

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 17.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

C.R.P.NPD.Nos.3974 and 3975 of 2013

The Salem District Tamil (Strct)
Baptist Trust Society+

Registration No.123/1967 represented by its
Secretary, D David Livingstone
No.84, S.B.M.Compound
Trichy Road
Namakkal-637 001

.. Petitioner
in both the petitions

Versus

1.J.Samuvel Ponniah
2.M.Raja Victor
3.S.Viswanathan
4.Represented by their power agents
Samson Papli
5.Mr.Gul-J-Panjabi
6.S.Paul Raj
7.J.C.Prakash
8.S.B.M. Trust Namakkal represented by
Paul Enoch
S/o.Paul
Chairman
SBM Church
Kakkaveri Post
Rasipuram Taluk (Deceased)
9.M.Gnanathickam
10.John

.. Respondents
in both the petitions

Prayer in C.R.P.No.3974 of 2013: Revision petition is filed under Article 227 of the Constitution of India as against the order dated 03.10.2013 and made in E.P.No.23 of 2013 in O.S.No.473 of 2003 on the file of the Subordinate Court, Namakkal.

Prayer in C.R.P.No.3975 of 2013: Revision petition is filed under Article 227 of the Constitution of India as against the order dated 03.10.2013 and made in E.A.No.159 of 2013 in E.P.No.23 of 2013 in O.S.No.473 of 2003 on the file of the Subordinate Court, Namakkal.

For Petitioner	: Mr.P.Wilson Senior counsel for Mr.R.Karthikeyan
For Respondents	: Mr.D.Saravanan for R1 to R7 R8 and R9 died R10 given up

ORDER

These memorandum of Civil Revision Petitions have been directed as against the fair and decretal orders dated 03.10.2013 and made in E.A.No.159 of 2013 and E.P.No.23 of 2013 in the suit in O.S.No.473 of 2003 on the file of the learned Subordinate Judge, Namakkal.

2. The petitioner in both the revision petitions is a third party to the above said suit, whereas the respondents 1 to 3 herein are the plaintiffs. They are represented by their Power agents viz., Respondents 4 to 7. The respondents 8 to 10 herein are the defendants 1 to 3 in the suit.

3. The respondents 8 and 9/defendants 1 and 2 have been reported dead. The tenth respondent, being the third defendant, in the suit has been given up.

4. The respondents 1 to 3 herein had filed a suit in O.S.No.473 of 2003 as against the respondents 8 to 10 seeking the following relief:

"To direct the defendants (respondents 8 to 10) to execute a registered deed of sale free of all encumbrances in their favour (Respondents 1 to 3) at their cost within a time to be specified by the Court, in case of non-compliance, execute a registered deed of sale in their favour by the Court itself"

5. This suit was left uncontested as the respondents 8 to 10 remained *ex parte*, which resulted in passing of an *ex parte* decree on 06.08.2003 as prayed for. On the strength of the decree dated 06.08.2003, the respondents 1 to 3 being the decree holders, had taken out execution proceedings and the sale deed was executed by the executing court in favour of the decree holders. Thereafter the decree holders had filed another execution petition in E.P.No.23 of 2013 on the file of the Subordinate Judge, Namakkal under Order XXI Rule 35 CPC for delivery of vacant possession of the suit property. The notice, which were ordered to be sent to the respondents 8 to 10/defendants 1 to 3, were returned with an endorsement saying that the respondents 8 and 9 / defendants 1 and 2 were dead. Insofar as 10th respondent herein (D3) is concerned, he was served but called absent. That was recorded by the executing Court. Under this circumstance, the respondents 1 to 3/plaintiffs had filed a memorandum before the executing Court saying that the judgment debtor was only a Trust represented by their Chairman, Secretary and Treasurer and that they came to know that the

Chairman and Secretary had already been expired and the judgment debtor can therefore be represented by the Treasurer Mr. John, who is the third respondent herein/third defendant in the suit. Therefore they had requested the executing Court to delete the names of the Chairman and Secretary from the execution petition in E.P.No.23 of 2013.

