

(1985) 02 BOM CK 0019

In the Bombay High Court

Case No : Civil Revision Application No. 388 of 1984

Lotu Bandu Sonavane

APPELLANT

Vs

Pundalik Nimba Koli

RESPONDENT

Date of Decision : 19-02-1985

Acts Referred:

Specific Relief Act, 1963 — Section 22(1), 22(2)

Citation : AIR 1985 Bom 412 : (1985) 2 BomCR 298 : (1985) 87 BOMLR 129 : (1985) MhLj 359

Hon'ble Judges : Jamdar, J

Bench : Single Bench

Advocate : A.G. Pawar, for the Appellant;

Judgement

1.This revision application arises out of the order dated 18-2-1984 passed by the Joint Civil Judge, Junior Division, Jalgaon in Regular Darkhast No. 229 of 1981 filed by the petitioner decree-holder against the respondent-judgment-debtor for possession of half portion of House No. 37. C. T. S. 1615 of Jalgaon in respect of which a sale deed was executed in favour of the petitioner in pursuance to a decree passed in his favour.

2. In the plaint filed by the petitioner no specific prayer for possession was made. The only prayer was for specific performance of the agreement of sale and execution of the sale deed through Court in case the respondent failed to do so. No application for amendment of the plaint was filed by the petitioner even in the Darkhast proceedings and hence in view of sub-sec. (2) of S. 22 of the Specific Relief Act, 1963 the executing Court rejected the prayer of the petitioner for possession of the property. It is this order which is sought to be revised.

In this petition the petitioner decree-holder has filed an application for amendment of the plaint in Regular Civil Suit No. 289 of 1974 for including the relief of possession. The respondent remained absent though served.

3. Shri A. G. Pawar, the learned Advocate for the petitioner contended that the

right to grant possession of the property is a relief, which is incidental to specific performance of the contract of sale which not only includes the execution of necessary documents but also putting the vendee in possession of the property. This contention finds support in the decisions of the Patna High Court in *Deonandan Prasad Singh v. Janaki Singh*, AIR 1920 Pat 89 and *Atal Behary Acharya Vs. Barada Prasad Banerji*, , *Sri Sri Janardan Kishore Lal Singh Deo and Another Vs. Girdhari Lal Sunda*, and *Parmeshwar Mandal Vs. Mahendra Nath Tewari and Others*, The Calcutta High Court took a similar view in *Kartik Chandra Pal Vs. Dibakar Bhattacharjee*, and *Subodh Kumar Banerjee Vs. Hiramoni Dasi and Others*, . In the first case it was held that the Court while 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. *Kartik Chandra's* case was followed in *Subodh Kumar's* case. In *Pt. Balmukand Vs. Veer Chand*, which followed the earlier decision in *Arjun Singh Vs. Sahu Maharaj Narain*, same view was taken stating 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 certain time failing which the Court will have the sale deed executed by a person nominated by it implies that the delivery of possession shall be given in accordance with the provisions of S. 55(1) (f) of the Transfer of Property Act. in *Venkatesh v. Parappa* (1966)1 Mys. LJ 799 the Mysore High Court sustained an order of delivery of possession though the decree for specific performance was passed in general terms. The above stated view was taken by the Madras High Court also in *S.S. Rajabathar Vs. N.A. Sayeed*, . All these decisions were referred to and relied on by a single Judge of the Kerala High Court in *Narayana Pillai Krishna Pillai Vs. Ponnuswami Chettiar Subbalekshmi Ammal*, on which strong reliance is placed by the petitioner. The learned Judge held:

"The executing Court can grant delivery of possession of property even where no such relief is granted by a decree for specific performance of the contract of sale."

4. Reliance is also placed on the decision of the Supreme Court on behalf of the petitioner in *Hungerford Investment Trusts Pvt. Ltd. v. Haridas Mundhra* in support of the contention that the Court which passes a decree for specific performance retains control over the subject matter even after the decree has been passed and that a decree for specific performance is virtually a preliminary decree. In that case their Lordships referred to various decisions in which such a view was taken and also quoted the statement of law on that point from the Book "Fry on Specific Performance". Their Lordships also quoted Halsbury's Laws of England, 3rd Edition, Vol. 36, Pp.351-2, where the law on the point is stated as under :-

"Ancillary relief may be obtained after judgment in an action for specific performance where such further relief becomes necessary."

