

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 5255 of 2014
Date of decision : April 7, 2016

Gurjant Singh

..... Petitioner

Versus

Harbans Kaur and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Ms. Navdeep, Advocate
for the petitioner.

Mr. M. K. Dogra, Advocate
for respondent Nos. 1, 3 to 5 and 6 to 9.

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

Amit Rawal, J (oral).

The petitioner-judgment debtor-defendant is aggrieved of the impugned orders dated 6.5.2014 and 16.7.2014 whereby warrant of possession has been issued in pursuance to the execution and registration of the sale deed as per order dated 6.5.2014.

Learned counsel appearing on behalf of the

petitioner submits that the respondents-plaintiffs instituted a civil suit bearing No. 299 of 1978 seeking specific performance of the agreement to sell dated 28.6.1978. In the aforementioned proceedings, no relief for possession was sought. The trial court vide judgment and decree dated 30.10.1979 passed the following order:-

“ As a result of my findings arrived at on issues number 1 and 2, hereby pass a decree in favour of the plaintiffs and against the defendants ordering the defendant No.1 to specifically perform the contract dated 28.6.1978 arrived at by her with the plaintiffs to sell the land in dispute within a period of two months, failing which the plaintiffs would be entitled to have the sale deed executed in their favour through court. The defendants will also bear the costs of the suit.”

In pursuance to the aforementioned finding, it is evident that no relief qua possession was sought yet the decree holder filed an execution petition seeking possession. The petitioner-defendant did not come forward for execution and registration of the sale deed, accordingly Local Commissioner was appointed for execution of sale deed which is reflected in the order dated 6.5.2014. As a natural corollary possession was sought but the execution petition has been dismissed. It is in these circumstances the present revision petition has been filed. In support of her contentions she has relied upon the judgment in **Adcon Electronics**

Pvt. Ltd. Vs. Daulat 2001 AIR (SC) 3712 to contend that as per proviso to Section 22 (2) of the Specific Relief Act, 1963 enables the court at any stage to amend such terms as it may consider appropriate including the claim for possession. Since the claimant sought relief only with regard to specific relief of agreement to sell without there being any claim of possession the executing court cannot issue warrant of possession in the absence of decree for possession.

On the other hand, learned counsel appearing on behalf of the respondents has relied upon the judgment rendered by Hon'ble Supreme Court in **Babu Lal Vs. M/s Hazari Lal Kishori Lal and others AIR 1982 SC 818** to contend that as per Section 28(3) if a 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 clause (b) of sub section (3) of Section 28 contemplates the delivery of possession or partition in separate possession of the property on the execution of such conveyance or lease as there is a specific bar for filing of a separate suit for any relief which may be claimed as per Section 28(4), thus urges this Court by building an argument, that this Court can apply the ratio decidendi that where there are two different views of Higher Courts the court can apply the one which is applicable to the facts of the case, much less found reasonable with the situation/matter in controversy.

He submits that the aforementioned view expressed

in Babu Lal's case (supra) has been followed by this Court in Nathu Ram Vs. Chhotu Singh 2012 (4) CCC 184 (P&H)

I have heard learned counsel for the parties, appraised the paper book and of the view that before referring to the rival contentions of the parties, it would be apt to reproduce Section 22 and 28 of the Specific Relief Act.

“Section 22 in The Specific Relief Act, 1963

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 decree-holder 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 not 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 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

April 7 , 2016
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