6. It is significant to note here that the respondents 1 to 3/deGREE holders have not specifically prayed for delivery of possession in the plaint prayer portion. When the execution petition came to be filed by them to direct the respondents 8 to 10/defendants 1 to 3 to execute a registered sale deed in their favour, the following crucial question was arisen before the executing Court for the disposal of the execution petition:-

"Can the executing Court, while executing the decree direct delivery of possession in the absence of specific direction to that effect in the decree?"

7. In order to find the answer for the above question, the learned Subordinate Judge, Namakkal after placing reliance upon a decision in **S. S. Rajabathar v. N. A. Sayeed** reported in **AIR 1974 Madras 289 (Vol.61, C.87)** has observed that since the relief of delivery of possession is only an incidental to the execution of conveyance in favour of the decree holder, the Court can direct the judgment debtor to deliver possession to the decree holder.

8. The learned Subordinate Judge has also relied upon an another

decision of this Court in ***Duraisamy and Ors. Vs. Periyasamy and Ors*** reported in 2012 (4) LW 729. In this case it has been held that as contemplated under Order XXI Rule 35 CPC as well as Section 22 of the Specific Relief Act, 1963 delivery of possession can be ordered. The learned Subordinate Judge has also observed that as decided by this Court (Madras High Court) in the decision cited supra viz., 2012 (4) LW 729, the delivery of possession can also be claimed after adding the relief for possession as contemplated under Section 22 of the Specific Relief Act and further held that the plaint as well as the decree ought to be amended. In pursuant to the order dated 12.06.2013, the respondents 1 to 3/deGREE holders had filed a petition in I.A.No.497 of 2013 under Order VI Rule 17 r/w. Section 151 CPC on the file of the trial Court to permit them to amend the plaint prayer (b) in the suit in O.S.No.473 of 2003 as under:

"(b) to direct the defendants to deliver the vacant possession of the suit properties morefully described in the suit schedule to the plaint."

9. As aforesaid the defendants 1 and 2 who are the Respondents 8 and 9 herein had already died and notice was served on the third defendant (10th respondent herein). Since he had not chosen to appear, he was called absent and set ex parte. Therefore the petition was allowed on 30.07.2013. Thereafter the prayer (b) was suitably amended in the plaint. Subsequently, the delivery was ordered on 23.08.2013.

10. At this stage, a written objection was filed on 27.08.2013 by the

petitioner herein viz., Salem District Tamil (Strict) Baptist Trust Society represented by its Secretary D.David Livingstone on the ground that the decree itself is invalid and therefore it could not be executed effectively and based on the non-executable decree, delivery could not be ordered. On account of the written objection dated 27.08.2013, delivery was not effected. Thereafter the decree holders seems to have filed an application in E.A.No.159 of 2013 under Section 151 of the Code of Civil Procedure before the executing Court to direct the Inspector of Police, Namakkal Town, Namakkal to give police aid to execute the warrant of delivery in the execution petition in E.P.No.23 of 2013.

11. It is revealed from the records that the respondents in this petition were called absent and set *ex parte* on 03.10.2013. It is also manifested from the records that the petitioner herein (Salem District Tamil (Strict) Baptist Trust Society represented by its Secretary D.David Livingstone) appears to have filed a suit in O.S.No.187 of 2013 as against the respondents 1 to 3 (plaintiffs in the suit O.S.No.473 of 2003) and the respondents 4 to 7 herein (being the power agents of respondents 1 to 3) as well as against the 10th respondent herein and thereby sought the following reliefs:

1. To set aside the decree dated 06.08.2013 and made in the suit in O.S.No.473 of 2003;
2. To grant the relief of permanent injunction as against the defendants 1

to 3 therein (plaintiffs in O.S.No.473 of 2003) as well as against the defendants 5 to 8 therein (respondents 4 to 6 herein who are the power agents of the plaintiffs 1 to 3/deGREE holders 1 to 3) restraining them from making encumbrances or alienation in respect of the suit property based on the decree obtained by the defendants 1 to 3 (decree holders 1 to 3 in the suit in O.S.No.473 of 2003).

