

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	DELIVERED ON
05-06-2018	14-06-2018

**Application Nos.2882,2883,2251 and 2304 of 2018 in
E.P.No.127 of 2005 and
Application Nos.2252 and 2305 of 2018 in
E.P.No.128 of 2005**

N.SATHISHKUMAR, J.

COMMON ORDER

Aggrieved over the order of dismissal passed by the Master in Application Nos.596 and 597 of 2018 under section 47 of CPC, the following applications have been filed by the applicants:

1.(a) Applicant/1st defendant in C.S.Nos.561 and 562 of 2002 filed the following applications:

A.No.2882 of 2018 in A.No.596 of 2018 **in E.P.No.128 of 2005** filed against the order of the Learned Master in A.No.596 of 2018

A.No.2883 of 2018 in A.No.597 of 2018 **in E.P.No.127 of 2005** filed against the order of the learned Master in A.No.597 of 2018

1.(b) Applicant/1st plaintiff/Decree holder in C.S.No.561 and 562 of 2002 filed the following applications:

A.No.2251 of 2018 in E.P.No.127 of 2005 filed to direct break open of the locks or gate or remove the bolt put up at No.39 (New No.81) Avathana Pappiah Road, Choolai, Chennai-600112.

A.No.2252 of 2018 in E.P.No.128 of 2005 filed to direct break open of the locks or gate or remove the bolt put up at No.39 (New No.81) Avathana Pappiah Road, Choolai, Chennai-600112.

A.No.2304 of 2018 in E.P.No.127 of 2005 filed to direct the Inspector of Police, G-1 Veperay Police Station, to render all necessary police assistance for implementation of the order of delivery that may be passed in E.P.No.127 of 2005 in C.S.No.562 of 2002.

A.No.2305 of 2018 in E.P.No.128 of 2005 filed to direct the Inspector of Police, G-1 Veperay Police Station, to render all necessary police assistance for implementation of

the order of delivery that may be passed in E.P.No.127 of 2005
in C.S.No.561 of 2002.

2. The facts leading to file these applications are as follows:

2.(a) The respondent and the applicant and one another are the brothers. The suits were filed in C.S.No.562 of 2002 and C.S.No.561 of 2002 for the specific performance of the agreement executed by the applicant and his brother in favour of the respondent. In the above proceedings the applicant remained *ex parte*. His another brother consented for decree. Based on the consent and compromise and also taking into the fact that the applicant remained *ex parte*, the suit was decreed for specific performance. By a decree and judgment dated 01.03.2004 this Court granted decree for specific performance and directed the second respondent to execute the sale deed after receiving his share and also directed if the 1st defendant failed to execute and register sale deed in favour of the plaintiff, the Sale Deed shall be executed through Court.

2.(b) It is undisputed fact that the applicant herein has filed A.No.1370 and 1506 of 2005 in C.S.No.561 and 562 to set aside the decree. But those applications were dismissed on 15.6.2005 by a Single Judge in A.Nos.1370 and

1506 of 2005 in C.S.No.561 and 562 of 2002 and the appeal preferred before the Division Bench of this Court in O.S.A.Nos.273 and 274 of 2005 on 22.02.2008 also dismissed, against which Special Leave Petition has been filed before the Honourable Supreme Court and the Honourable Supreme Court has also dismissed the same. In the meanwhile, a sale deed has also been executed by the second defendant in respect of his share. As far as the applicant shares, court has executed the sale in favour of the respondent. Thereafter he filed application for seeking delivery of the possession of the property. In the above application, applicant being one of the judgment debtors filed application under Section 47 of CPC to decide the rights. The learned Master vide his order dated 02.03.2018 dismissed the applications. Aggrieved over the same, the present applications came to be filed.

