore, sub-section (2) of Section 22 is a rule of prudence to ask for possession “in an appropriate case”. The appropriate case would not include a suit for specific performance simpliciter but may include a suit for partition or a suit when the decree is to be executed against a transferee. Sub-section (2) cannot be said to be a mandatory provision as the power to claim relief at any stage of the proceeding makes sub-section (2) directory. Sub-section (2) is a matter of procedure to avoid multiplicity of proceedings. The procedural laws are handmaid of justice and cannot defeat the substantive rights. Reference may be made to *Ganesh Trading Co. v. Moji Ram* wherein it was held as under:

“2. Procedural law is intended to facilitate and not to obstruct the course of substantive justice. Provisions relating to pleadings in civil cases are meant to give to each side intimation of the case of the other so that it may be met, to enable courts to determine what is really at issue between parties, and to prevent deviations from the course which litigation on particular causes of action must take.”

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29. To examine whether a provision is directory or mandatory, one of the tests is that the court is required to ascertain the real intention of the legislature by carefully attending to the whole scheme of the statute. Keeping in view the scheme of the statute, we find that Section 22(2) of the Act is only directory and thus, the decree-holder cannot be

non-suited for the reason that such relief was not granted in the decree for specific relief.

30. The defendant in terms of the agreement is bound to handover possession of the land agreed to be sold. The expression “at any stage of proceeding” is wide enough to allow the plaintiffs to seek relief of possession even at the appellate stage or in execution even if such prayer was required to be claimed. This Court in *Babu Lal* has explained the circumstances where relief of possession may be necessary such as in a suit for partition or in a case of separate possession where the property conveyed is a joint property. In the suit for specific performance, the possession is inherent in such suit, therefore, we find that the decree-holders are in fact entitled to possession in pursuance of the sale deed executed in their favor.

31. The judgment debtor in the written statement has admitted that the property is a vacant land and that she has sold other portion in favor of one Lakshmipathy. The stand of the judgment debtor now that the respondent is in possession of 750 sq. feet would not defeat the right of possession of 2400 sq. feet of an area which she has agreed to sell to the plaintiffs in respect of which decree was passed. All sales affected, and the construction, if any, raised are subject to lis pendens and no legal or equitable rights arise in favour of the purchasers during the pendency of the proceedings. Therefore, the decree-holders are entitled to actual physical possession of 2400 sq. feet of land which was agreed to be sold to the appellants.

32. The appeal is thus allowed. The order passed by the High Court is hereby set aside. The Executable Court shall ensure that such decree is executed and if any construction is raised on any part of the land agreed to be sold, the possession shall be delivered with or without construction in accordance with law."

11. It is thus clear that the ancillary relief of delivery of possession in a suit for specific performance can be claimed at any stage including that of the execution. In the instant case, the petitioner/plaintiff had prayed for the ancillary relief of delivery of possession of the suit land besides asking for the substantive relief of execution of the agreement by the defendant upon deposit of the balance amount of consideration by the plaintiff. The learned trial Court decreed the suit by directing the defendant to execute the registration of the

sale deed in respect of the suit land after taking balance consideration money from the plaintiff but failed to grant the ancillary relief of delivery of possession without which the execution of the registration of the sale deed on the part of the defendant could be only a paper transaction. The learned trial Court, however, refused to amend the decree on the ground that such a prayer cannot be allowed on the ground that Section 152 of the CPC provides for amendment of the judgments, decrees or orders only for correction of clerical or arithmetical mistakes or accidental slip or omission. The opinion of the Apex Court rendered in the case of *Manickam alias Thandapani and another* (supra), however, makes the legal position clear that such a prayer can also be made at the stage of execution of the decree in a case for specific performance of the agreement for sale even if not claimed by the plaintiff during the proceedings of the trial.

11. In the present case, the plaintiff had made a prayer for delivery of possession after execution of the sale deed which the learned trial Court perhaps inadvertently failed to allow. In such circumstances, the impugned order dated 12.12.2022 passed by the learned Civil Judge (Senior Division), Khawai in case No. Title Suit 04 of 2020 be set aside. The matter is remitted to the learned trial Court to consider the application of the petitioner for correction of the decree in accordance with law.

12. Accordingly, the revision petition stands allowed and disposed of.
Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH), CJ

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