

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

C.R. No.5122 of 2016 (O&M)

Date of Decision.17.08.2016

Bhupinder Singh and others

.....Petitioners

Vs.

Sukhdev Singh and another

.....Respondents

Present: Mr. S.S. Rangi, Advocate
for the petitioners.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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

-.-

AMIT RAWAL J. (ORAL)

The petitioners-defendants are aggrieved of the impugned order (Annexure P-8) whereby the objections qua execution application for execution of the sale deed in pursuance of the judgment and decree to the extent of 1/4th share in favour of the plaintiff No.1, 3/4th share in favour of plaintiff No.2 regarding the land in dispute, had been dismissed.

Mr. S.S. Rangi, learned counsel for the petitioners-defendants submits that the plaintiffs instituted the suit seeking specific performance of the agreement to sell dated 09.06.1993. The aforementioned suit was decreed by judgment and decree dated 12.12.2007. The respondents-plaintiffs failed to prove that the possession was handed over at the time of execution, in essence, possession is with the defendants and in the absence of relief of possession, much less, amendment of the plaint in view of the provisions of Section 22 of the Specific Relief Act, the Executing Court

cannot order for possession of the property. In support of his contentions, he has relied upon the judgment rendered by this Court in **Jeet Singh Vs. Gursewak Singh and others 2015(2) PLJ 476** and as well as by the Hon'ble Supreme Court in **Adcon Electronics Vs. Daulat 2001(7) SCC 698**. He submits that Section 22 of the Specific Relief Act does not envisage any procedure with regard to the delivery of possession in the absence of claim in the plaint. The plaintiff has not sought any amendment of the plaint and therefore, as per the ratio decidendi culled out in the judgment of **Jeet Singh's** case (supra), the Court could not have issued warrant of possession after execution of the sale deed.

I have heard learned counsel for the petitioners and appraised the paper book. The question raised in the revision petition is whether the judgment rendered by this Court and Hon'ble Supreme Court by interpreting provisions of Section 22 of the Specific Relief Act would be applicable or not. The aforementioned question came to be debated in this Court in **Gurjant Singh Vs. Harbans Kaur and others** in C.R. No.5255 of 2014 decided on 07.04.2016 where similar arguments were raised and after discussing the case laws on this point particularly judgment rendered by the Hon'ble Supreme Court in **Babu Lal Vs. M/s Hazari Lal Kishori Lal and others AIR 1982 SC 818** wherein after interpreting provisions of sub-section 3 of Section 28 of the Specific Relief Act, the Hon'ble Supreme Court found that when the statute itself envisages relief of possession, Section 22 of the Specific Relief Act cannot be read in isolation. In my view, in the judgment rendered by this Court in **Jeet Singh's case** (supra), the Court was not made aware of the judgment rendered by the Hon'ble Supreme Court in **Babu Lal's case** (supra).

For the sake of brevity, Sections 22 and 28 of the Specific Relief Act are reproduced as under:-

“22. 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 [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.

28. Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed.— (1) Where in any suit a decree for specific performance of a contract for the sale or lease of immovable property has been made and the purchaser or lessee does not, within the period allowed by the decree or such further period as the court may allow, pay the purchase money or other sum which the court has ordered him to pay, the vendor or lessor may apply in the same suit in which the decree is made, to have the contract rescinded and on such application the court may, by order, rescind the contract either so far as regards the party in default or altogether, as the justice of the case may require.

(2) Where a contract is rescinded under sub-section (1), the court—

(a) shall direct the purchaser or the lessee, if he has obtained possession of the property under the contract, to restore such possession to the vendor or lessor, and (b) may direct payment to the vendor or lessor of all the rents and profits which have accrued in respect of the property from the date on which possession was so obtained by the purchaser or lessee until restoration of possession to the vendor or lessor, and if the justice of

the case so requires, the refund of any sum paid by the vendee or lessee as earnest money or deposit in connection with the contract.

(3) If the purchaser or lessee pays the purchase money or other sum which he is ordered to pay under the decree within the period referred to in sub-section (1), the court may, on application made in the same suit, award the purchaser or lessee such further relief as he may be entitled to, including in appropriate cases all or any of the following reliefs, namely:—

(a) the execution of a proper conveyance or lease by the vendor or lessor;
(b) the delivery of possession, or partition and separate possession, of the property on the execution of such conveyance or lease.

