



C.R.P.(MD)No.227 of 2007

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.10.2024

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

C.R.P.(MD)No.227 of 2007

and

M.P.(MD)No.1 of 2007

Ramachandran Pillai

... Petitioner

Vs.

- 1.Bhagavathiperumal Pillai
- 2.Umayammal
- 3.Dhanu Pillai
- 4.Madhusudhanaperumal Pillai
- 5.Ramakrishnapillai (Died)
- 6.Murugan
- 7.Kannan
- 8.Ganesan
- 9.R.Andal Pillai
- 10.R.Uma Narayani

... Respondents

(Respondents 9 and 10 are brought on record as LR's of the deceased 5th respondent, vide Court order, dated 03.03.2020, made in CMP(MD)Nos.6182 to 6184 of 2017 in CRP(MD)No.227 of 2007)

(Since the respondents 1 and 7 herein were set ex-parte by the Lower Court, they are given up)



C.R.P.(MD)No.227 of 2007

WEB COPY

PRAYER : Civil Revision Petition is filed under Section 115 of C.P.C., against the order, dated 12.10.2007, passed in E.P.No.249 of 2005 in O.S.No.358 of 1978 on the file of the 1st Additional District Munsif Court, Nagercoil.

For Petitioner	: Mr.V.Meenakshisundaram for Mr.D.Nallathambi
R1 and R7	: Exparte
For R2 to R4	: No appearance
R5	: Died
For R9 and R10	: Mr.K.MD.Sirajudeen

ORDER

The present Civil Revision Petition is filed by one of the legal heirs of the plaintiff against the order, dated 12.10.2007, passed in E.P.No.249 of 2005 in O.S.No.358 of 1978 on the file of the 1st Additional District Munsif Court, Nagercoil.

2. The suit was filed for specific performance by one Velvikavala Perumal Pillai and the suit was allowed on 21.01.1980. Aggrieved over the same, the defendants had preferred Appeal Suit No.17 of 1983 on the file of the Sub Court,



C.R.P.(MD)No.227 of 2007

WEB COPY

Nagercoil and the same was dismissed on 25.06.1984. Aggrieved over the same, S.A.No.1903 of 1985 on the file of the High Court, Madras was filed. Pending second appeal the plaintiff Velvikavala Perumal Pillai died and his legal heirs namely Nagar Pillai, Subbiah Pillai, Lakshmana Pillai, Ramachandra Pillai, Krishnan Pillai and Anandan were impleaded as 3 to 8 respondents in the second appeal. Thereafter the second appeal was dismissed on 14.03.2000.

3. In the meanwhile the said Velvikavala Perumal Pillai had executed a registered Will dated 12.09.1988 in favour of the revision petitioner for receiving the sale deed from the defendants. Then the said Velvikavala Perumal Pillai died on 04.11.1989 and the Will had come into force. Thereafter, the revision petitioner had received the sale deed executed by the 1st defendant. However, the defendant had not handed over the possession of the property, hence the revision petitioner had preferred E.P.No.249 of 2005.



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4. The defendants have taken a plea that the plaintiff has prayed for executing the sale deed but has not prayed for recovery of possession. In the impugned order, the Court has held that “on perusing the prayer in the suit, the plaintiff had prayed for specific performance of the contract alone and had not prayed for handing over possession. Further, the plaintiff has not filed any petition to amend the prayer in the suit”. Hence the E.P. was dismissed. Aggrieved over the same, the present revision petition is filed.

5. In the suit for specific performance whether the recovery of possession ought to be prayed separately was considered by the Hon'ble Supreme Court in the case of *Manickam @ Thandapani and another Vs Vasantha* reported in **2023 (4) CTC 690** wherein it has been categorically held that in a suit for specific performance, the possession is inherent in such suit, hence the decree holder is entitled to possession in pursuance of execution of sale deed. The relevant portion is extracted hereunder:



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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 favour.”*

6. In the aforesaid judgment the Hon'ble Supreme Court has referred to the judgment rendered in the case of **Babu Lal Vs Hazari Lal Kishori Lal and others** reported in **1982 (1) SCC 525**, and has held as under:

“16. Such provision of the Act had come up for consideration before this Court in Babu Lal v. Hazari Lal Kishori Lal & ors., 1982 (1) SCC 525, at the instance of a Purchaser pendente lite. This Court has explained the expression "in an appropriate case" appearing in sub-section (1) of Section 22 of the Act. The Court also examined the question as to whether the relief



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for possession can be effectively granted to the Decree-holders where the property agreed to be conveyed is jointly held by the Defendant with other persons. In such cases, the Plaintiff must claim partition of the property and possession over the share of the Defendant. Hence, relief for possession must be specifically pleaded in these particular cases. This Court held that as against the third person, a Decree for possession must be specifically claimed as such a person is not bound by the Contract to be enforced. The argument that the Plaintiff must claim possession in a Suit for Specific Performance of a Contract in all cases was also negated as Section 22 talks about the relief of possession in appropriate case. This Court addressed the history of the provision so enacted and held as under:

"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.



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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..... 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 in consonance with the provisions 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.



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14. 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 share of the Defendant. It is in such cases that a relief for Possession must be specifically pleaded.

16. ...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 Section 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 proceeding".

7. The various High Courts had taken a view even before the said judgment rendered in Babu Lal's case that the relief for possession is inherent in the relief of specific performance of the contract for sale and that in execution of a decree for specific performance, the decree holder is entitled to possession over the



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property even if no such relief was specifically claimed in the suit or granted under the decree. Therefore, by relying on the aforesaid judgment, this Court is of the considered opinion the impugned order passed by the Execution Court is erroneous. And the same is against the provisions of the Act and also against the dictum laid down in the aforesaid judgment.

8. The next contention of the revision petitioner is that Execution Court held that the revision petitioner has executed the sale deed along with the first defendant alone but the possession is with the respondents 3 to 9 and hence the revision petitioner ought to have prayed for recovery of possession separately. It is seen the suit was filed against two defendants namely Bhagavathi Perumal and Narayana Pillai. After the demise of the 2nd defendant Narayana Pillai, his legal heirs namely Umayammal, Dhanu Pillai, Madhusudhanaperumal Pillai, Ramakrishnan Pillai, Murugan, Kannan and Ganasen were impleaded as parties, who are the other respondents from 3 to 7. Thereafter the said Ramakrishnan Pillai died and his legal heirs were impleaded as respondents 8 and 9. Therefore,



C.R.P.(MD)No.227 of 2007

WEB COPY

even though the possession is with other respondents, the decree is against the original defendants and the same is binding the legal heirs also on the principles of lis-pendens. In other words, when the lis is pending, any encumbrances or rights are subject to the result of the suit or further litigations. Therefore, a separate prayer for recovery of possession is not necessary.

9. Therefore, the impugned order is liable to be set aside and accordingly set aside. The civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

24.10.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes

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C.R.P.(MD)No.227 of 2007

To

- 1.1st Additional District Munsif Court,
Nagercoil.
- 2.The Section Officer,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.



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C.R.P.(MD)No.227 of 2007

S.SRIMATHY, J.

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C.R.P.(MD)No.227 of 2007

24.10.2024