

BHARAT
DASHARATH
PANDIT

Digitally signed
by BHARAT
DASHARATH
PANDIT
Date: 2021.08.30
11:42:47 +0530

Mr. Deepak Nivrutti Bandal and Anr	Petitioners
V/s	
Mr. Santosh Goel and Others	Respondents

Mr. Shriniwas S. Patwardhan for the Petitioner.
Mr. Nitin P. Deshpande for Respondent No.1.

CORAM: NITIN W. SAMBRE, J.

DATE: AUGUST 24, 2021

P.C.:-

1] This Petition is by Defendants to Special Civil Suit No.2100 of 2011 wherein Respondents/Plaintiffs sought a decree of declaration of ownership, execution and registration of Sale Deed dated 13/12/2010 or in the alternative specific performance and possession.

2] It appears that Plaintiffs/Respondents moved an application Exhibit-62 under Order 6 Rule 17, which came to be allowed vide impugned order dated 10/7/2014.

3] Mr. Patwardhan, learned Counsel for the Petitioners/Defendants would urge that the suit in question is principally under Section 77 of

the Registration Act. By way of amendment, what is sought to be inserted is, relief of possession under Specific Relief Act. Since the relief claimed under Section 77 of the Registration Act is based on its scheme which is complete Code, as defined thereunder, parallel relief under Specific Relief Act for possession ought not to have been permitted to be incorporated. Mr. Patwardhan would draw support from judgment of this Court in the matter of *Rafiuddin Nuruddin Musalman vs. Abdul Karim Abdul Rehman* and Others reported in **2005(4)Mh.L.J. 646**.

4] While countering aforesaid submissions, Mr. Deshpande, learned Counsel for Respondent No.1 would invite attention of this Court to the judgment of the Apex Court in the matter of *Kalavakurti Venkata Subbaiah vs. Bala Gurappagari Guruvi Reddy* reported in **(1999) 7 SCC 114**. According to him, relief of possession claimed under the provisions of the Specific Relief Act has larger amplitude and as such, the Respondent/Plaintiff has every right to choose the relief to be claimed being *dominus litis*. He would draw support from observations made in paras 10 and 11 of the aforesaid judgment.

5] Considered rival submissions.

6] In my opinion, in view of law laid down by the Apex Court in the matter of *Kalavakurti* cited supra, it cannot be said that Plaintiff cannot claim relief of possession under the provisions of the Specific Relief Act in a suit initially initiated under Section 77 of the Registration Act, particularly when observations of the Apex Court are that relief claimed under the Specific Relief Act has wider scope than the relief claimed under Section 77 of the Registration Act. Though by relying on the aforesaid judgment of this Court, Mr. Patwardhan tried to canvass that relief claimed under Section 77 of the Registration Act and the one under Specific Relief Act cannot be prayed in same suit, however, in answer to the same, it can be noticed that it is always open for the Plaintiff to claim larger relief. In such an eventuality, if so required, Plaintiff may reconsider restricting relief claimed in his suit, if so desired at appropriate stage.

7] In the aforesaid backdrop, in my opinion, no case for interference in extraordinary jurisdiction is made out. Petition as such fails and same stands dismissed.

(NITIN W. SAMBRE, J.)