12. Along with the above suit, the petitioner herein had also filed two interlocutory applications in I.A.Nos.516 and 517 of 2013 for granting an order of ad-interim injunction as against the defendants therein and to stay the operation of the decree and judgment of the suit in O.S.No.473 of 2013 till the disposal of the execution petition in E.P.No.23 of 2013. It is reliably understood that the above suit in O.S.No.187 of 2013 and the interlocutory applications in I.A.No.516 and 517 of 2013 are still pending.

13. As aforesaid these two revision petitions have been filed as against the order dated 03.10.2013 and made in the application in E.A.No.159 of 2013 and E.P.No.23 of 2013 on the file of the learned Subordinate Judge, Namakkal for ordering delivery of possession and providing police protection to the respondents decree holders for taking delivery of possession.

14. Heard Mr.P.Wilson, learned senior counsel appearing on behalf of

Mr.R.Krishnamurthy, learned counsel, who is on record for the revision petitioner and Mr.D.Saravanan, learned counsel appearing for respondents 1 to 7.

15. Mr.P.Wilson, has projected his arguments on the following grounds:

a) The executing Court, on 19.09.2013, had recorded that there was resistance or obstruction for delivery of possession. It is trite law that once there is a resistance or obstruction, the executing Court ought to have adjudicated the issue upon an application filed by the decree holder in that behalf.

b) The order of the executing Court is entirely contrary and in violation of Order XXI Rule 97 and 98 of Code of Civil Procedure.

c) It is settled principle of law that if a decree is sought to be executed after two years of its passing, the judgment debtors had to be put on notice of the execution proceedings.

d) The learned Subordinate Judge, Namakkal had played a dual role in exercising both the original jurisdiction as well as the powers of executing Court.

e) The SBM Society had not been made as a party to the suit and any decree passed in respect of the properties belong to the society would not be binding on SBM Society, who is the petitioner herein.

f) Admittedly, the first and second defendants (judgment debtors 1 and

2) in O.S.No.473 of 2003 had died. Under such circumstance, the executing Court could not have ordered for amendment of the plaint and decree in O.S.No.473 of 2003 against the defendants 1 and 2.

g) The suit in O.S.No.473 of 2003 was filed only for specific performance of contract of sale and to execute the sale deed. In pursuant to the decree, the sale deed was executed by the executing Court in execution petition in favour of the decree holder and therefore nothing survives in the decree in O.S.No.473 of 2013 for filing the present execution petition in E.P.No.23 of 2013 and the decree holder could not seek to amend the plaint and decree in the suit in O.S.No.473 of 2003 after the same was properly executed as early as in the year 2004.

h) The petitioner had filed a written objection on 27.08.2013 when the Court Ameen came to the suit property for effecting delivery. The written objection was also recorded by the executing Court. However, the impugned order, without removing the obstruction as postulated under Order XXI Rule 97, is nothing but a gross abuse of process of law. The execution proceedings itself was tainted by fraud and collusion.

i) The grant of police aid would arise only when the person in possession of the property is bound by the decree and he resists and obstructs to take delivery of possession and in other cases the principles laid down under Order XXI Rule 97 and 98 CPC would alone apply for removal of such obstruction and resistance.

j) The suit schedule property has been in the possession of the tenants. It is apparent that the decree holders had not given the details of such occupants nor had they made any applications under Order XXI Rule 36 CPC which prescribes the procedure to be followed in case of the property in issue is in the possession of such permitted occupants.

