

HON'BLE SRI JUSTICE S.V. BHATT

C.R.P.No.4143 OF 2014

ORDER:

Heard Mr.Mohd.Ghulam Hussain for revision petitioners and Mr.C.Subodh, holding for Mr.O.Manohar Reddy, for respondents.

Judgment debtors 2 and 3 in EP.No.136 of 2014 in O.S.No.66 of 2007 in the Court of the Senior Civil Judge, Peddapalli are the revision petitioners. The revision petitioners assail the order dated 30.10.2014 in EP.No.136 of 2014 directing delivery of EP schedule to decree holder/respondent No.1 herein. The judgment debtors assail that delivery of possession ordered by the Executing Court is unavailable and also illegal. According to the judgment debtors, in execution of decree for specific performance of agreement, in the absence of definite prayer made in the plaint or clause in the decree, such power is unavailable and if exercised amounts to illegal exercise of jurisdiction.

The circumstances relevant for disposing of the revision are stated thus:

Respondent No.1 herein filed O.S.No.66 of 2007 for specific performance of agreement of sale dated 11.03.2007. On 04.11.2011, the suit was decreed and confirmed on appeal in A.S.No.13 of 2013 dated 03.09.2013. In EP.No.22 of 2012, the executing Court, since judgment debtors failed to execute registered sale deed, registered sale deed dated 10.07.2014 in favour of decree holder, for and on behalf of judgment debtors, was executed. The instant EP is filed for delivery of possession of

EP schedule property. The executing Court ordered EP.No.136 of 2014. Hence, the revision.

Mr.Mohd.Ghulam Hussain contends that ordering possession in execution of a decree for specific performance without a prayer to that effect in the plaint or clause in the decree, the delivery of possession is illegal and beyond the jurisdiction of the executing Court. He reads the decree in O.S.No.66 of 2007 and contends that the decree refers to execution of sale deed, payment of balance sale consideration etc. In other words, there is no decree for delivery of possession by the judgment debtors/ revision petitioners.

Mr.Subodh contends that the question raised by the revision petitioners is no more *res integra*. He places strong reliance on the following decisions:

BABU LAL v. M/s HAZARI LAL KISHORI LAL AND OTHERS (AIR 1982 SC 818)

V.NARASIMHA CHARY v. P.RADHA BAI AND OTHERS (1999 (5) ALT 499)

PT. BALMUKAND v. VEER CHAND) AIR 1954 Allahabad 643 and

SAVEERUNNISA BEGUM v. SYED RAFAQ (2015(3) ALT 762)

and contends that there is no merit in the revision and is liable to be dismissed as covered by the decisions relied on by respondent/ decree holder.

I have perused the decisions relied on by decree holder and since the same proposition is considered in all the cases, this Court refers to the decision of the Apex Court in BABU LAL case. In BABU LAL case, the Hon'ble Supreme Court considered the jurisdiction and authority of the executing Court in ordering

possession in execution of a decree for specific performance and held as follows:

“The expression in-sub-section (1) of S.22 'in an appropriate case' is very significant. The plaintiff may ask for the relief of possession or partition or separate possession 'in an appropriate case'. As pointed out earlier, in view of order 2, rule 2 of the Code of Civil Procedure, some doubt was entertained whether the relief for specific performance and partition and possession could be combined in one suit; one view being that the cause of action for claiming relief for partition and possession could accrue to the plaintiff only after he acquired title to the property on the execution of a sale deed in his favour and since the relief for specific performance of the contract for sale was not based on the same cause of action as the relief for partition and possession, the two reliefs could not be combined in one suit. Similarly, as a case may be visualized where after the contract between the plaintiff and the defendant the property passed in possession of a third person. A mere relief for specific performance of the contract of sale may not entitle the plaintiff obtain possession as against the party in actual possession of the property. As against him, a decree for possession must be specifically claimed or such a person is not bound by the contract sought to be enforced. In a case where exclusive possession is with the contracting party, a decree for specific performance of the contract of sale simpliciter without specifically providing for delivery of possession, may give complete relief to the decree-holder. In order to satisfy the decree against him completely he, is bound not only to execute the sale-deed but also to put the property in possession of the decree-holder. This is no consonance with the provision of Section 55 (1) of the T.P Act which provides that the seller is bound to give, on being so required, the buyer or such person as he directs, such possession of the property as its nature admits.

There may be circumstances in which a relief for possession cannot be effectively granted to the decree- holder without specifically claiming relief for possession, viz., where the property agreed to be conveyed is jointly held by the defendant with other persons. In such a case the plaintiff in order to obtain complete and effective relief must claim partition of the property and possession over the t share of the defendant. It is in such cases that a relief for possession must be specifically pleaded.

In the instant case, it is pointed out on behalf of the petitioner that the possession was not with the respondents Nos. 6 to 9 but was with a third person namely, the petitioner, who was subsequent purchaser and, therefore. this was an appropriate case where the relief for possession should have been claimed by the plaintiff-respondents Nos. 1 to 5.

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 S.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'."

The contentions, having regard to the ratio in BABU LAL case, are liable to be rejected and are, accordingly, rejected. It is held that the executing Court has power to deliver possession in execution of a decree for specific performance.

To sum up the legal position, it is held that once the decree for specific performance was passed; the decree provides that the property shall be sold to the plaintiff by the defendants; and the sale deed shall be executed within a certain time failing which the Court will have the sale deed executed by a person nominated by it, implies that delivery of possession shall be given in accordance with the provisions of Section (55) 1(f) of the Transfer of Property Act. The delivery of possession is a necessary ingredient and part of transfer of ownership. It is in this background the effect of Section 22(2) of the Specific Relief Act and Section 55 of the Transfer of Property Act are noted and the Courts have been consistently holding that even in the absence of a direction in the decree to

delivery possession of the property in the decree passed for specific performance, still to complete the transfer of property, the possession of such property is directed to be delivered to plaintiff/decree holder.

For the above reasons, the revision fails and is, accordingly, dismissed. There shall be no order as to costs.

Pending miscellaneous petitions, if any, stand closed.

S.V.BHATT, J

30th August, 2018

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