

(2007) 07 DEL CK 0264

In the Delhi High Court

Case No : FOA (OS) No's. 213 of 1990 and 4 of 1998

Prakash Kaur

APPELLANT

Vs

K.G. Ringshia
 Everest Construction Co. Vs Smt.
Prakash Kaur

RESPONDENT

Date of Decision : 20-07-2007

Acts Referred:

Contract Act, 1872 — Section 50
Specific Relief Act, 1963 — Section 22, 34
Transfer of Property Act, 1882 — Section 54
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 7, 16, 20, 9

Citation : (2007) 07 DEL CK 0264

Hon'ble Judges : Dr. M.K. Sharma, C.J; Sanjiv Khanna, J

Bench : Division Bench

Advocate : Ruchi Sindhwani, in FOA OS No. 4 of 1998 and Mohinder J.S. Rupal, in FOA OS No. 213 of 199, for the Appellant; Ruchi Sindhwani in FOA (OS) No. 213 of 1990, for the Respondent

Final Decision : Allowed

Judgement

Sanjiv Khanna, J.—As similar legal issues arise for consideration in the present appeals, viz. FAO(OS) No. 4/1998 Ms. Prakash Kaur v. K.G. Ringshia and Everest Construction Co. v. Ms. Prakash Kaur in FAO(OS) No. 213/1990, they are being disposed of by this common order. The question raised in the present appeals is regarding territorial jurisdiction of the courts in Delhi to entertain the suits for declaration filed by the respondent in FAO(OS) No. 213/1990 and the appellant in FAO(OS) No. 4/1998. The appellant in FAO(OS) No. 4/1998 and the respondent in FAO (OS) No. 213/1990 is the same person namely Ms. Prakash Kaur, now represented by her legal representatives. The question pertaining to territorial jurisdiction has been decided on the preliminary objection raised by the appellant in FAO(OS) No. 4/1998 and respondent in FAO(OS) No. 213/1990. It may be stated here that parties had not led evidence and the aforesaid question was decided by the learned Single Judge on the basis of the facts and averments

made in the plaint itself. At this stage and for deciding the present appeals, the averments and facts stated in the written statement are irrelevant and cannot be taken into consideration.

Facts in FAO(OS) No. 213/1990

2. Ms. Prakash Kaur in 1989 filed the suit for declaration in the Delhi High Court, which now stands transferred to District Court against Everest Construction Company, the appellant herein. The appellant is a partnership firm having its office at Bombay. It does not have any office at Delhi. As per the averments made in the plaint, the respondent or Ms. Prakash Kaur had entered into an agreement dated 13th October, 1981 with the appellant. The agreement was executed at Bombay, now known as Mumbai. As per the said agreement, the appellant had agreed to sell to Ms. Prakash Kaur, a flat described as 606 on 6th floor of the building proposed to be constructed by the appellant at Prabha Devi in Mumbai. The building was to be called Resham Tower. It is claimed in the plaint that the total consideration for purchase of the flat is Rs. 2,32,875/- to be paid in 14 installments. Ms. Prakash Kaur claims that she has paid Rs. 12,875/- on two different dates as per receipts issued. It is further stated that Ms. Prakash Kaur shifted from Mumbai to Delhi and intimation was given to the appellant and her new address was furnished vide letter dated 13th July, 1982. The construction had remained stalled due to some difficulties and in January, 1987 construction re-started and at that time Ms. Prakash Kaur had sent a demand draft of Rs. 50,000/- by registered letter dated 28th January, 1987 to the appellant towards on account payment. The said demand draft was not returned back by the appellant and remained with the appellant. Ms. Prakash Kaur thereafter wrote another letter dated 24th/28th December, 1987 to the appellant to which a reply dated 28th January, 1988 was received from the appellant denying existence of any agreement between the parties and the demand draft of Rs. 50,000/- was sent back along with the letter. Thereafter, some correspondence exchanged between the parties including legal notices. Not being satisfied, Ms. Prakash Kaur filed the suit for declaration in Delhi. By the said suit, Ms. Prakash Kaur sought declaration that letters dated 28th January, 1988 and 21st December, 1988 written by the appellant herein denying existence of agreement between the parties are null and void and of no effect and the agreement dated 13th October, 1981 continues to remain operative and binding on the parties. Paragraphs 19 and 21 of the plaint are relevant for the purpose of deciding the present appeal and read as under:

