



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 7710 OF 2023

(AMAR SURESH CHANDEKAR & OTH..VS.. RAJENDRA GANPAT ATRAM & OTH.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri A.M.Chandekar, Advocate for Petitioners.
Dr.(Mrs.) R.S.Sirpurkar, Advocate for Respondents.

CORAM : ANIL S. KILOR, J.
DATED : JANUARY 05, 2024.

1. Heard.
2. The order dated 11/04/2023 passed below Exh.108 by Civil Judge Senior Division, Chandrapur in Regular Darkhast No.32 of 2003, allowing the application moved by the Decree Holder/ respondent praying for issuance of possession warrant with a view to put the decree holder in possession of the suit property is under challenge.
3. I have heard the learned counsel for the respective parties.
4. Shri Chandekar, learned counsel for the petitioner submits that in the suit for specific performance no prayer was made as regards the possession and even in the decree passed on 22/01/2003 no directions were issued for handing over the possession. It is submitted

that despite the fact that the execution proceeding was filed immediately after the decree, in the year 2003, no possession was sought. He, therefore, submits that after 19 years, moving of the application for possession and allowing the same by the executing Court is contrary to the provisions, particularly Section 22, of the Specific Relief Act 1963. He, accordingly prays for quashing and setting aside of the impugned order.

5. Mrs.Sirpurkar, learned counsel for the Respondents/ Decree Holders supports the impugned order and points out that at any stage such relief can be claimed under Sections 22 and 28 of the Specific Relief Act, 1963 and since possession is an ancillary relief it can be granted even at the appellate stage. In support of her contention she has relied upon the judgments of the Hon'ble Supreme Court of India in the case of *Babu Lal ..vs.. Hazari Lal Kishori Lal and others*, reported in (1982) 1 SCC 525 and in the case of *Manickam alias Thandapani and Another ..vs.. Vasantha*, reported in **2022 SCC OnLine SC 2096**. She, accordingly, prays for dismissal of the present writ petition.

6. In light of the rival contentions, I have perused the record and the impugned order.

7. After going through the record, it is evident that prayer for possession was not directly sought. The prayer clause (ii) of the suit reads as under :

“(ii) Perpetual injunction restraining the defendants and others on their behalf from disturbing the suit plot in favour of anybody-else and be further restrained from disturbing the plaintiff’s possession over the suit plot after delivery of possession to the plaintiff and transferring the same to others.”

8. The learned trial Court, while decreeing the suit, directed the defendant to execute the sale deed on deposit of balance consideration by the plaintiff within 90 days. The said judgment and decree was not challenged and has attained finality.

9. Since the Sale Deed was not executed by the Judgment Debtors within the stipulated period the execution proceeding was filed and in the execution proceeding the Sale Deed was executed in favour of the Decree Holders on 05/01/2022. Thereafter, the application Exh.108 was moved by the Decree Holders on 04/10/2022 seeking possession which came to be allowed by the learned executing Court.

10. To appreciate and consider the arguments made by the learned counsel for the petitioners, I am of the opinion that it would be relevant to refer to the judgments of the Hon’ble Supreme Court of India in the case of *Babu Lal* (supra) and *Manickam* (supra), wherein the Hon’ble Supreme Court of India has categorically held that the relief of possession is ancillary to the decree for

specific performance and need not be specifically claimed and the defendant in terms of the agreement is bound to hand over possession of the land agreed to be sold. It is further held that the expression 'at any stage of the proceedings' is wide enough to allow the plaintiff to seek possession even at the appellate stage or even in execution. It is also held that the limitation in such matters would start against the Decree Holders only after they had obtained a sale in respect of the disputed property.

11. To specifically refer to the relevant portion of the above referred judgments, I would reproduce the same herein below:

12. In the case of *Babu Lal* (supra) the Hon'ble Supreme Court of India held thus :

11. Section 22 enacts a rule of pleading. The Legislature thought it will be useful to introduce a rule that in order to avoid multiplicity of proceedings the plaintiff may claim a decree for possession in a suit for specific performance, even though strictly speaking, the right to possession accrues only when suit for specific performance is decreed. The Legislature has now made a statutory provision enabling the plaintiff to ask for possession in the suit for specific performance and empowering the court to provide in the decree itself that upon payment by the plaintiff of the consideration money within the given time, the defendant should execute the deed and put the plaintiff in possession.

12. *The section enacts that a person in a suit for specific performance of a contract for the transfer of immovable property, may ask for appropriate reliefs, namely, he may ask for possession, or for partition, or for separate possession including the relief for specific performance. These reliefs he can claim, notwithstanding anything contained in the Code of Civil Procedure, 1908, to the contrary, Sub-section (2) of this section, however, specifically provides that these reliefs cannot be granted by the Court, unless they have been expressly claimed by the plaintiff in the suit. Sub-section (2) of the section recognised in clear terms the well- established rule of procedure that the court should not entertain a claim of the plaintiff unless it has been specifically pleaded by the plaintiff and proved by him to be legally entitled to. The proviso to this sub-section (2), however, says that where the plaintiff has not specifically claimed these reliefs in his plaint, in the initial stage of the suit, the court shall permit the plaintiff at any stage of the proceedings, to include one or more of the reliefs, mentioned above by means of an amendment of the plaint on such terms as it may deem proper. The only purpose of this newly enacted provision is to avoid multiplicity of suits and that the plaintiff may get appropriate relief without being hampered by procedural complications.*

13. *The expression in-sub-section (1) of section 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 Transfer of Property 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.

19. ... In my opinion the proviso gives ample power to a court to allow the amendment of the plaint even at this stage. The proviso says that the amendment of the plaint can be allowed "at any stage of the proceedings" on such terms as may be just for including a claim for possession where the plaintiff has not claimed such relief in his original plaint.

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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 in my opinion includes execution proceedings also."

The High Court had relied upon Rameshwar Nath v. UP Union Bank (Supra) for its decision in this case. We are in complete agreement with the view taken by the Delhi High Court on this case."

13. Similarly in the case of *Manickam* (supra) the Hon'ble Supreme Court of India has held thus :

"25. A perusal of the aforesaid judgments would show that relief of possession is ancillary to the decree for specific performance and need not be specifically claimed. That was the position even under the Specific Relief Act, 1877. Section 22 of the Act was introduced in pursuance of the recommendation of the Law Commission to avoid multiplicity of proceedings and to cut down the delay. Therefore, though the

preponderance of judicial opinions under the Specific Relief Act, 1877 was in favour of the fact that relief of possession is ancillary to the decree for specific performance, it was further clarified by introducing Section 22 of the Act.

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30. The defendant in terms of the agreement is bound to handover possession of the land agreed to be sold. The expression "at any stage of proceeding" is wide enough to allow the plaintiffs to seek relief of possession even at the appellate stage or in execution even if such prayer was required to be claimed. This Court in Babu Lal has explained the circumstances where relief of possession may be necessary such as in a suit for partition or in a case of separate possession where the property conveyed is a joint property. In the suit for specific performance, the possession is inherent in such suit, therefore, we find that the decree-holders are in fact entitled to possession in pursuance of the sale deed executed in their favor."

14. Thus, in light of the above referred observations made by the Hon'ble Supreme Court of India, it is evident that no error has been committed by the learned Executing Court in allowing the application Exh.108 filed by the Decree Holder in this case.

Accordingly, the Writ Petition is **dismissed**. No order as to costs.

JUDGE