(4) No separate suit in respect of any relief which may be claimed under this section shall lie at the instance of a vendor, purchaser, lessor or lessee, as the case may be.

(5) The costs of any proceedings under this section shall be in the discretion of the court.”

On conjoint reading of proviso to Section 22(2) and as well as sub Section 3 of Section 28, it is manifest that the court can at any stage of the proceedings grant relief of amendment of plaint, in the absence of relief sought in the main suit and thus, the respondent-plaintiff need not to seek amendment of the plaint by resorting to the provisions of Section 22 (2) instead moved an application to the court for granting such relief. As noticed above the sale deed through the intervention of the court has already been executed.

This view has been reiterated by the judgment of Hon'ble Supreme Court in Babul Lal's case (supra) . For the sake of brevity para 26 to 29 of the judgment is extracted hereinbelow.

“Sub-section (3) of Section 28 clearly contemplates that if the purchaser or lessee pays the purchase money or other sum which he is ordered to pay under the decree, the court may on application made in the same suit, award the purchaser or lessee such further relief as he may be entitled to Sub-cl (b) of sub-sec.(3) of S.28 contemplates the delivery of possession or partition and separate possession of the property on the execution of such conveyance or lease. Sub sect.(4) of S.28 bars the filing

of a separate suit for any relief which may be claimed under this section.

27. In Hungerford Investment Trust Ltd.V.Haridas Mundhra (AIR 1972 SC 1826) dealing with S.28 (1) of the Specific Relief Act, 1963 this Court observed (at p.1832)

“The Specific Relief Act, 1963 is not an exhaustive enactment and under the law relating to specific relief a Court which passes a decree for specific performance retains control over the decree even after the decree had been passed. Therefore the Court, in the present case, retained control over the matter despite the decree and it was open to the Court, when it was alleged that the party moved against had positively refused to complete the contract, to entertain the application and order rescission of the decree if the allegation was proved.”

The reasoning given by this Court with regard to the applicability of sub-sec(1) of S.28 will equally apply to the applicability of sub-sec.(3) of S.28.

28. This is an additional reason why this Court should not interfere with the eminently just order of the High Court. The High Court had amended the decree passed by the first appellate Court and passed a decree for possession not only against the transferors but also against their transferee, that is, the petitioner.

29. Procedure is meant to advance the cause of justice and not to retard it. The difficulty of the decreeholder starts in getting possession in pursuance of the decree obtained by him. The judgment debtor tries to thwart the execution by all possible objections. In the circumstances narrated above, we do not find any fault with the order passed by the High Court.

Keeping in view the aforementioned facts, the objections filed on behalf of the petitioner, that relief of possession cannot be granted is totally mis-conceived. Once the sale deed has already been registered, the decree holder would be entitled to possession.

There is another aspect of the matter. In case the parties had not litigated before the court below, in essence, had actually acted and performed their part of agreement by appearing before the Registrar, even then vendee, was/is entitled to possession. The matter regarding interpretation of Section 23 of the Specific Relief Act, 1963, reached the

Hon'ble Supreme Court as to whether agreement to sell containing liquidated damages, as double the amount of earnest money in the absence of any clause seeking execution and registration of the sale deed, much less specific performance, through competent court of law, can one party be precluded from claiming such relief or not. The Hon'ble Supreme Court though earlier held in the absence of any clause of specific performance the vendee is entitled to double the amount but the said view has been held per incuriam in the judgment rendered in *P. D'Souza Vs. Shondrilo Naidu (2004) 6 SCC 649*, therefore keeping in view the law enunciated by the Hon'ble Supreme Court in *Babu Lal's case* (supra) and *P. D'Souza's case* (supra), I am of the view that there is inherent relief of possession in a suit for specific performance in the decree where the party omitted to claim relief of possession.

I do not find any illegality and perversity in the impugned order and the same cannot be said to have been passed without jurisdiction.

The revision petition is devoid of merits. Accordingly the same is dismissed.

(AMIT RAWAL)
JUDGE

August 17, 2016
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	Yes