19. That the cause of action arose on 13th October, 1981 when the Agreement was entered into between the plaintiff and the Defendant and from time to time thereafter and finally on 21st December, 1988 when the Defendant by his letter informed the plaintiff that no agreement had been entered into between the parties.

21. That the cause of action substantially and materially arose at Delhi where the letters dated 28th January 1988 and 21st December 1988 written by the

Defendant to the plaintiff denying the existence of the Agreement were received. This Hon"ble Court has, Therefore, jurisdiction to entertain and try the suit.

3. It may be relevant to state here that it is an admitted case of the parties that the building in question mentioned in the agreement has not been constructed by the appellant and possession and title of the flat cannot be transferred and passed on to any person including Ms. Prakash Kaur.

4. Learned Single Judge by the impugned order dated 18th September, 1990 has held that mere agreement to sell in view of Section 54 of the Transfer of Property Act does not create any interest in an immovable property and, Therefore, Section 16(d) of the Code of Civil Procedure, 1908 (hereinafter referred to as the Code, for short) is not applicable and Section 20 of the Code is applicable. It has been further held that a part of cause of action has arisen in Delhi as letter dated 24th/28th December, 1987 written by the appellant to Ms. Prakash Kaur was received by her at Delhi. By the said letter, the appellant denied existence of the agreement between the parties. In this regard, learned Single Judge has relied upon decision of the Delhi High Court in *Raja Brothers, Cloth Merchants Chandni Chowk, Kucha Rehman, Delhi v. Chanrai Uttam Chand* (1969) 2 Del 931, wherein it has been held that a part of cause of action arises at the place where revocation letter terminating the contract is received and accordingly courts located at the place where revocation letter is received have jurisdiction. The learned Single Judge also rejected the contention that the suit is not maintainable in view of Section 34 of the Specific Relief Act as only relief of declaration is prayed for and no further reliefs, even if available have not been prayed for. Learned Single Judge held that the first question which was required to be decided is whether there was any agreement to sell between the parties and not any interest or right in land and in this view of the matter Ms. Prakash Kaur is entitled to file the present suit in view of the first part of Section 34 of the Specific Relief Act.

Facts in FAO(OS) No. 4/1998

5. Ms. Prakash Kaur has filed a suit for declaration that letter dated 20th November, 1984 written by the respondent in the present appeal, namely K.G. Ringshia is null and void and of no effect and agreement dated 10th November, 1979 continues to remain operative and binding on the parties. It is alleged in the plaint that vide agreement dated 10th November, 1979, Ms. Prakash Kaur has agreed to purchase flat described as No. D on 3rd floor in the multi-storeyed building known as "Aditya", which the respondent is to construct at Chakla Village, Andheri (East) in Bombay, now known as Mumbai. The appellant had paid Rs. 3,942/- before the execution of the agreement to sell. As per Ms. Prakash Kaur, construction of the building got stalled and delayed for various reasons. However, it is admitted in the plaint that the agreement was signed and executed between the parties at Mumbai. Thereafter, Ms. Prakash Kaur shifted to Delhi and intimated to the respondent change in her address. Some correspondence was exchanged between the parties. Ms. Prakash Kaur received

letter dated 20th November, 1984 that had been dispatched from Mumbai to the appellant-plaintiff at Delhi, inter alia, claiming that Rs. 3,942/- paid by Ms. Prakash Kaur at the time of execution of agreement dated 10th November, 1979 had been refunded and paid to her son and the agreement was cancelled by mutual consent. The contents of the letter dated 20th November, 1984 are disputed by Ms. Prakash Kaur. It is stated that Rs. 3,942/- was never refunded and the agreement is binding between the parties.

