

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

**Before:
The Hon'ble Justice Hiranmay Bhattacharyya**

C.O. 3528 of 2025

**Kamala Bhattacharjee & Anr.
VS.
Suman Ganguly & Anr.**

For the Petitioners	: Mr. Haradhan Banerjee, Mr. Amitaba Pain, Mr. Partha Pratim Mukhopadhyay, Mr. Vivek Tripathi, Mr. Suresh Kr. Sahoo	Advocates
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For the Opposite Parties	: Ms. Shohini Chakraborty, Mr. Koushik Bhattacharya, Mr. Suranjan Mondal, Ms. Gargee Acharya Biswas, Ms. Moushumi Biswas	 Advocates
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Reserved on : 22.09.2025

Judgment on : 02.12.2025

Hiranmay Bhattacharyya, J.:-

1. This application under Article 227 of the Constitution of India is at the instance of the Judgment Debtors and is directed against an order being No. 57, dated August 28, 2025 passed by the learned Civil Judge (Senior Division) 1st Court at Barasat in Title Execution Case No. 1 of 2014 arising out of Title Suit No. 266 of 2011.

2. By the order impugned, the prayer of the decree holders/ opposite parties herein for delivery of khas possession was allowed and the Court bailiff was directed to deliver khas possession of the decretal property to the opposite parties after removing all obstructions within the time limit indicated in the said order.
3. The opposite parties filed a suit for specific performance of contract, declaration, permanent injunction and for delivery of possession being Title Suit No. 266 of 2011 before the learned Civil Judge (Senior Division) 1st Court at Barasat.
4. The said suit was decreed on contest against the petitioners by a judgment and decree dated September 30, 2013. The opposite parties got a decree for specific performance of the agreement for sale dated 24.02.2010 and the opposite parties were directed to deposit with the Court the balance consideration amount and the petitioner was directed to execute a conveyance in terms of the agreement for sale in favour of the opposite parties after withdrawing the balance consideration amount within a specified time limit failing which the decree may be put into execution.
5. Petitioner preferred a First Appeal being FA 11 of 2015 before this Hon'ble Court challenging the aforesaid judgment and decree. The said appeal was dismissed by the Hon'ble Division bench by a judgment and decree dated November 30, 2023.
6. The said decree was put into execution giving rise to Title Execution Case No. 01 of 2014. The sale deed was executed and registered through Court on 17.12.2024 in favour of the opposite parties.
7. The decree holders/opposite parties prayed for delivery of khas possession which was allowed by the impugned order. Being aggrieved, the judgment debtors have approached this Court.
8. Mr. Banerjee, learned advocate for the petitioner submitted that when decree for recovery of possession was prayed for but not granted, such

prayer shall be deemed to have been refused in terms of Explanation V to Section 11 of the Code of Civil Procedure. He further contended that when the relief for recovery of possession was not allowed, the order directing issuance of writ of delivery of possession is beyond the jurisdiction of the executing Court as it is well settled that the executing Court cannot go behind the decree. Mr. Banerjee placed reliance upon the decision of the Hon'ble Supreme Court in the case of ***Desh Raj & Ors. Vs. Rohtash Singh*** reported at **(2023) 3 SCC 714** and ***Adcon Electronics Pvt. Ltd. vs. Daulet & Another*** reported at **(2001) 7 SCC 698** in support of his contention that writ for delivery of possession could not have been issued unless such relief is specifically granted in a suit for specific performance of contract.

9. Ms. Chakraborty, learned advocate for the opposite party contended that a decree for specific performance of contract includes everything incidental to be done by one party or another to complete the sale transaction. She further contended that even though the decree for specific performance of contract of sale was silent as to the relief of delivery of possession, the executing Court was competent to deliver the possession. In support of the aforesaid contention, she placed reliance upon the decisions of the Hon'ble Allahabad High Court in the case of ***Pt. Balmukund vs. Veen Chand*** reported at ***AIR 1954 Allahabad 643*** and ***Rohit Kochhar vs. Vipul Infrastructure Developers Ltd.*** reported at **2024 SCC Online SC 3584**.
10. Heard the learned advocates for the parties and perused the materials placed.
11. The issue that falls for consideration is whether the executing Court could have issued the writ of delivery of possession when the decree for specific performance of contract did not specifically provide for delivery of possession.
12. A more or less similar issue fell for consideration in ***Balmukund*** (supra). The suit for specific performance of contract of sale was decreed and the decree was silent about delivery of possession even though such relief was

claimed in the suit. It was held in the said reported case that the decree for specific performance, which provides that the property shall be sold to the plaintiff by the defendants and the sale deed shall be executed within a certain time, failing which the Court will have the sale deed executed by a persons nominated by it, implies that delivery of possession shall be given in accordance with the provisions of Section 55(1) (f) of Transfer of Property Act. It was also held that delivery of possession is a necessary ingredient and part of transfer of ownership. It was further held that a decree for specific performance of contract includes everything incidental to be done by one party or another to complete the sale transaction.

13. In ***Subodh Kumar Banerjee vs. Hiramani Dasi*** reported at ***AIR 1955 Cal 267***, this Hon'ble Court held that the right to recover possession springs out of the contract which was being specifically enforced and not as a result of execution and completion of conveyance and as such the judgment debtor was bound to deliver possession to the decree-holder.
14. The Hon'ble Division Bench after noting the provisions laid down in Section 55 of the Transfer of Property Act held that unless there is a contract to the contrary, giving delivery of possession to the buyer by the seller is an incident of a contract for sale and when there is a decree directing the contract to be specifically enforced it includes a direction upon the vendor to give delivery of possession to the purchaser.
15. The Hon'ble Division Bench of this Court in ***Kartick Chandra Pal vs. Dibakar Bhattacharyya*** reported at ***AIR 1952 Cal 362*** held that a sale of a property after payment of consideration and upon execution of a deed of sale presupposes and requires the vendor to put the purchaser in possession of the property. It cannot be suggested that, when a party comes to the Court for the specific performance of contract, he is to be satisfied with simply the execution of the document on payment of the consideration money. The Court when allowing the prayer for specific performance, vests the executing Court with all the powers which are required to give full effect to the decree for specific performance. By the decree for specific

performance, the Court sets out what it finds to be the real contract between the parties and declare such a contract exists and it is for the executing Court to do the rest.