5. S. 22 of the Specific Relief Act, 1963 reads as follows.

"22(1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 any person suing for the Specific performance of a contract for the transfer of immovable property may in an appropriate case ask for

(a) possession or partition and separate possession of the property in addition to such performance. Or

(b) any other relief to which he may be entitled including the refund of any earnest money or deposit paid or made by him in case his claim for specific performance is refused

(2) No relief under Cl. (a) or Cl. (b) of sub-sec. (1) shall be granted by the Court unless it has been specifically claimed;

Provided that where the plaintiff has not claimed any such relief in the plaint, the Court shall at any stage of the proceeding allow him to amend the plaint on such terms as may be just for including a claim for such relief.

(3) The power of Court to grant relief under clause (b) of sub-sec. (1) shall be without prejudice to its powers to award compensation under S. 21"

No doubt sub-sec. (2) specifically lays down that no relief under Cl. (a) or Cl (b) of the said sub-section shall be granted by the Court unless it has been specifically claimed. But it, is not always necessary to claim such a relief. The requirement to claim the relief under Cl. (a) or (b) of S. 22(2) is qualified by the clause "in an appropriate case". An appropriate case" means a case in which the relief does not necessarily flow from the decree for specific performance of the agreement of sale. If such a relief is ancillary to and necessarily flows from a decree for specific performance then it is not necessary to specifically seek such a relief and the bar of S. 22(2) would not be attracted. If the defendant is in possession of the property agreed to be sold and the decree directs a specific performance of the agreement of sale, the defendant is bound to execute the sale deed as per the decree and to put the plaintiff in possession of the property as contemplated. by S. 55(I)(f) of the Transfer of Property Act. In such a case it is not necessary to specifically claim the relief of possession in the suit.

6. This view finds support in the above referred decision of the Kerala High Court in Narayana Pillai Krishna Pillai Vs. Ponnuswami Chettiar Subbalekshmi Ammal, . In that case relying on the decision in Gyasa Vs. Smt. Risalo, the learned single Judge interpreted the expression in an appropriate case appearing in opening clause of sub-sec. (1) of S. 22 of the Specific Relief Act, 1963 and held that the said expression indicates that it is not always incumbent on the plaintiff to claim possession or partition and separate possession in a suit for specific performance of the contract for transfer of immovable property.

7. Admittedly the respondent in this case is in possession of the property, which is subject-matter of the decree for specific performance and is bound to deliver possession of the property after execution of the sale-deed. Hence even though no specific prayer is made in the plaint and even though the decree is silent

about delivery of possession, the executing Court was bound to grant the relief.

8. As mentioned above the petitioner has also sought amendment of the plaint for including the claim for possession of the property in question. Proviso to sub-sec. (2) of S. 22 of the Specific Relief Act permits the plaintiff who has not claimed any such relief contemplated by Cl. (a) or (b) of sub-sec. (1) of S. 22 to amend the plaint for including a claim for such relief. The amendment can be sought at any stage of the proceeding and if the plaintiff moves for such an amendment the Court is bound to allow him to do so. of course on such terms as may be just.

9. The term "proceeding" is a very wide and comprehensive term and it includes execution proceeding also. The expression "at any stage of the proceeding" gives widest permission to the Court to allow amendment at any stage of the proceeding including execution of the decree. The amendment can be allowed even in an appeal arising out of the order passed by the executing Court rejecting the prayer for permission. The proviso recognises the well settled position that the Court passing a decree for specific performance retains control over the subject matter as long as anything remains to be done in the case.

In the Duke of Buccleugh, (1892) P.201 Fry LJ observed as follows:

"I base my decision upon the words at any stage of the proceeding". It has been argued that the rules do not apply after final judgment. They apply, in my opinion, as long as anything remains to be done in the case."

These observations were quoted by a learned single Judge of the Delhi High Court in M/s. Ex-service men Enterprises (P) Ltd. v. Sumey Singh, AIR 1976 Delhi 56 . In that case relying on the decision of the Allahabad High Court in Rameshwar Nath Vs. U.P. Union Bank Ltd., it was held that the word "proceeding" is a very comprehensive term meaning generally a prescribed course of action for enforcing a legal right and the expression "at any stage" in its literal and actual meaning means without limitation either in frequency or duration or length of time. I am in agreement with this view.

10. In this view of the matter the application filed by the petitioner for amendment of the plaint will have to be granted, even though such an amendment was not necessary.

11. In the result the revision application is allowed. The order rejecting the prayer of the petitioner is set aside. The application filed by the petitioner for amendment of the plaint is allowed and the matter is remitted to the executing Court for proceeding further according to law. No order as to costs.

12. Revision allowed.