

Birma Devi & Ors.

v.

Subhash & Anr.

(Special Leave Petition(Civil) No. 29397 of 2024)

06 December 2024

[J.B. Pardiwala and R. Mahadevan, JJ.]

Issue for Consideration

Whether the relief of possession may be granted by the executing court in a case where the suit has been decreed for specific performance simpliciter and no express relief for the transfer of possession of the suit property has been granted.

Headnotes[†]

Specific Relief Act, 1963 – s.22 – Executing court declined to handover the possession of the suit property to the respondents-plaintiffs (decree holders) holding that though there was a decree for specific performance no relief as regards putting the plaintiffs in possession of the suit property was granted – Order set aside by High Court – Challenged by subsequent purchasers:

Held: In cases where the possession of the suit property is exclusively with the contracting party, then a decree for specific performance simpliciter, without specifically providing for delivery of possession, may give complete relief to the decree holder – However, in cases where the relief of possession cannot be effectively granted to the decree-holder without specifically claiming relief for possession, for example, in cases where the property agreed to be conveyed is jointly held by the defendant with other persons, or cases where after the contract the property has passed in possession of a third person, then the plaintiff, in order to obtain complete and effective relief, must claim the relief of transfer of possession over the property – Section 22 allows the plaintiff to amend the plaint to include a claim for the relief of possession, partition, etc. at “any stage of the proceeding” including the stage of execution of the decree by the executing court – Special Leave Petition dismissed – Transfer of Property Act, 1882 – s.55. [Paras 13, 16]

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Babu Lal v. Hazari Lal Kishori Lal [\[1982\] 3 SCR 94](#) : (1982) 1 SCC 525; *Rohit Kochhar v. Vipul Infrastructure Developers Ltd. & Ors.*, 2024 INSC 920 – relied on.

List of Acts

Specific Relief Act, 1963; Transfer of Property Act, 1882.

List of Keywords

Agreement of sale; Decree for specific performance; Executing court; Relief of possession; Suit decreed for specific performance simpliciter; No express relief for the transfer of possession of the suit property; Possession of the suit property not handed over; Delivery of possession; Contracting party; Complete relief to the decree holder; Relief of possession; Property passed in possession of a third person; Subsequent purchasers; Stage of execution of the decree; Amend the plaint; “any stage of the proceeding”.

Case Arising From

EXTRAORDINARY APPELLATE JURISDICTION: Special Leave Petition (Civil) No. 29397 of 2024

From the Judgment and Order dated 11.07.2023 of the High Court of Judicature for Rajasthan at Jaipur in SBCWP No. 4982 of 2020

Appearances for Parties

Jasbir Singh Malik, Ms. Rhythm Bharadwaj, Narender Kumar Sharma, Ms. Suman Sharma, Varun Punia, Advs. for the Petitioners.

Ashish Kumar Upadhyay, Ms. Chavi Kalla, Ms. Maitri Goal, V. Sibi Kargil, Advs. for the Respondents.

Judgment / Order of the Supreme Court**Order**

1. Application seeking permission to file the Special Leave Petition is granted.
2. Delay condoned.

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3. This petition arises from the order passed by the High Court of Judicature for Rajasthan, Bench at Jaipur in SB Civil Writ Petition No.4982/2020, by which the High Court allowed the petition filed by the respondents – herein (original plaintiffs and decree holders) and set aside the order passed by the Additional District Judge, Bansur, District Alwar (Rajasthan) in Execution No.06/2018.
4. The facts of this case in brief are that the petitioners– herein claim to be the subsequent purchasers of the suit property. The plaintiffs instituted a suit for specific performance of contract based on an agreement of sale with the original defendants. The plaintiffs have succeeded in the suit. The Trial Court passed a decree for specific performance in favour of the plaintiffs.
5. It appears that since the original defendant who had executed the agreement of sale is no longer interested in the matter as he seems to have sold the suit property to the petitioners – herein, there has been no further challenge to the judgment and decree passed by the Trial Court.
6. However, in the execution proceedings, the executing court took the view that although there is a decree for specific performance yet the decree does not say anything as regards putting the plaintiffs in possession of the suit property.
7. In such circumstances, the executing court declined to handover the possession of the suit property to the respondents – herein.
8. The order passed by the executing court came to be challenged by the respondents – herein - decree holder.
9. The High Court vide order dated 11-7-2023 allowed the petition in the following terms:-

“14. Considering the view of the Hon'ble Courts in the cases referred to above, it is very safe to say that in the case of suit for specific performance even no decree for possession has been sought and the suit for specific performance is decreed, the Executing Court is under an obligation to see that the possession of the suit property as decreed is handed over to the decree-holder.