16. Mr.P.Wilson, learned senior counsel, while advancing his arguments has adverted to that the defendant trust was a non-existing one and that all trustees were not made as defendants. He has also invited the attention of this Court to Paragraph No.4 of the plaint, wherein the respondents 1 to 3/decreed holders have stated that the defendants Trust had already leased out the suit vacant site to certain persons and there were certain people who have raised superstructure and reoccupying the suit vacant site and that the period of lease had come to an end on 25.02.1999. The respondents 1 to 3 / plaintiffs have also stated that the defendants Trust had given an undertaking in the agreement that they would vacate the occupants and deliver possession on or before 21.04.2003. It is also implied in the agreement that if the defendants fail to deliver vacant site to the plaintiff on or before the stipulated time, the plaintiff have right to take steps and vacate the occupants from the suit vacant site.

17. Before we go into the merits of the case, the competency of the

revision petitioner herein to maintain this revision under Article 227 of the Constitution of India is to be decided first. The petitioner himself has admitted that he is a third party to the suit in O.S.No.473 of 2003. If he is a third party, he must be a **"person in obtaining possession of the property"**, which is sought to be delivered for placing obstruction for effecting delivery of the property as contemplated under Order XXI Rule 97 of the Code of Civil Procedure.

18. Sub-Rule (1) of Rule 97 to Order XXI envisages that where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any **"person in obtaining possession of the property"**, he may make an application to the Court complaining of such resistance or obstruction.

Sub-Rule (2) of Rule 97 reads as under:

"(2) Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained. "

19. Strictly speaking, the revision petitioner will not certainly come within the amplitude of the phraseology **"any person in obtaining possession of the property"** as contemplated under Sub-Rule (1) of Rule 97. For this purpose this Court finds it necessary to extract the provisions of Sub-Rules (1) and (3) to Rule 35 of Order XXI.

"Rule 35 deals with decree for immovable property.

(1) Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.

Sub-Rule (3) enacts as under:

(3) Where possession of any building or enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the court, through its officers, may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree holder in possession. "

20. Sub-Rule (1) of Rule 35 of Order 21 contains the following three important features:

Where a decree is for the delivery of any immovable property, possession shall be delivered to the party_

- a) to whom it has been adjudged; (or)
- b) to such person as he may appoint to receive delivery on his behalf;
- and
- c) if necessary, by removing any person bound by the decree who refuses to vacate the property.

21. On coming to the instant case on hand, the petitioner on 27.08.2013 had presented a written objection to the senior bailiff of the

Court when he had been to the suit property along with the Village Administrative Officer, Namakkal, Village menial and Surveyor for executing the warrant of delivery and place strong obstruction to cause delivery of the property and therefore, the decree holders had given a report to the Court after narrating the reasons about their inability to take delivery of the possession of the property. It is also relevant to note here that the senior bailiff had also given a report on 30.08.2013 to the executing Court with regard to the non-delivery of possession of suit property as the petitioner herein had presented a written objection on 27.08.2013. In this connection, this Court is of considered view that the revision petitioner has to clarify the position as to whether he is coming under the category of person specified under Sub-Rule (1) and (3) of Rule 35 or under the category of person coming under the category of person specified under Sub-Rule (1) of Rule 97.

22. As aforestated, as per Sub-Rule (1) and (3), the person who does not afford free access for delivery of possession of the property must be considered as the person bound by the decree. On the other hand, as per Sub-Rule (1) of Rule 97, the person who makes obstruction must be **"a person in obtaining possession of the property."** The written objection dated 27.08.2013 presented by the petitioner herein to the senior bailiff of the Court has been captioned as "Objection presented on behalf of SBM Trust, Namakkal by its Secretary David Livingstone". The caption in

vernacular is extracted hereunder:

“எஸ்பிஎம் டிரஸ்ட் நாமக்கல் சார்பாக அதன் செயலாளர்
டேவிட் லிவிங்ஸ்டன் தாக்கல் செய்யும் ஆட்சேபனைகள்.”