6. Learned Single Judge by the impugned order decided the preliminary issue No. 1 with regard to territorial jurisdiction. Relying upon the decision in the case of Everest Construction Co. v. Prakash Kaur which is subject matter of the appeal in FAO(OS) No. 213/1990, learned Single Judge has held that Section 16(d) of the Code is not attracted and Section 20 of the Code is applicable and, Therefore, Ms. Prakash Kaur is entitled to file the suit for declaration at a court where the cause of action or a part thereof arises. Learned Single Judge, however, held that no part of cause of action has arisen in Delhi as vide letter dated 20th November, 1984, the respondent-defendant had stated that the agreement was cancelled by mutual consent at Mumbai and the amount of Rs. 3,942/- paid by Ms. Prakash Kaur at the time of execution of the agreement dated 10th November, 1979 was refunded back to her son at Mumbai. In these circumstances, learned Single Judge held that no part of cause of action has arisen in Delhi and the preliminary objection was accepted and the plaint filed by Ms. Prakash Kaur directed to be returned.

Contentions:

7. We have heard the learned Counsel appearing for Ms. Prakash Kaur the respondent-plaintiff in FAO(OS) No. 213/1990 and the appellant in FAO(OS) No. 4/1998. We have also heard counsel for the appellant, Everest Construction Company in FAO(OS) No. 213/1990. However, there has been no appearance on behalf of K.B. Ringshia respondent in FAO(OS) No. 4/1998, in spite of the case being repeatedly adjourned to enable the counsel to address arguments.

8. Learned Counsel for the appellant, Everest Construction Company in FAO(OS) No. 213/1990 submitted that the letter made subject matter of the suit though received in Delhi was posted in Mumbai and that the post office had acted as an agent of Ms. Prakash Kaur and, Therefore, the fact that the letter dated 24th/28th December, 1987 was posted from Mumbai and delivered to Ms. Prakash Kaur at Delhi was of no consequence. In this regard he relied upon Dr. Annada Prasad Pattnaik Vs. State of Orissa and Others, and Mazharul Islam and Others Vs. Khacher Bux and Another, . It was submitted that when letter or communication is delivered by post as a mode requested for by the recipient, the postal authorities act as the agent of the recipient. Reliance was also placed upon Unit Trust of India Vs. Ravinder Kumar Shukla, etc. etc., . Reference was also made to Section 34 of the Specific Relief Act and upon Anirudha Padhan Vs. Chhai Padhan and Others, , Ram Saran and Another Vs. Smt. Ganga Devi, and Om Prakash and Another Vs. Anar Singh and Others, . Judgment of the Supreme

Court in *Harshad Chiman Lal Modi Vs. DLF Universal and Another*, was referred. Counsel for Ms. Prakash Kaur, on the other hand, referred to the provisions of the Contract Act and submitted that the letter denying existence of the contract was received by Ms. Prakash Kaur at Delhi and, Therefore, courts at Delhi have jurisdiction in view of the limited prayer for declaration as prayed for in the plaint. It was submitted that the buildings are yet to be constructed and, Therefore, Ms. Prakash Kaur cannot ask for relief of specific performance or possession. Our attention was drawn to Section 50 of the Contract Act and it was submitted that a suit for mere declaration that the agreement subsists is maintainable. Reference was also made to judgment of the Supreme Court in 2001 VII AD 513 (SC) . Our attention was drawn to some other cases which are referred to in the conclusions and the findings given by us. Findings and Conclusions:

9. In the present appeals we are concerned with the preliminary issue/objection raised by the appellant in FAO(OS) No. 213/1990 and the respondent in FAO(OS) No. 4/1998 whether courts in Delhi have territorial jurisdiction to entertain the suits for declaration in view of the averments made in the plaint. The first question which arises for consideration is whether Section 16(d) or Section 20(c) of the Code would apply. The relevant provisions read as under:

16. Suits to be instituted where subject matter situate. - Subject to the pecuniary or other limitations prescribed by any law, suits-

(a) XXX

(b) XXX

(c) XXX

(d) for the determination of any other right to or interest in immovable property,

20. Other suits to be instituted where defendants reside or cause of action arises.- Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction-

(a) XXX

(b) XXX

(c) the cause of action, wholly or in part, arises.

