

(2001) 09 AHC CK 0026
In the Allahabad High Court
Case No : C.M.W.P. No. 10792 of 1980

Islah Uddin and Others

APPELLANT

Vs

District Judge, Bulandshahr and Others

RESPONDENT

Date of Decision : 10-09-2001

Acts Referred:

Specific Relief Act, 1963 — Section 22

Citation : (2002) 1 AWC 235 : (2002) 2 CivCC 502 : (2002) 93 RD 120

Hon'ble Judges : S.K. Singh, J

Bench : Single Bench

Advocate : Shyam Narayan, for the Appellant; S.N. Agrawal and Neeraj Agrawal, for the Respondent

Final Decision : Allowed

Judgement

S.K. Singh, J.—By means of this writ petition, the petitioners have challenged the judgments of the respondent Nos. 1 and 2 dated 21.10.1980 and 8.9.1979 (Annexures-4 and 3 to the writ petition) respectively.

2. Suit for specific performance of agreement of sale was filed by the petitioners (Original Suit No. 22 of 1964) against the respondent No. 3 on the basis of agreement dated 20.7.1963. In the plaint, relief of possession was not specifically claimed. The suit, as was filed by the plaintiffs, was decreed by the trial court on 27.5.1971 against which appeal was filed by the defendants which was dismissed on 24.2.1976. Thereafter, a second appeal was filed which was numbered as Second Appeal No. 47 of 1976 in which on 29.4.1976, an interim order was granted in favour of the appellants. In the meantime, in pursuance of the Judgment and decree of the trial court, the petitioners filed execution application (Execution Case No. 30 of 1971) for execution of sale deed and for possession. After objection by the respondent No. 3 u/s 47, C.P.C., raising a point that the petitioners cannot get the possession over the land as there is no decree of possession, the executing court vide its order dated 31.7.1976, repelled the objection of respondent No. 3 and the sale deed was executed in favour of the

petitioners and the possession was also given on 3.8.1976 and by the order dated 5.8.1976, execution was directed to be struck off in full satisfaction. When this fact was brought to the notice of second appellate court in Second Appeal No. 47 of 1976 on 15th of July, 1976. stay order was vacated.

3. After the execution of decree in favour of the petitioners as stated above, the respondent No. 3 preferred an appeal which was allowed by 3rd Additional District Judge by his order dated 20.5.1978 whereby the learned Judge held that the possession could not be given to the petitioners over the land in dispute unless the decree holder/petitioners get the Judgment and decree amended so as to include a direction for possession. In view of the aforesaid decision of 3rd Addl. District Judge dated 20.5.1978, the petitioners moved an application before the trial court under Sections 151, 152 and 153, C.P.C. for making correction in the judgment and consequential correction and amendment of the decree. The said Misc. Application was numbered as Misc. Case No. 191 of 1979. The respondent No. 3 filed objection to the said application. The trial court took a view in its order dated 8.9.1979 that it had no jurisdiction to pass any order as the decree of the trial court had merged with that of lower appellate court. Thereafter, the petitioners moved another application under Sections 151, 152 and 153, C.P.C. before the learned District Judge for making necessary correction in the Judgment and decree in Suit No. 22 of 1964. The respondent No. 1 also by his order dated 21.10.1980 rejected the petitioners' application on the ground that the matter is pending in the second appeal before the High Court, therefore, it cannot be done. It is against these two orders passed by the courts below, the petitioners have come up before this Court in this writ petition.

4. It has been submitted by learned counsel for the petitioners that the respondent Nos. 1 and 2 have committed error in rejecting the petitioners' application as the amendment as was prayed by the petitioners in respect to the addition in the decree for relief of possession was Just a consequence to the judgment and decree as was granted for specific performance of contract. It has been submitted by learned counsel for the petitioners that approach of the courts below that they have no Jurisdiction for making necessary amendment, is not correct and so far pendency of the second appeal before this Court is concerned, that has nothing to do with the powers of the courts below of granting necessary amendment in the decree as in the event of a decision in the suit itself, if goes against the plaintiffs, everything will be set at naught and if the decision in the second appeal goes in petitioners' favour everything remains intact and thus so far the amendment as was claimed by the petitioners being formal, as a consequence to the decree as has been granted, it was legally permissible.

5. Learned counsel who has appeared for the respondent has submitted that on the facts of the present case, the view as has been taken by the courts below cannot be said to be illegal in any manner as the mistake on the part of the petitioners not being accidental slip or omission, it cannot be corrected,

6. The question which is involved in this petition is that whether in a suit for

specific performance of contract on the basis of agreement, if the decree has been passed, directing the execution of the sale deed, if the relief of possession was not claimed in the plaint, whether it can be allowed at subsequent stage or not. This question has already been considered by the Hon''ble Apex Court in a decision in Babu Lal v. Hajari Lal Kishori Lal and Ors. AIR 1982 SC 181. After considering the provisions as contained in Section 22 of the Specific Relief Act, it has been laid down that the decree holder shall be entitled to possession also in pursuance of the judgment and decree as was granted for specific performance and it is for any Court at any subsequent stage to allow relief of possession, which can be allowed even at execution stage. The aforesaid decision of the Apex Court was thereafter taken note of by this Court in a decision which has been rendered as in Krishna Kumar and Ors. v. Balbir Singh and Ors. 1984 ALJ 976 This Court after referring the aforesaid decision given in Babu Lal's case (supra) has rejected the contention of the judgment-debtor and affirmed the view taken by the courts below by which they have allowed the relief of possession by amending the decree, although it was not claimed in the suit.

7. In view of the facts as have been placed on record, it appears that in pursuance of the judgment and decree in favour of the petitioners, after deposit of the money so directed by the Court, the sale deed stood executed and possession has also been delivered on 3.8.1976 and the execution was directed to be struck off in full satisfaction by the order of the executing court dated 5.8.1976.

8. In view of the aforesaid discussions, it appears that the courts below have not properly appreciated the legal aspect and permissibility of allowing the relief of possession when the decree for specific performance is already there and, therefore, the judgments of the courts below appear to be vitiated under law. The pendency of second appeal before this Court cannot be said to be a bar in exercise of jurisdiction by the courts below which is vested in them under law and, therefore, the approach of the courts below appears to be not well-founded.

9. In view of the aforesaid analysis and the position of law as emerges on the admitted facts of the case, the Judgment of respondent Nos. 1 and 2 dated 21.10.1980 and 8.9.1979 (Annexures-4 and 3 to the writ petition) are hereby quashed and this writ petition is allowed. The matter is remanded back to the respondent No. 2 to pass appropriate orders in respect to the application as was moved by the petitioners under Sections 151, 152 and 153, C.P.C., in the light of the observations as has been made in this judgment.

Parties shall bear their own costs.