23. It is absolutely imperative on the part of this Court to make reference to the sale agreement dated 21.11.1984, which is the pivot of the entire proceedings. As per the sale agreement dated 21.11.1984 on behalf of Namakkal Taluk, Namakkal Town SBM Trust, Namakkal Town, Namakkal Taluk its important members 1) J.Samuvel Ponniah, 2) M.Raja Victor, 3) Viswanathan, being 'A' party and on behalf of Salem District Tamil (Strict) Baptist Trust Society, which is established at Namakkal, its administrative members viz., 4) Paul Enoch (D1), son of retired teacher Paul, Chairman, 5) M.Gnanathickam, Secretary, S/o.Maria Loganathan (D2), 6) John S/o. Paul SBM School committee, being Trust Society Administrators, 7. Prabhu Samuvel S/o.David, 8. M.Daniel Jayaveeran S/o.Marimuthu Nadar, 9. R.Solomon, S/o.Raman, 10.Devasagayam S/o.Gnanamuthu, 11.K.Samuvel, S/o.Gnanamuthu, 12. J.Sundaram, S/o.Yovan, 13. A.Chinnamuthu, retired teacher, Son of Arapuli, 14. T.Dhanapal, Son of S.B.M.Church member Deivasigamani, the persons listed from 6 to 14 are the members and administrators of Tamil Strict Baptist Trust Society, being 'B' party, have entered into an agreement of sale on 21.11.1984 and thereby the members of 'B' party had agreed to sell the property (specified thereunder) belong to Salem District Tamil (Strict) Baptist Trust Society in favour of 'A' party with

the acceptance of the society members as well as in compliance of the by-laws of the society, for a total sale consideration of Rs.50,000/-. Since the persons belong to 'B' party had failed to perform their part of the contract of sale, 'A' party happened to file the above suit in O.S.No.473 of 2003 for specific performance of contract of sale.

24. As discussed in the forgoing paragraphs, on careful perusal of the agreement of sale, the petitioner herein would definitely come under the category of the person described under Sub-Rule (1) and (3) of Rule 35 of Order XXI, who is bound by the decree passed by the trial Court in the Suit in O.S.No.473 of 2003. It is thus made clear that the petitioner himself does not have any locus standi to present the letter of objection/obstruction dated 27.08.2013 as he claims to be the Secretary of Salem District Tamil (Strict) Baptist Trust Society from the year 1980 onwards.

25. It is to be noted that the agreement of sale in respect of the property specified under the schedule of execution petition was entered into between 'A' and 'B' Parties on 21.11.1984. The present suit for the relief of specific performance of contract of sale was filed in the year 2003. Since the petitioner has claimed that he is holding the post of secretaryship for Salem District Tamil (Strict) Baptist Trust Society from the year 1988, if he is having real interest in the affairs of the Trust Society, he could have impleaded himself as one of the defendants in the suit when the suit was left

undefended by the defendants 1 to 3

26. As aforestated, these two revision petitions have been filed as against the order dated 03.10.2013 and made in the application in E.A.No.159 of 2013 and E.P.No.23 of 2013 on the file of the learned Sub-ordinate Judge, Namakkal ordering delivery of possession and providing police protection to the respondent decree holders for taking delivery of the possession.

27. It is also more relevant to note here that no steps were taken to set aside the ex parte decree passed in the above suit on 06.08.2003. Even after the filing of the execution petition for execution and registration of the sale deed based on the agreement of sale dated 21.11.1984, the petitioner had not taken any effective steps to make himself impleaded in the execution proceedings. Having slept over for a sizeable period, it is not open for him to present the letter of obstruction all of a sudden i.e., at the time of execution of delivery warrant by the officer on 27.08.2013. Further, since he claims to be the secretary of the SBM Trust, Namakkal, i.e., Salem District Tamil (Strict) Baptist Trust Society, he is also bound by the decree dated 23.04.2003 and therefore he does not have the competency to raise obstruction without setting aside the decree.