16. However, the Specific Relief Act, 1963 came into force on March 1, 1964. Section 22 of the Specific Relief Act, 1963 enables a plaintiff in a suit for specific performance to ask for the relief of possession. Subsection (2) of Section 22 puts a caveat that no relief under Clause (a) or Clause (b) of subsection (1) shall be granted by the Court unless it has been specifically claimed.
17. By placing reliance upon Section 22 of the Specific Relief Act, Mr. Banerjee contended that decree for delivery of possession has to be sought for by the party and granted by the Court in a suit for specific performance of contract of sale.
18. The expression “in an appropriate case” appearing in Section 22(1) of the Specific Relief Act fell for consideration before the Hon’ble Supreme Court in ***Babu Lal vs. Hazari Lal Kishori Lal*** reported at **(1982) 1 SCC 525**. In the said reported case, the Hon’ble Supreme Court, upon a conjoint reading of Section 22 and 28(3) of the Specific Relief Act and Section 55 of the Transfer of Property Act observed that it was only “in an appropriate case” that the plaintiff was required to separately seek the relief of possession, partition or separate possession. The Hon’ble Supreme Court observed that in other cases, say for example a case where the exclusive possession of the suit property 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. The Hon’ble Supreme Court observed that this was the mandate flowing from Section 55 of the Transfer of Property Act. The Hon’ble Supreme Court 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 stages 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, a case may be visualised 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 to 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 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.

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.*

26. *Sub-section (3) of Section 28 clearly contemplates that if the purchaser or lessee pays the purchase money or other sum which he is ordered to pay under the decree, the court may on application made in the same suit, award the purchaser or lessee such further relief as he may be entitled to. Clause (b) of sub-section (3) of Section 28 contemplates the delivery of possession or partition and separate possession of the property on the execution of such conveyance or lease. Sub-section (4) of Section 28 bars the filing of a separate suit for any relief which may be claimed under this section.”*

(emphasis supplied)

19. The Hon'ble Supreme Court in **Rohit Kochhar** (supra), noticed the decision in the case of **Adcon Electronics** (supra) and observed that the same proceeds on the understanding that a suit for specific performance of an agreement to sell is an act in personam. It was further held that the decision in **Babu Lal** (supra) takes into account the change brought about by the introduction of Section 22 and 28 of the Specific Relief Act, 1963 respectively which has changed the nature of the relief available under Section 22 by allowing the plaintiff to seek the relief of possession, partition etc. simultaneously along with the prayer for specific performance. The Hon'ble Supreme Court further held that the decision in **Babu Lal** (supra) was not considered and reliance was placed on the decision of the Federal Court which was rendered in the context of the old Specific Relief Act and had no occasion to consider the amended regime brought into being by virtue of the 1963 Act.

20. In **Rohit Kochhar** (supra), the Hon'ble Supreme Court after taking note of the provisions of Section 55(1)(f) of the Transfer of Property Act and the decision in **Babu Lal** (supra) held that the handing over the possession of the immovable property in respect of which a decree of specific performance has been granted is only incidental.
21. For the reasons as aforesaid, the decision in **Adcon Electronics** (supra) cannot come to the aid of the petitioner.
22. In the case on hand, the opposite party sought for the relief of possession in the suit for specific performance of the contract of sale. However, the decree for specific performance of the contract of sale was silent as to the relief of delivery of possession. By applying the proposition of law laid down in **Babu Lal** (supra) which was reiterated in **Rohit Kochhar** (supra), this Court is of the considered view that handing over of the possession of the immovable property in respect of which the decretal property is only incidental.
23. In the light of the aforesaid discussion and upon proper construction of the decree passed in the instant suit, this Court is not inclined to accept the contention of Mr. Banerjee that the relief for delivery of possession shall be deemed to have been refused as the decree is silent as to the relief of possession. Considering the nature of the decree, this Court is of the considered view that it was not necessary to specifically provide for delivery of possession as the seller is bound to deliver possession of the property to the buyer.
24. To the mind of this Court, the decree for specific performance of contract of sale cannot be said to have been satisfied with the execution and registration of the deed of sale until the seller delivers possession of the immovable property to the buyer.
25. Upon the decree for specific performance of a contract of sale being passed by a competent Court, the executing Court is vested with all the powers to give full effect to the decree including delivery of possession to the purchaser.

26. For all the reasons as aforesaid, this Court holds that the learned Judge of the executing Court was right in directing issuance of writ of delivery of possession even though the decree for specific performance of contract of sale did not specifically provide for delivery of possession.
27. The issue is accordingly answered in the affirmative and against the petitioners.
28. In ***Desh Raj*** (supra), the issue that fell for consideration was if the second party is not able to execute the sale deed whether the First party will be entitled to confiscate the earnest money. The said issue was answered by holding that in the absence of a prayer for refund of earnest money, it is difficult to accept that the courts would suo moto grant the refund of earnest money. The said decision being distinguishable on facts cannot be applied to the case on hand.
29. This Court accordingly holds that the impugned order does not suffer from any infirmity warranting interference under Article 227 of the Constitution of India.
30. Accordingly, CO No. 3528 of 2025 stands dismissed without, however, any order as to costs.
31. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)