15. Taking into consideration the facts and the circumstances of the case and the view of the Hon'ble Courts in the

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cases referred to above, this Court is of the view that the decree of specific performance and the resultant execution and registration of the sale deed at the instance of the Executing court in favour of the plaintiff-decree holder entailed an implied right of the plaintiff-decree holder to be in possession of the property so conveyed. Since such a right has been denied by the impugned order by the Executing Court failing to exercise its jurisdiction, this Court set aside the impugned order dated 12.03.2019 passed by the Executing court.

16. Resultantly, the writ petition is allowed. The order dated 12.03.2019 passed by the Executing Court is set aside and the Executing court is directed to issue a warrant of possession of the suit property in favour of plaintiff - decree holder.

17. In view of the order passed in the main petition, the stay application and pending application/s, if any, also stand disposed of.”

10. The petitioners – herein who claim to be the subsequent purchasers of the suit property seek to challenge the order of the High Court in this petition.
11. We have heard Mr. Jasbir Singh, the learned counsel appearing for the petitioners and Mr. Ashish Kumar Upadhyay, the learned counsel appearing for the respondents.
12. The short question that falls for our consideration is whether the relief of possession may be granted by the executing court in a case where the suit has been decreed for specific performance simpliciter and no express relief for the transfer of possession of the suit property has been granted.
13. The position of law on the issue has been settled by this Court in the case of [Babu Lal v. Hazari Lal Kishori Lal](#) reported in (1982) 1 SCC 525 wherein the Court while elaborating on Section 22 of the Specific Relief Act, 1963 laid down the law for the following two situations that may arise:
 - a. *First, in cases where the possession of the suit property is exclusively with the contracting party, then a decree for specific*

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performance simpliciter, without specifically providing for delivery of possession, may give complete relief to the decree holder. This, the Court held, was in consonance with Section 55(1) of the Transfer of Property Act, 1882, which binds the seller, on being so required, to transfer to the buyer or such other person as he directs, such possession of the property as its nature admits.

- b. *Secondly, in cases where the relief of possession cannot be effectively granted to the decree-holder without specifically claiming relief for possession, for instance, in cases where the property agreed to be conveyed is jointly held by the defendant with other persons, or cases where after the contract the property has passed in possession of a third person, then the plaintiff, in order to obtain complete and effective relief, must claim the relief of transfer of possession over the property defendant along with the relief of partition, etc., if required.*
14. For the second category of cases, the Court observed that Section 22, which was introduced by the legislature to avoid multiplicity of proceedings, allows the plaintiff to amend the plaint to include a claim for the relief of possession, partition, etc. at any stage of the proceeding. The Court further held that the expression “any stage of the proceeding” includes the stage of execution of the decree by the executing court. The relevant paragraphs from the said decision are reproduced hereinbelow:

“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

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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.

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17. The word “proceeding” is not defined in the Act. Shorter Oxford Dictionary defines it as “carrying on of an action at law, a legal action or process, any act done by authority of a court of law; any step taken in a cause by either party”. The term “proceeding” is a very comprehensive term and generally speaking means a prescribed course of action for enforcing a legal right. It is not a technical expression

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with a definite meaning attached to it, but one the ambit of whose meaning will be governed by the statute. It indicates a prescribed mode in which judicial business is conducted. The word 'proceeding' in Section 22 includes execution proceedings also. In Rameshwar Nath v. U.P. Union Bank Ltd. [AIR 1956 All 586 : 1956 All LJ 470 : 1956 All WR HC 450] such a view was taken. It is a term giving the widest freedom to a court of law so that it may do justice to the parties in the case. Execution is a stage in the legal proceedings. It is a step in the judicial process. It marks a stage in litigation. It is a step in the ladder. In the journey of litigation there are various stages. One of them is execution.

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20. It is thus clear that the legislature has given ample power to the court to allow amendment of the plaint at any stage, including the execution proceedings. In the instant case the High Court granted the relief of possession and the objection raised on behalf of the petitioner is that this was not possible at the execution stage and in any case the court should have allowed first an amendment in the plaint and then an opportunity should have been afforded to the petitioner to file an objection."

15. The aforesaid position of law has been recently reiterated by us in a recent order passed in the case of *Rohit Kochhar v. Vipul Infrastructure Developers Ltd. & Ors.* reported in 2024 INSC 920 wherein we have observed thus:

"23. This Court in [Babu Lal](#) (supra), upon a combined reading of Sections 22 and 28(3) of the Specific Relief Act respectively and Section 55 of the Transfer of Property Act, observed that the it was only "in an appropriate case" that the plaintiff was required to separately seek the relief of possession, partition, or separate possession, as the case may be, along with the relief of specific performance. The 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

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for delivery of possession, may give complete relief to the decree-holder. This, the Court observed, was the mandate flowing from Section 55 of the Transfer of Property Act.”

16. The Special Leave Petition is, accordingly, dismissed.
17. Pending applications, if any, also stand disposed of.

Result of the case: Special Leave Petition dismissed.

[†]Headnotes prepared by: Divya Pandey