28. Admittedly the decree dated 06.08.2003 has been passed as against a registered society which is having a separate legal entity. As

argued by Mr.D.Saravanan, learned counsel for the respondents 1 to 7, neither the judgment debtors nor the petitioner, who claims to be the secretary of the above trust society had taken any steps to get the ex parte decree set aside. The learned counsel for the respondents has rightly argued that the present office bearers including the revision petitioner, who are claiming under the society, are definitely bound by the decree under Sub Rule (1) to (3) of Rule 35 of Order XXI and therefore, the provisions of Sub-Rule 1 of Rule 97 to Order XXI will not be made applicable to the facts and circumstances of the case.

29. It is explicit that for the purpose of taking possession, warrant was issued to the senior bailiff and assistance was also given to him. Since the petitioner had put an obstruction by way of presenting a written objection dated 27.08.2013, the senior bailiff was not able to execute the decree in full and final. Therefore, on an application made by the decree holders in E.A.No.159 of 2013 police aid was ordered. This cannot be objected or resisted either by the judgment debtor or by the person who is bound by the decree.

30. Insofar as the present case on hand is concerned, the decree holders are the successful litigant, who became successful in all the proceedings initiated one after the another and to meet the ends of justice, relief must be given to them. It is settled preposition of law that when the decree is to be executed, the execution must be in full and final satisfaction.

Here in the instant case, the bailiff was issued writ for the purpose of execution of the decree. The assistance of police was given only to help the bailiff in executing the decree.

31. This Court having taken into consideration of all the relevant facts and circumstances finds that the presentation of written objection dated 27.08.2013 and filing of this revision petition are nothing but an attempt to delay the execution proceedings. The objection raised by the petitioner was rightly rejected by the executing court and the warrant of possession was also rightly issued, which according to this Court, does not require the Court to exercise its revisional jurisdiction as the impugned order of the executing court does not suffer with any infirmity of illegality. Equally the executing Court has not committed any jurisdictional error for exercising the supervisory jurisdiction of this Court.

32. Mr.P.Wilson, learned senior counsel for the revision petitioner, while advancing his arguments, has contended that the Sub-Court, Namakkal had played a dual role in exercising its original jurisdiction as well as the powers of execution. In this connection he would submit that while the Sub-Court, Namakkal had recorded the demise of second respondent, it was not known on what basis the same Court had recorded satisfactory service of notice in the amendment application and proceeded to amend the plaint and ordered police aid in E.A.No.159 of 2013 in the execution proceedings in

E.P.No.23 of 2013.

33. In this connection, this Court would like to place it on record that as observed in the foregoing paragraphs, since the revision petitioner himself is bound by the decree passed by the trial Court on 06.08.2003, he cannot and shall not raise the above questions before the executing Court.

34 It is obvious to note here that Mr.Wilson has also maintained that the suit schedule property had been described to be in the possession of the tenants and in this connection the decree holders had not given the details of such occupants nor had they made any applications under Order XXI Rule 36 CPC which prescribe the procedure to be followed in case of the property in issue in possession of such permitted occupants and therefore, he has urged this Court that the impugned order shall have to be set aside on this ground also.

35. As observed earlier, in Paragraph No.4 of the plaint the decree holders/plaintiffs have stated that the defendant Trust had already leased out the suit vacant site to certain persons and there were certain people who have raised super structure and are occupying the suit vacant site and the period of lease come to an end on 25.06.1999. They have also stated that the defendant had given an undertaking in the agreement that they would vacate the occupants and deliver possession on or before 21.04.2003 and it

is also stated in the agreement that if the defendants failed to deliver vacant site to the plaintiffs on or before the stipulated time, the plaintiffs have right to take steps to vacate the occupants from the suit vacant site. It is palpable that no such tenant or the persons in possession of vacant site had raised objection or obstruction when the senior bailiff went to the suit property for taking delivery of possession. Only the petitioner alone, who is claiming himself as the secretary of the SBM Trust, had placed objection by way of a letter dated 27.08.2013 which was rightly rejected by the executing Court and therefore, there is no necessity for the decree holders to give the details of the occupants for the purpose of Order XXI Rule 36 of the Code of Civil Procedure.