10. Section 16(d) applies when a suit relates to interest or right in an immovable property, other than interest or right in an immovable property specified in Clauses a, b and c of the said Section. It is now well settled that if Section 16 applies, a suit can only be filed before a court having territorial jurisdiction over the subject matter i.e. the immovable property, irrespective of the fact that a part or even the entire cause of action for filing of the suit has arisen outside the territorial jurisdiction of the court where the immovable property is located. Once Section 16 applies, recourse and reference to Section 20 of the Code for

determining territorial jurisdiction is not required. Section 20 of the Code can be relied upon only when Section 16 of the Code is not applicable.

11. We do not think that the suit as framed is one for right or interest in an immovable property and, Therefore, covered by Section 16 of the Code. At this stage, we are concerned with and should refer only to the averments made in the plaint. The plaint relies upon and is based upon agreement to sell purportedly entered into by Ms. Prakash Kaur for purchase of two flats and the prayers made in the two suits are to the effect that the said agreements continue to be binding on the parties. An agreement to sell does not create any right or interest in an immovable property. It only entitles the parties to get a sale deed or document of transfer executed. No right, title or interest in an immovable property is created by execution of a mere agreement to sell. Section 54 of the Transfer of Property Act expressly states that an agreement to sell does not result in creation of any interest in the immovable property. Unlike the English Law, where a contract for purchase of immovable property is regarded as creating equitable interest, law in India is well settled that an agreement alone does not result in creation of any interest or right in the immovable property made subject matter of the agreement. Refer Rambaran Prosad Vs. Ram Mohit Hazra and Others, and Bai Dosabai Vs. Mathurdas Govinddas and Others, No doubt Section 54 of the Transfer of Property Act states that an agreement to sell does not create any interest in the immovable property and does not specifically use the word "right", whereas Section 16(d) of the Code uses both expressions "interest or right?", we do not think that an agreement to sell by itself creates any right in an immovable property and, Therefore, Section 16(d) of the Code is not applicable to the cause of action as stated in the plaint on the basis of which reliefs have been prayed.

12. By filing the present suits, Ms. Prakash Kaur seeks declaration that there exists subsisting and a valid written contract between the parties which has not been terminated or cancelled. The suit is not for title or interest in an immovable property subject matter of the agreement i.e. the flats are not the subject matter of the suit. It is "the agreement" and the conduct of parties, which is the subject matter of the suit. It may also be stated here that as per the case of Ms. Prakash Kaur, the flats in respect of which agreement to sell were executed, have not yet been constructed and were not in existence on the date when the suits were filed. Therefore, Ms. Prakash Kaur could not have filed a suit for specific relief and possession. The question of territorial jurisdiction of a court is determined and decided on the basis of factual position as existing on the date the plaint is presented. Subsequent events are not the determining factors for deciding the issue of territorial jurisdiction.

