



C.R.PPD.No.1128 of 2023

IN THE HIGHCOURT OF JUDICATURE AT MADRAS

Dated : 28/6/2023

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

Civil Revision Petition No.1128 of 2023

a n d

C.M.P.No.7876 of 2023

James Paul

...

Petitioner

Vs

1. M. Shashikumar

2. G. Vasantha

3. Siddarth Gopinath

...

Respondents

Prayer: Petition filed under Article 227 of the Constitution of India to set aside the order dated 10/3/2023 in E.P.No.169 of 2022 in O.S.No.102 of 2007 passed by the learned III Additional District and Sessions Judge, Coimbatore.

For Petitioner

...

Mr.V.Raghavachari
for Mr.Najeeb Usman Khan

For Respondents

...

Mr.N.Sridhar

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ORDER

This Civil Revision Petition is directed against the order passed by the learned III Additional District and Sessions Judge, Coimbatore, on 10/3/2023, in E.P.No.169 of 2022 in O.S.No.102 of 2007.

2. The facts which led the revision petitioner/third judgment debtor to file this Civil Revision Petition in brief are as under:-

The second respondent/judgment debtor has entered into a sale agreement dated 1/8/2006 with the first respondent/deedee holder to sell landed property for a total sale consideration of Rs.1,54,18,000/-. As the second respondent could not execute the sale deed, as per the terms of agreement of sale, the first respondent/deedee holder has filed O.S.No.102 of 2007, on the file of III Additional District and Sessions Judge, Coimbatore, seeking enforcement of agreement of sale, dated 1/8/2006. On 1/7/2011. On the strength of the pleadings, trial Court has initially framed two issues, viz.,

(i). Whether the first defendant is liable to receive the balance sale consideration and execute



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the sale deed in terms of the sale agreement dated
1/8/2006?

(ii). Whether the plaintiff is entitled for the
relief of possession of the suit property?

Subsequently, the trial Court went on to frame the following additional
issues:-

(i). Whether the plaintiff was ready and
willing to perform his part of contract?

(ii). Whether time is the essence of the suit
agreement?

(iii). Whether the third defendant is a
bonafide purchaser for value without notice of
the suit sale agreement (or) whether the third
defendant is a lis pendens purchaser as claimed
by the plaintiff?

(iv). Whether protection against specific
performance available a bonafide purchaser
under Section 19 (b) of the Specific Relief Act is



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available to the third defendant, if he is considered to be a lis pendens purchaser?

(v). Whether the plaintiff is entitled for specific performance of suit sale agreement dated 1/8/2006?

3. The trial Court having taken into consideration the materials on record has ultimately decreed the suit, in part as the suit was dismissed in respect of relief of possession.

4. Aggrieved by the judgment, dated 26/9/2016, the revision petitioner/judgment debtor No.3 has preferred A.S.No.114 of 2017 on the file of the this Court, which ultimately came to be dismissed on 30/11/2018. The revision petitioner/third judgment debtor has taken the matter to the Hon'ble Supreme Court and filed S.L.P.Nos.17194 and 17195 of 2019 and vide, order, dated 29/7/2019 and same was dismissed.

5. Subsequently, the first respondent/deGREE holder has filed Execution Petition in E.P.No.104 of 2019 on the file of the learned III Additional District and Sessions Judge, Coimbatore, seeking for



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execution of sale deed as per the terms of the decree passed in O.S.No.102 of 2007. The said Execution petition was allowed and accordingly, the sale deed was also got executed on 25/4/2022. The petitioner did not seek for recovery of possession in E.P.No.104 of 2019, however, the first respondent/decreed holder has filed Execution Petition in E.P.No.169 of 2022 seeking the relief of recovery of possession and the said petition came to be allowed, on 10/3/2023 directing the petitioner/judgment debtor to deliver the possession by 30/3/2023.

6. Aggrieved by the same, revision petitioner/judgment debtor No.3 has preferred this Civil Revision Petition.

7. Heard Mr.V.Raghavachari, learned Senior counsel for the petitioner and Mr.N.Sridhar, learned counsel for the respondents. Perused the materials available on record.

8. It is submitted by the learned Senior counsel for the petitioner that the order for delivery of possession in favour of the respondents by the Execution Court, without there being any decree is unsustainable in law.

The Execution Court has directed the possession to be delivered against



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the principles of law that Executing Court cannot go beyond the decree.

The Executing Court has failed to consider that in E.P.No.104 of 2019, there was no prayer for delivery of possession. The Executing Court should not have entertained the E.P for delivery of possession, since the decree in O.S.No.102 of 2007 does not speak about delivery of possession.

9. There is no dispute that in the agreement of sale, entered into between the parties, first respondent has agreed not only to execute the registered sale deed but also for delivery of possession. However, the trial Court declined to grant the relief of delivery of possession, as sought for by the first respondent/decreed holder, while decreeing O.S.No.102 of 2007, partly.

10. It has been submitted vehemently by the learned Senior counsel for the respondents that once a decree of specific performance for agreement of sale has already been passed, no decree in respect of delivery of possession required to be specifically passed and possession of the schedule of property can be delivered without there being any specific decree of delivery of possession, as delivery of possession is



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inherent to the decree of specific performance of agreement of sale.

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11. The question as to whether in a decree of specific performance delivery of possession is inherent has actually been debated many times by this Court and also the Apex Court and ultimately, concluded that in a suit for specific performance of agreement of sale, delivery of possession is inherent.