36. With regard to the prayer for delivery of possession, admittedly no relief was sought for in the original suit. At the time of filing the execution petition in E.P.No.23 of 2013 for delivery of property, a question was arisen as to **"where a suit for specific performance of a contract of sale has been decreed, can the executing Court while executing the decree direct delivery of possession in the absence of specific direction to that effect in the decree."** This question was answered affirmatively by the executing Court after placing reliance upon the decision of this Court in ***S.S.Rajabathar Vs. N.A.Sayeed*** reported in ***AIR 1974 Madras 289 (V.61, C.87)*** and ***Duraisamy and Others Vs. V.P.Periyasamy Gounder and Others*** reported in ***2012-4-L.W.729***. The executing Court had also

found that delivery of possession could be claimed after adding the relief of possession as contemplated under Section 22 of the Specific Relief Act and that the plaint as well as the decree could be suitably amended so as to enable the decree holder for taking delivery of possession of the property.

37. Section 22 of the Specific Relief Act contemplates power to grant the relief of possession, partition, refund of earnest money etc.,

Sub-Section (1) enacts as under:

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."

38. In ***Sunderlal and Ors Vs. Gopal Sharan*** reported in **2003 (3) AIC 964 (M.P)** in a suit for specific performance, relief of possession was not asked. Plaintiff-respondent had pleaded himself to be in possession. Decree of specific performance was passed but it was silent about possession. There was no finding on possession, In execution of decree the plaintiff had also claimed possession. Under this circumstance, the Gwalior Bench of Madhya Pradesh High Court held that the **relief of possession could be given by the executing court as decree of specific**

performance of contract itself implied also the decree for possession.

39. It may also be relevant to note here that Section 22 of the Specific Relief Act, 1963, enacts a rule of pleading. This section was introduced to avoid multiplicity of proceedings and therefore, the plaintiff could also claim a decree for possession in a suit for specific performance, even though, the right to possession accrued only after the suit for specific performance was decreed. This principle is laid down in ***Jafar Mian v. Smt. Qaisar Jahan Begum And Others*** reported in **2006 (65) All LR 373**.

40. Insofar as this case is concerned, as per the direction of the executing Court dated 16.06.2013, the decree holders had filed an application in I.A.No.497 of 2013 under Order VI Rule 17 r/w.151 CPC to amend the plaint prayer (b) in the suit in O.S.No.473 of 2003 to direct the judgment debtors/defendants to deliver the vacant possession of the suit property morefully described in the plaint schedule. Insofar as this petition is concerned, it is stated that R1 and R2/D1 and D2 had passed away and notice was served on the third respondent (D3). However, he had not chosen to appear and therefore he was called absent. As argued by Mr.P.Wilson, the adjudication of the petition in I.A.No.497 of 2013 to amend the plaint cannot be questioned in this revision as the petitioner himself does not have the locus standi to raise this objection. As already observed, he is bound by the

decree.

41. Keeping in view of the above fact even in the absence of a specific prayer in the suit for specific performance of contract, at the time of execution proceedings also the relief of delivery of possession can be maintained as per Section 22 of the Specific Relief Act as the relief of delivery of possession is implied in the decree passed in the suit for specific performance of contract of sale.

42. Having regard to the facts and circumstances, this Court is of considered view that the impugned order, passed by the executing Court dated 30.10.2013 and made in E.A. No.159 of 2013 in E.P.No.23 of 2013 does not suffer from any infirmity or illegality warranting interference of this Court.

In the result, the Civil Revision Petition is dismissed and the order dated 03.10.2013 and made in E.A.No.159 of 2013 in E.P.No.23 of 2013 is confirmed. No costs.

17.11.2016

Index: Yes/No
Internet: Yes
gpa

T.MATHIVANAN.J.,

gpa

C.R.P.NPD.Nos.3974 and 3975 of 2013

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<http://www.judis.nic.in>