

HON' BLE Dr. JUSTICE B. SIVA SANKARA RAO

Civil Revision Petition No.7349 of 2017

ORDER

The plaintiff is the revision petitioner. The revision respondents are the defendants leave about the earlier factual background as on date of the filing of the I.A.No.4111 of 2017 in the pending suit O.S.No.312 of 2007 on the file of the Chief Judge, City Civil court, Hyderabad. It is a suit for specific performance of the contract for sale pursuant to the so called sale agreement dt.15.11.1993. The claim of the plaintiff pursuant to the amendment from the relief of injunction to the specific performance and injunction consequently he is in possession pursuant to the sale agreement and it is the say that part of the property covered by the plaint schedule is not in possession and seeking amendment to include for possession. That amendment application filed in I.A.No.4111 of 2017 was ended in dismissal on 23.11.2017 by the impugned order of the lower Court which is the subject matter of the present revision.

2. A perusal of the impugned order of the lower Court shows initially the plaintiff filed the suit for permanent injunction and the prayer was amended and while amending for specific performance, they did not seek for possession of the property. The petition averments in the amendment sought for by the plaintiff are that he was dispossessed partially from the plaint schedule property in February, 2010 and when he carried the amendment in 2014 he ought to have been included for delivery

of possession of the vacant and peaceful possession but could not thereby the amendment may be permitted.

3. The lower Court referred to the general provisions of Order VI Rule 17 CPC and the decisions referred therein in dismissal of the application saying particularly from para-10 of the impugned order that when the plaintiff was dispossessed in the year 2010 itself having kept quite all these years, it is in seeking the amendment only for the first time for the relief of specific performance in 2014, he could have been diligent in asking for vacant possession of any portion of the property for not in possession and having not asked for converting suit of injunction into suit for specific performance with injunction, he cannot be permitted to amend the plea of possession in the specific performance suit.

4. In fact, the Apex Court in Babulal Vs. Hazari Lal Kishori Lal¹ categorically held in a suit for specific performance even the reliefs like possession originally not asked before passing of a decree that is not a bar to get the relief. It is observed referring to catena of expressions including Hakim Enayat Ullah Vs. Khalil Ullah Khan² of a decree for specific performance only declares the rights of the D.Hr. to have a transfer of the property covered by the decree executed in his favour and decree by itself does not transfers title and in order to get title to the property, the D.Hr. has to proceed in execution of the decree in accordance with

¹ AIR 1982 SC 818

² AIR 1938 All.432

Order XXI CPC and as it is only on execution of the sale deed that transfers title to the property as also held by a Division Bench of the Calcutta High Court in Kartik Chandra Pal Vs. Dibakar Bhattacharjee³ and thereby it is not debatable that in a suit for specific performance of a contract for sale of land, it is open to the plaintiff, to join in the same suit two prayers that is for execution of the deed of transfer and for recovery of possession of land in question. Same is also quoted with approval by this Court in V.Narasimha Chary Vs. P.Radha Bai⁴ in CRP No.1003 of 2004,dt.08.02.2012.

5. Having regard to the above, the lower Court even allowed the amendment not incorporated the relief of possession which even otherwise could get after passing of a decree of specific performance in execution of a sale deed during execution proceedings to get title to the property to get possession as a pre-condition but for to say from the conduct of the plaintiff in seeking amendment from time to time of the suit is of the year 2007 as rightly contended by the defendants to allow the petition subject to costs of Rs.5,000/- on or before 23.01.2018 to pay to the party or the advocate, before the trial Court to permit the amendment if said costs paid and memo filed before the trial Court by the time so that it can proceed with the matter earlier as suit is of 2007.

³ AIR 1952 Cal.362

⁴ 1999 5 ALT 499=(2012) 1 Decisions Today page 223

6. Accordingly and in the result, the revision is allowed.
Consequently, miscellaneous petitions pending if any, in this
revision shall stand cancelled.

Dr. B. SIVA SANKARA RAO, J

Date:03.01.2018
vvr