3. The main contention of the learned counsel for the applicant is that the suit was decreed for specific performance. There was no order in respect of the delivery of possession. Therefore, the execution court has no right to order the delivery of possession. Hence, Execution Petition filed for delivery of possession is not maintainable. Hence the order dismissing the applications under Section 47 of CPC by the learned Master is not maintainable and liable to be interfered with. In his submissions, he has also relied upon a judgment reported in ***Vasantha v. Manickam and Others [(2017) 3 MLJ 662]*** and

vehemently contended that unless relief of delivery of possession ordered in the main suit, the execution court cannot order for delivery of possession.

4. Heard the respondent who appeared as party-in-person. According to him, these applications are nothing but abuse of process of law and they are filed to non-suit the decree holder. Hence he prayed for dismissal.

5. On a careful perusal of the records, it is seen that the decree passed for specific performance has reached finality and sale deed also executed in favour of the respondent. The attempts made by the applicant to set aside the decree were also failed. Having failed in his attempt, now the present applications under Section 47 of CPC are filed by the applicant. It is to be noted that the execution petition was filed in the year 2005. These applications under Section 47 are filed in the year 2018 i.e., after 13 years. It is to be noted that the applicant is none other than the brother of the respondent and he alongwith another brother had entered agreement in respect of his share. The applicant's other brother not only executed the sale deed but also handed over the possession of the property. Now the applicant, 13 years after the Execution Petition filed, came up with the application under Section 47 CPC and challenges the execution proceedings on the ground that no delivery of possession was ordered. It is to be noted that when a suit for specific performance ended by a

decree and documents were executed in favour of the decree holder, the title relate back to the deed of agreement. In such a situation, the execution court is competent to order for delivery of possession even if the decree is silent as far as the delivery of possession is concerned. It is also well settled that in an agreement for sale of immovable property containing stipulation that on execution of sale deed, the possession of immovable property will be handed over to the purchaser. It is implied that the delivery of possession of immovable property is part of the specific performance of contract. A perusal of the agreement filed in the typed set, there is a specific agreement between the parties to handover the vacant possession of the property. Apart from the above, now the sale deed is also executed in favour of the respondent. Though it is averred in the sale deed that the possession is handed over, the fact remains that the applicant has not handed over the possession.

6. In **Sampoornam and Another v P.V. Kuppusamy** reported in **2007(3) CTC 529** this Court has held as follows:

"In a suit for specific performance for agreement of sale, decreeing court has got power to enforce the terms of agreement and as per the terms of agreement, the vendor, namely, the judgment debtor is bound to handover possession to the decree holder and therefore, even in the absence of any prayer for possession and even without amending the relief

for possession, the court has got power to grant possession."

7. In ***K.M. Rajendran v. Arul Prakasam, AIR 1998 Madras 336***

this Court has held as follows:

"...in a suit for specific performance of an agreement to transfer an immovable property, once a decree for specific performance is granted, it includes the term for delivery of possession and it is unnecessary for the court to direct such delivery of possession expressly because the Court was directing the enforcement of the entire agreement, including the agreement to deliver possession."

8. In ***Vasantha v. Manickam @ Thandapani and Another, (2017)***

3 MLJ 662, this Court has held that unless the plaintiff is not prayed in the suit, he is not entitled for the relief of delivery of possession.

9. I have considered the above judgments and also the Honourable Apex Court Judgment reported **Adcon Electronics Case**(supra). In Adcon Electronics Case which is an appeal filed under Letters Patent clause 12 (Bombay) the Apex Court held that in a suit for specific performance simpliciter in the absence of a explicit prayer for delivery of possession of the suit property, it can not be treated as a suit for land as per Letters Patent. Learned Brother Judge of this Court has relied upon the above judgment of the Apex Court. The above Judgment arose out of the appeal under Letters Patent as to the

jurisdiction of the Original Side of the High Court. The issue involved in the above judgment is whether suit filed for specific performance for the land or the simpliciter one. I am of the view that the facts and the law declared in the above case is not applicable to the facts of the present case. Admittedly, in this case decree has been passed. As already stated there is specific agreement between the parties to hand over the vacant land. That apart, sale deed also executed in respondent's favour. Once suit for specific performance is decreed, it is implied for delivery of possession also. Hence, I am of the view that the judgment relied upon by the applicant is not applicable to the facts of the present case. This court is of the view that where a court has passed decree for specific performance and the decree is silent about the delivery of possession, the execution court can pass order for delivery of possession. Further the judgment debtor having failed in attempts stalling execution in all aspects cannot seek any adjudication under Section 47 of CPC on the ground that the decree is silent about the delivery of possession.