13. In Adcon Electronics Private Limited (supra), the Supreme Court examined Clause 12 of the Letters Patent as applicable to the High Court of Adjudicator at Bombay with specific reference to the expression? suit for land?. Reference was made to the decision of the Federal Court in Moolji Jaitha and Co. v. The Khandesh Spinning and Weaving Mills Co. Limited AIR1950 FC 83, wherein the

import of the said expression was considered by a Bench of five Judges. Justice Fazal Ali held that the said expression broadly speaking covers three classes of suits viz. (i) suits for determination of title to land (ii) suits for possession of land and (iii) suits in which reliefs claimed, if granted, would directly affect title to or possession of land. Justice Patanjali Shastri observed that the said words were also apt to connote suits which primarily and substantially seek adjudication upon title to an immovable property or right or interest therein. Justice Mahajan felt that a comprehensive definition may not be feasible and correct to propound. The test is the nature of the suit and the substance of the controversy, which is the determining factor. If the controversy is about land or an immovable property and the court is called upon to decide conflicting claims the suit is for land. The cause of action and subject matter should be primarily relating to land or immovable property and not merely incidentally relating to land or immovable property. A suit when the above test is satisfied can be regarded as one which falls within the four corners of the expression "suit for land". The Federal Court made a distinction between a suit for specific performance implicate and a suit for specific performance along with relief for possession. In *Adcon Electronics Private Limited* (supra), the Supreme Court noted the provisions of Section 22 of the Specific Relief Act and held that in a suit for specific performance, the plaintiff can also pray for a separate relief for possession, partition or separate possession. It was held that no court can grant relief for possession of land, partition etc. in a suit for specific performance unless a prayer to that effect is specifically made. A suit for specific performance, Therefore, is not a "suit for land" or a suit in which interest or right in a land is the primary subject matter. A suit for specific performance is for enforcement of the term of the contract and title of the land or right or interest in the land is not the primary subject matter in a suit for specific performance, with no further relief.

14. The decision of the Supreme Court in *Adcon Electronic Private Limited* has to be distinguished from the decision of the Supreme Court in the case of *Harshad Chiman Lal Modi* (supra). In the said case, the Supreme Court has held that Section 16(d) was applicable as the suit in question was for specific performance and other reliefs including possession and thus was a suit in respect of right or interest in land. The prayer clause of the suit has been quoted in the judgment. In the case of *Harshad Chiman Lal Modi* in addition to decree for specific performance, the plaintiff therein had also prayed for decree of delivery of possession. Therefore, *Harshad Chiman Lal Modi*'s case was not one of specific performance implicate but a suit praying for decree of specific performance as well as possession along with other reliefs.

15. In the present cases *Ms. Prakash Kaur* has not prayed for decree of specific performance or decree of possession. The suit as framed is for declaration that there exists a binding and a valid contract between the parties. A declaration to the said affect is sought for and prayed. The Court is not required to go into the question of right or interest in any immovable property. The only question is whether there exists a contract as per dictum and requirements of the Contract

Act, whether a concluded and a binding agreement exists and whether there was any termination/repudiation of contract as pleaded in FAO(OS) No. 4/1998 by the respondent. The Court in both the suits is not required to go into the question of title in any immovable property or right or interest of the parties in any immovable property.

16. In view of the above factual position and the nature of suit as filed, it has to be held that Section 16(d) of the Code is not applicable. In view of the above factual position, we also hold that the decision of Allahabad High Court in the case of Om Prakash (supra) is not applicable. In the said case learned Single Judge of Allahabad High Court had come to the conclusion that for granting permanent injunction the question relating to right and interest in an immovable property was required to be determined.

17. The appellant with reference to the impugned order made subject matter of FAO(OS) No. 213/1990, further submitted that no part of cause of action, even as per the averments in the plaint has arisen in Delhi and, Therefore, even as per Section 20(c) of the Code, courts in Delhi do not have any jurisdiction. He submitted that the alleged agreement was entered into and signed at Mumbai, the so-called payments made by Ms. Prakash Kaur were made at Mumbai and the immovable property to be constructed for which it is claimed that there was an agreement is to be constructed at Mumbai. Our attention was drawn to letters dated 24th/28th December, 1987 and 17th June, 1988 written by Ms. Prakash Kaur from Delhi calling upon the appellant in FAO(OS) No. 213/1990 to send written communication/reply by registered post to the Delhi address of Ms. Prakash Kaur. It may be also stated here that the appellant in FAO(OS) No. 213/1990 does not have any office in Delhi and works for and resides for gain in Mumbai. Learned Counsel referred to the decisions in Dr. Annada Prasad Pattnaik, Unit Trust of India, Commissioner of Income Tax (supra) for the proposition that the post office had acted as an agent of Ms. Prakash Kaur as she had herself requested the appellant in FAO(OS) No. 213/1990 to send her all communications by registered post. It was submitted that the letters repudiating and or stating that there was no contract between the parties were posted from Mumbai by giving it to the post-office, which acted as the agent of Ms. Prakash Kaur. The fact that the said letters were received by Ms. Prakash Kaur in Delhi, will not confer jurisdiction on courts in Delhi.