12. In a decision rendered by the Hon'ble Supreme Court of India, in Civil Appeal No.2726 of 2022 arising out of S.L.P.(Civil) No.15653 of 2017 and decided on 5/4/2022, between MANICKAM AND OTHERS Vs. VASANTH, it is held that in a suit for specific performance, possession is inherent in such suit, therefore, the decree holders are in fact entitled for possession in pursuance of sale deed executed in their favour. However, the terms of the agreement should have mentioned about the agreement in respect of delivery of possession as well. As already observed, in the case on hand, the agreement of sale, dated 1/8/2006 also speaks that the petitioner has agreed to deliver the possession of the schedule of property on execution of registered sale deed.



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13. In **K.M.RAJENDRAN Vs. ARUL PRAKASAM AND OTHERS**, reported in (1998) 3 CTC – 25, the learned Single Judge of this Court has held thus:-

“26. The present petition is unnecessary for the reason that it is settled law that once a decree for specific performance of contract of sale is passed, a sale deed will be executed in favour of the plaintiff and automatically he is entitled to possession of the suit property by virtue of the said sale deed. However, as per [Section 22\(2\)](#) of the Specific Relief Act, the relief of possession shall not be granted by Court unless it has been specifically claimed. It is true that the decree in the instant case is silent with regard to the possession of the suit property. The prayer for possession has neither been expressly overruled nor expressly allowed. But the fact remains that



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the Court allowed the plaintiffs prayer for specific performance of the contract which itself incorporates a clause for delivery of possession. When the decree contains a direction upon the judgment-debtor to sell the suit property to the plaintiff in terms of the agreement it necessarily embodies a mandate to fulfill all the terms including the term for delivery of possession. Construing the decree in the light of the judgment in the present case there is no hesitation in accepting the contention that the Court in decreeing the suit allowed the prayer for delivery of possession. It was not necessary for the Court to direct such delivery of possession expressly because the Court was directing enforcement of the entire agreement including the agreement to deliver possession. It is also settled view that [Section 22\(1\)](#) of the Specific Relief Act, 1963, is procedural in nature. The reliefs by way of delivery of possession or partition and separate



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possession of property mentioned in [Section 22\(1\)\(a\)](#) of the said Act are ancillary or consequential to the passing of a decree for specific performance of a contract to transfer immovable property. Thus, possessory reliefs mentioned in clause (a) of sub-section (1) of [Section 22](#) of the Act are dependent upon and flows from passing of a decree for specific performance of an agreement to transfer an immovable property. I have already referred to the judicial decisions to the effect that the Court could grant such possessory relief in favour of a successful plaintiff in a suit for specific performance as per [Section 22\(1\)](#) of the Act. In view of Proviso to sub-section (2) of [section 22](#) the Legislature has given statutory recognition and power to the Court to grant delivery of possession and has also prescribed the procedure for obtaining such relief. In the light of the specific provision, namely, [section 22](#) of the



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Specific Relief Act and in view of the fact that the plaintiff has succeeded in getting a decree for specific performance which is affirmed by this Court, I am of the view that once a decree for specific performance is there it includes the term for delivery of possession. As stated earlier, 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.”

14. However, one other argument raised by the learned counsel for the petitioner is that even though the Apex Court and this Court have repeatedly held that in a suit for specific performance for recovery of possession need not be specifically asked, as it is inherently embedded in the decree of specific performance. In the case on hand, the first respondent being the decree holder has specifically pleaded in the trial Court, for a decree of delivery of possession, which was denied by the trial Court. Therefore, it is submitted by the learned Senior counsel for the petitioner that in case, if the first respondent being the decree holder,



failed to ask for delivery of possession, he can take advantage of the fact that delivery of possession is inherent in the relief of execution of specific performance of contract of sale, however, in a case, like this, where the decree holder specifically sought for relief of delivery of possession and since it is declined, the delivery of possession cannot be ordered.

15. This submission of the learned counsel for the petitioner/judgment debtor is not convincing. Once it is held that in a suit for specific performance, recovery of possession need not be asked for as a recovery of possession is inherent to the decree of specific performance as delivery of possession is only incidental to the decree of specific performance. Hence, even if such relief is asked by the first respondent/decreed holder and even it was declined by the Court, it will not take away the right of the first respondent/decreed holder to invoke the relief of delivery of possession basing of the decree of specific performance of contract of sale. Therefore, as the petitioner himself has agreed in the agreement of sale that he will deliver the possession, once the execution of sale deed is done and since the sale deed has already been executed, what remains is the delivery of possession. Here



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Execution Court has rightly ordered delivery of possession.

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16. The other ground raised by the learned counsel for the petitioner is that when the first respondent/decreed holder has filed E.P.No.104 of 2019, he did not seek for relief of delivery of possession and has filed another E.P.No.169 of 2022. This objection is very trivial in nature. It is the settled legal position that the decreed holder can file any number of execution petition during the period when the decree is in live. The trial Court has granted decree in O.S.No.102 of 2007, directing the petitioner to execute the sale deed. As already observed, recovery of possession is consequential to the main decree. The first respondent/judgment debtor can file one E.P, seeking for both reliefs or can file two different E.Ps., one after the other or simultaneous one for execution of the sale deed and another for recovery of possession.

17. In view of the discussion made above, Execution Court has rightly held for the delivery of possession, as per the decree passed and as per the sale deed executed in consequence pursuance of the same and thereby, the order passed by the learned Execution Court in E.P.No.169 of 2022, cannot be interfered with.



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18. In the result, this **Civil Revision Petition is dismissed.** No costs. Consequently, the connected Miscellaneous Petition is closed.

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Index: Yes/No

Neutral Citation: Yes/No

To

III Additional District and Sessions Judge, Coimbatore.

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