10. In Babu Lal v. M/s. Hazari Lal Kishori Lal and others, AIR 1982 Supreme Court 818, the Honourable Supreme Court has held as follows:

“16. It may be pointed out that the Additional Civil Judge had decreed the suit for specific performance of the contract. The High Court modified decree to the extent that

the sale deed was to be executed by respondents Nos. 6 to 9 together with the petitioner. In short, the decree was passed by the High Court not only against respondents Nos. 6 to 9 but also against the subsequent purchaser i.e., the petitioner and thus the petitioner was himself the judgment debtor and it cannot be said that he was a third person in possession and, therefore, relief for possession must be claimed. The contention on behalf of the petitioner is that the relief for possession must be claimed in a suit for specific performance of a contract in all cases'. This argument ignores the significance of the words 'in an appropriate case'. The 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. 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. Besides, the proviso to sub-section (2) of section 22 provides for amendment of the plaint on such terms as may be just for including a claim for such relief 'at any stage of the proceedings'.

17. The word 'proceeding' is not defined in the Act. Shorter Oxford Dictionary defines it as "carrying on of an action at law, a legal action or process, any act done by authority of a court of law; any step taken in a cause by either

party". The term 'proceeding' is a very comprehensive term and generally speaking means a prescribed course of action for enforcing a legal right. It is not a technical expression with a definite meaning attached to it, but one the ambit of whose meaning will be governed by the statute. It indicates a prescribed mode in which judicial business is conducted. The word 'proceeding' in [section 22](#) includes execution proceedings also. In [Rameshwar Nath v. Uttar Pradesh Union Bank](#) AIR 1956 All 586 such a view was taken. It is a term giving the widest freedom to a court of law so that it may do justice to the parties in the case. Execution is a stage in the legal proceedings. It is a step in the judicial process. It makes a stage in litigation. It is a step in the ladder. In the journey of litigation there are various stages. One of them is execution.

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."

11. In **Krishnamurthy Gounder Vs. Venkatakrishnan, 2012(1) L.W.463** it is held that 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.

12. In **Krishnan v. Valarmathi, 2016 (4) CTC 163**, it is also held

that even though the decree is silent about the possession of property, the decree holder is entitled for the same.

13. In view of the above, I do not find any illegality and infirmity in the order passed by the learned Master. Hence Application Nos.2882 in E.P. No.128 of 2005 and Application No. 2883 of 2018 in E.P.No.127 of 2005 are dismissed.

14. Taking into consideration of the allegations contained in the affidavit accompanied in Application Nos.2251 of 2018 in E.P.No.127 of 2005 and Application No.2252 of 2018 in E.P.128 of 2005, Application No.2304 of 2018 in E.P.No.127 of 2005 and Application No.2305 of 2018 E.P.No.128 of 2005, that when the plaintiff / Decree holder accompanied the bailiff of this Court went to the suit premises to execute the warrant of delivery, he was prevented by some people in the name of advocates and prevented to execute the warrant, I am of the view that it is the fit case to direct break open of locks and police assistance to render justice. Accordingly these applications are ordered.

15. In the result,

Application Nos.2882 in E.P. No.128 of 2005 and Application No. 2883 of 2018 in E.P.No.127 of 2005 **are dismissed** and

Application Nos.2251 of 2018 in E.P.No.127 of 2005 and Application No.2252 of 2018 in E.P.128 of 2005, Application No.2304 of 2018 in E.P.No.127 of 2005 and Application No.2305 of 2018 E.P.No.128 of 2005 **are ordered**. No cost.

14-06-2018

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Pre-delivery common order in:
Application Nos.2882,2883,2251 and 2304 of 2018 in
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