



possession of the land. He further contends that it has been falsely averred in the plaint that part of cause of action has arisen within the jurisdiction of this Hon"ble Court. In support of his submission he has relied on the decisions of the Division Bench of this Court reported in *Gowardhandas Rathi Vs. Corporation of Calcutta and Another*, and *Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others*, .

2. Mr. Shyamal Sarkar, learned Advocate appearing for the plaintiff/ petitioner, while opposing this demurer action, contends that it is settled position of law that while granting decree for specific performance of agreement for sale of an immovable property Court is not required to decide the title, as such the relief can be granted by the Civil Court even though the property situates outside the territorial limit of the Court. In other words, he contends that the relief claimed in the plaint does not relate to the land at all. He further contends that relief for perpetual injunction and mandatory injunction does not require any adjudication of title or delivery of possession. He submits that if the plaint is read as a whole it will appear that the plaintiff has not claimed possession in as much as he is in possession of the property in question though in different status. In support of his submission he has relied on three decisions of this Court reported in *United Commercial Bank Vs. Sanatan Bastushilpa Pratisthan Pvt. Ltd.*, , *Md. Hassen Hashmi Vs. Sm. Kaberi Roy and others*, and a decision of a learned single Judge of this Court rendered in G.A. No. 741 of 2000, in C.S. No. 217 of 1989 2001 VII AD 513 (SC) *Adcon Electronics Private Limited v. Daulat and Anr.*

3. Having heard contentions of the learned Counsels I have read the plaint carefully and with reference to the relief claimed therein. I find that at this stage reading of the plaint is only exercise to decide the aforesaid Motion. I find from the plaint that the plaintiff has asked for decree for specific performance of an agreement for sale of an immovable property and permanent injunction restraining the defendants and each of them whether by themselves or their men, agents or assigns or otherwise howsoever from transferring, encumbering, dealing with, disposing of or creating any third party right or interest over and in respect of the premises No. 62/1C, Diamond Harbour Road, Kolkata - 700 023; mandatory injunction directing the defendants No. 1 to 9 and each of them whether by themselves or their men, agents or assigns or otherwise however to forthwith execute and register the Deed of Conveyance in favour of the plaintiff over and in respect of premises No. 62/1C, Diamond Harbour Road, Kolkata - 700023.

4. In the case of 2001 VII AD 513 (SC) the Supreme Court, in recent Judgment while approving the earlier decision of this Court reported in *Debendra Nath Chowdhury Vs. Southern Bank Ltd.*, and accepting the Judgment of Federal Court reported in AIR 1950 FC 83 *Moolji Jaitha & Co. v. Khandesh Spg. And Wvg. Mills Co. Ltd.* has authoritatively held in paragraph 15 as follows:

From the above discussion it follows that a "suit for land" is a suit in which the relief claimed relates to title to or delivery of possession of land or immovable

property. Whether a suit is a "suit for land" or not has to be determined on the averments in the plaint with reference to the reliefs claimed therein; where the relief relates to adjudication of title to land or immovable property or delivery of possession of the land or immovable property, it will be a "suit for land".

5. In this Judgment, Supreme Court has specifically ruled that if the suit is for specific performance of the agreement for sale of the immovable property wherein relief of delivery of the suit property is not specifically claimed, it cannot be treated as being a suit for land.

6. The three decisions of this Court cited by Mr. Sarkar have also held in the similar line, rather it has been held that the relief for perpetual injunction of the nature claimed here is an ancillary, and/ or incidental, and/or interlocutory in nature. These reliefs really do not relate to the adjudication of the title to the land.

7. The Division Bench Judgment of this Court cited by Mr. Haradhan Bandyopadhyay, reported in 2003 (2) WBLR 42 has not decided anything new, rather upon reading of the Supreme Court Judgment and other decisions rendered earlier has summarized the principle of law. The proposition laid down in this Division Bench Judgment is undisputed but the same will be applicable not only at this stage but it will be applicable even at the time of the trial of the suit. Of course, some portions of the observation of this Judgment is the repetition of the Supreme Court decisions and also earlier decisions of this Court. In this connection the decision of this Court reported in Tridandeeswami Bhakti Kusum Sraman Maharaj and Others Vs. Mayapore Sree Chaitanya Math and Others, can also be referred to, wherein it has been held amongst other, in order to hold a particular suit being a suit for land the Court has to embark upon an enquiry into the right, title and possession of the land in question.