18. The decisions relied upon by the appellant in FAO(OS) No. 213/1990 in this regard law of agency and post office are not u/s 20(c) of the Code. The issues and contentions raised before the courts in the said cases were entirely different. In the case of Unit Trust of India (supra), the dividend warrants sent by post were fraudulently misappropriated and a dispute arose whether Unit Trust of India or the depositors were liable to suffer the loss on account of misappropriation. In that context it was held that post office was acting as an agent of Unit Trust of India and, Therefore, as dividend warrants were never received by the depositors, Unit Trust of India was liable to make payments to

the depositors. In Dr. Annada Prasad's case (supra), the writ petitioner therein had submitted an application for admission to an educational course by registered post as was required by the prospectus and the guidelines issued by the respondent therein. This letter was received late i.e. after the cut off date. In that context it was held that the post office had acted as an agent of the educational institution. In the case of Commissioner of Income Tax (supra), question arose about the situs or the place where the assessed had received payments which were sent by cheque through post, as per the terms of the contract. Question for consideration was whether any income had arisen in British India.

19. Cause of action as pleaded in the two complaints relates to wrongful denial/termination of an agreement. Denial or termination of an agreement is an essential and important part of the cause of action leading to the filing of the suit. The courts located at the place where Ms. Prakash Kaur was informed about repudiation/termination/denial of the contract will have jurisdiction to decide a suit filed by Ms. Prakash Kaur as part of cause of action for filing of the suit has arisen within its territorial jurisdiction. In cases where cause of action consists of breach of contract, a suit can be filed at the place where contract is made or to be performed and also where breach occurs. The suit can also be filed where money is expressly or impliedly payable. In case of A.B.C. Laminart Pvt. Ltd. and Another Vs. A.P. Agencies, Salem, it has been held that when a contract is repudiated, the place where repudiation is received is also a place where a part of cause of action arises. Similarly in the case of Raja Brothers (supra), it has been observed as under:

In *Arthur Butler and Co. v. District Board Gaya* which has been relied upon by the learned Counsel on both sides, it has been held that the mere making of an offer is not a part of the cause of action for a suit based on a contract and the suit cannot be brought at the place where the offer originated when the offer was accepted within the jurisdiction of another Court. The respondents cannot derive any support from this case because it is not the petitioners' case that Delhi is a place where the offer originated. Even according to this case, the place where the offer was accepted is the relevant place to determine the jurisdiction of a Court. It has also been held in this case that revocation of a contract is part of the cause of action in a suit for breach of contract and, Therefore, the place where the communication of revocation of the contract was received may determine the forum for the trial of the suit. If the petitioners' case that the revocation is contained in the respondents' letter dated August 13, 1956 is correct, then the letter containing the revocation having been received by the petitioners in Delhi, the Courts at Delhi would undoubtedly have jurisdiction. To the same effect in the case reported in *Dhanraj Mills Limited Liability Co. v. Narsingh Prasad Boobna and Ors.*

20. General actions or personal actions are transitory because they can occur anywhere. However, an action for or against a real or an immovable property u/s 16

can be brought in the forum rest sitoe, i.e. the place where immovable property is situated.

21. In FAO(OS) No. 4/1998 learned Single Judge while holding that Section 16(d) is not applicable as the suit filed by Ms. Prakash Kaur is not in respect of any right or interest in an immovable property and Section 20(c) of the Code is applicable, has held that no part of cause of action has arisen in Delhi and the whole of the cause of action has arisen at Mumbai. Learned Single Judge in this regard had relied upon decision of the Supreme Court in Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others, . In the said case, the petitioner therein had submitted a tender from Calcutta after reading an advertisement. The tender was submitted at Dehradun but was not accepted. In these circumstances, it was held that Calcutta High Court does not have territorial jurisdiction. In State of Rajasthan and Others Vs. Swaika Properties and Another, , the Supreme Court held that the question related to land at Jaipur which had been acquired and, Therefore, no cause of action had arisen at Calcutta. As stated above, in cases of repudiation/cancellation of contracts or their denial, the place where letter of repudiation/denial is received is also one of the places where a suit for breach of contract or for declaration that the contract exist is maintainable. The two decisions are, Therefore, distinguishable and the cause of action which was made subject matter of challenge in the writ petitions related to challenge to award of tender to a third party and challenge to the land acquisition proceedings. The cause of action for both the proceedings had not arisen in the territorial jurisdiction of High Court of Adjudicator at Calcutta.

22. The last contention raised by the appellant in FAO(OS) No. 213/1990 was with reference to Section 34 of the Specific Relief Act. Section 34 of the said Act reads as under:

34. Discretion of court as to declaration of status or right. Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

23. It was submitted that the suit for declaration as filed is not maintainable as Ms. Prakash Kaur has not prayed for further relief for specific performance and possession. The said contention is liable to be rejected. On the date when the suit was filed, the flats in question were not constructed. Ms. Prakash Kaur could not have prayed for decree of possession or specific performance of flats before they are constructed. The question whether a suit is barred and not maintainable for failure to ask for further reliefs under the proviso of Section 34 has to be determined and decided on the basis of the facts existing on the date when the suit was filed. To be fair to the counsel for Ms. Prakash Kaur, it may be pointed

out that she had argued in the alternative that the present suit has not been filed u/s 34 of the Specific Relief Act but u/s 9 and Order VII Rule 7 of the Code. In this regard she had relied upon two decisions of the Supreme Court viz. Supreme General Films Exchange Ltd. Vs. His Highness Maharaja Sir Brijnath Singhji Deo of Maihar and Others, and Veruareddi Ramaraghava Reddy and Others Vs. Konduru Seshu Reddy and Others, . We are, however, not examining these aspects in detail as these do not directly pertain to the question whether or not courts in Delhi have territorial jurisdiction to decide the suit. The said questions arose incidentally before the learned Single Judge in FAO(OS) No. 213/1990 while deciding and examining the issue of territorial jurisdiction with reference to Section 16(d) of the Code. While examining the question of territorial jurisdiction, it was submitted that Ms. Prakash Kaur was required to make prayers and seek relief for specific performance of contract and possession. The argument of the appellant in FAO(OS) No. 213/1990 proceeded on the basis that if the said prayers had been made, the courts in Delhi would not have territorial jurisdiction. We make it clear that we have not examined and decided whether a suit praying for declaration that there exists a valid and binding contract, is maintainable u/s 34 of the Specific Relief Act or u/s 9 and Order VII Rule 7 of the Code. The said aspects are left open. It may be noted here that the appellant in FAO(OS) No. 213/1990 has not urged and argued before us that a declaratory decree, a valid and binding contract exists, cannot be granted under the Specific Relief Act or u/s 9 read with Order VII Rule 7 of the Code.

24. In view of the above, we dismiss the appeal in FAO(OS) No. 213/1990 and allow the appeal in FAO(OS) No. 4/1998 holding that the courts in Delhi have territorial jurisdiction to adjudicate and decide the aforesaid suits in view of nature of reliefs prayed for therein. In the facts and circumstances of the case, there will be no order as to costs.