8. On the background of the aforesaid proposition of law it is to be examined in this case whether relief for perpetual injunction and mandatory injunction related to the decision of title or not. The decision rendered in case of Gowardhandas Rathi Vs. Corporation of Calcutta and Another, , it has been merely observed that while granting relief for perpetual injunction the Court is to determine the plaintiff's right or alleged commission of act by the defendant would be contrary to or violative to the rights of the plaintiff. This case was rendered on different facts and different context for granting relief of perpetual injunction but what the Court is to decide has been stated in this Judgment.

9. Here the objection is that this Court cannot grant relief for perpetual injunction and mandatory injunction as claimed in the plaint as it will be virtually an exercise of adjudication and/or determination of title to the property in question as contended by Mr. Banerjee. It is difficult for me to accept this contention, as relief for perpetual injunction and mandatory injunction in the case of this nature are not essentially substantial reliefs, though decree is passed. It is merely a preventive relief rather incidental relief aiming at to help to

achieve real relief. I feel it appropriate that provision of Section 38 of the Specific Relief Act, 1963 is required to be set out in order to appreciate this proposition of law in better way:

38. Perpetual injunction when granted.--(1) Subject to the other provisions contained in or referred to by this Chapter, a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication.

(2) When any such obligation arises from contract, the Court shall be guided by the rules and provisions contained in Chapter II.

(3) When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the Court may grant a perpetual injunction in the following cases, namely:

(a) where the defendant is trustee of the property for the plaintiff;

(b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;

(c) where the invasion is such that compensation in money would not afford adequate relief;

(d) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

10. It is clear from the language of the said section that the Court is to examine, while granting relief, whether there exists any obligation in favour of the plaintiff and whether it has been breached expressly or by implication or not. One of such obligations may arise out of contract, and the Court is to look for guidance as contained in Sub-section (2) of the said section for remedial of such breach. In case of invasion or threatened invasion of plaintiff's right to, or enjoyment of property, the Court may have to require to decide the limited right, not every right, relating to the property. This right relates to the right of the beneficiary and does not relate to the title of the property. In this case, the plaintiff has not stated a case of invasion or threatened invasion of his right to, enjoyment of property, but has complained of breach of obligation arising from the contract. Sequently, the relief for mandatory injunction is claimed in connection with and in relation to the decree for specific performance.

11. According to me, in this case the Court will have to decide as to whether there exists any agreement for sale and further whether there is breach thereof or not. The plaintiff has not challenged the title of the defendant. Simply it does not call for as it itself must have decided title. Here probable issues would be whether there exists any valid and lawful agreement and furthermore whether the same can be asked to be performed by the defendants or not. Accordingly, while granting relief for permanent injunction Court is to examine whether there exists any contractual obligation on the part of the defendants to sell the

property and further whether such obligation has been breached or not. If Section 39 of the Specific Relief Act is read similar would be the situation and it will appear from the language of the section itself. Section 39 is as follows:

Mandatory Injunctions.--When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the Court is capable of enforcing, the Court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.

12. According to me, while granting relief of the perpetual injunction and mandatory injunction in this case I do not require any adjudication or declaration of title of the immovable property. Whatever title the defendants possess, is to pass on to the plaintiff by executing conveyance. Passing on title from x to y does not require any adjudication and it automatically follows by operation of the law when the property is sold from one person to another. Declaration of title is required when a particular person's right, whether exists or not, is denied by the defendants.

13. In this case the defendants have not denied any title of the plaintiffs, only they have refused to discharge the obligation to execute conveyance arising out of the jurisdiction.

14. In view of the above discussion I think this demurer action on this point must fail.

15. As far as accrual of part of cause of action is concerned, I think this stage is premature and it is not required to be decided unless written statement is filed and in witness action it is established that no part of cause of action has arisen within the jurisdiction. The revocation of leave under Clause 12 of the Letters Patent though sought for, at the present moment it cannot be granted going by the averment of the plaint, which, to my mind, are good enough for the time being to maintain leave already granted till it is decided by the Court as a preliminary issue as the question of jurisdiction for the same involves mixed question of fact and law. Hence this application is disposed of passing any order.

Accordingly, this point is kept open. There will be no order as to costs.