

## Arjun Singh vs Sahu Maharaj Narain on 10 January, 1950

**Equivalent citations: AIR1950ALL415, AIR 1950 ALLAHABAD 415**

### JUDGMENT

Wali Ullah, J.

1. This is an appeal by the judgment-debtor against an order passed by the Court below by which his objections were dismissed.

2. It appears that in pursuance of a contract for sale of a house known as Esse Lodge in Mussoorie, the decree-holder respondent obtained a decree for specific performance of the contract of sale. On appeal, this decree was affirmed by the High Court. The appellant failed to obey the decree although he had an opportunity of doing so. The decree-holder was thus compelled to apply to the Court under Order 21, Rule 32, Civil P. C., for executing the sale-deed in pursuance of the decree. The sale-deed was executed by the Court in favour of the decree-holder. It appears that the decree-holder failed to secure delivery of possession of the house in question. He then applied to the execution Court for delivery of possession of the house. The appellant then resisted the application and objected to delivery of possession on the ground that the decree was only for specific performance of the contract of sale and that it did not contain any relief regarding delivery of possession. It appears that in the plaint filed by the decree-holder, no relief was sought for possession of the property. The decree which was passed by the Court consequently contained no relief regarding delivery of possession.

3. The Court below has overruled the objections. Against that order the judgment-debtor has come up in appeal.

4. Learned counsel for the appellant has contended that there being no decree for possession, the decree-holder was not entitled to apply for delivery of possession in the execution department, nor was the Court competent to deliver possession when the decree was silent on the point. The question, therefore is whether in a case like the present, the execution Court is competent to deliver possession of the property. The Court below has relied upon a Division Bench ruling of the Patna High Court in *Atal Behary v. Barada Prasad*, A. I. R. (18) 1931 Pat. 179 : (131 I. C. 529) where it was held :

"Incidental to the relief to which a plaintiff is entitled in a decree for specific performance arising on a contract for sale, the Court has a right to grant possession of the property. A contract for sale includes not only the execution of the necessary document, but also putting the vendee in possession of the property. Therefore, if there is an omission in the plaint or in the decree about possession, the executing Court is not debarred from granting the plaintiff the possession of the property."

5. This decision has followed an earliest Bench decision of the Patna High Court in the case of Deo Nandan v. Janki Singh, (1920) 5 Pat. L. J. 314 : (A. I. R. (7) 1920 Pat. 89). In that case a share in a certain village had been sold in execution. Subsequently the sale was set aside and the Court ordered a conveyance by the purchaser to the plaintiff. On appeal, this order was affirmed both by the High Court as-well-as by the Judicial Committee of the Privy Council. The decree in that case in terms directed the execution of the necessary document by way of conveyance in favour of the plaintiff. There was no order for delivery of possession, In execution of that decree, however, it was held by the Patna High Court that the executing Court had a right to order delivery of possession of the property, the subject-matter of the suit.

6. Learned counsel for the appellant, however, has contended that the view taken in the Madras and the Bombay High Courts is contrary to that which has been upheld in the Patna High Court. He has invited our attention to the case of Nathu v. Budhu, 18 Bom. 537, and the case of Krishnammal v. Sundararaja Aiyar, 38 Mad. 698 : (A. I. R. (1) 1914 Mad. 465), On the strength of these rulings, learned counsel has contended that it was not open to the execution Court to order delivery of possession of the house to the decree-holder.

7. We have examined both these cases with due care. It seems to us that neither of them really supports the contention of the learned counsel. In neither of them was there any question of the power of the execution Court to direct delivery of possession of the property in executing the decree for specific performance of sale of that property. It may be observed that the case of Nathu v. Budhu, 18 Bom. 537, arose Under Section 260 of the old Code of Civil Procedure of 1882. Section 260 of that Code corresponds to Order 21, Rule 32, Civil P. C., 1908, with this difference that Sub-rule (5) of the present Code was absent from the old Code. And Sub-rule (5) of Rule 32 has a material bearing on the question of the powers of a Court executing a decree for specific performance of a contract for sale. The facts of that case were these : The plaintiff claiming specific performance of a contract for sale sued the defendant to compel him to execute a deed of sale, alleging that he had paid the purchase money to the defendant and had obtained possession, but was subsequently dispossessed. The Court found that the plaintiff had paid the purchase money, but had not got possession and ordered the defendant to execute a deed of sale. On failure of the defendant to do so, the Court executed a deed of sale in plaintiff's favour, The plaintiff thereupon brought a second suit to recover possession on the strength of the deed of sale. The defendant contended that the second suit was barred both by Sections 13 and 43, Civil P. C. (Act XIV [14] of 1882). These contentions were overruled by a Division Bench of the Bombay High Court. It was held that the cause of action for the second suit was not the breach of the contract, but a new and distinct cause of action arising from the deed of sale,

8. Similarly, in the case of Krishnammal v. Sundararaja Aiyar, 38 Mad. 698 : (A. I. R. (1) 1914 Mad. 465), the plaintiff who had obtained, in a previous suit, a decree against the defendants for specific performance of an agreement to sell certain immovable property to the plaintiff and had got a sale deed in his favour in execution of the decree, instituted a second suit for the recovery of possession of the lands from the defendants. It was held that the suit was not barred by Order 2, Rule 2, Civil P. C. It was observed :

"At the time, the plaintiff brought the previous suit, the right to possession of the lands was not vested in him, as he acquired that right only on the execution of the deed of conveyance."

At page 699 it was observed by Sankaran Nair J.

"At the time he (the plaintiff) brought the previous suit, the right to possession was not vested in him. He would acquire that right only on the execution of the deed of conveyance."

With reference to Section 55(1)(a), T. P. Act, Tyabji J., at p. 701 observed thus :

"In the absence of any express agreement to transfer possession independently of the registered conveyance, the purchaser (or to be accurate the person agreeing to purchase) has no right to the possession of the property until the conveyance is completed."

9. The learned Judges followed the decision of the Bombay High Court in the case of Nathu v. Budhu, 18 Bom. 537, and disapproved of the decision given in an earlier case decided by a Division Bench of their Court in Narayana v. Kandasami, 22 Mad. 24.

10. It is, therefore, clear that none of the cases relied on by the learned counsel for the appellant really supports his contention. These cases merely decide that the bar of Order 2, Rule 2, would be available in a case where the plaintiff, after obtaining a decree for specific performance of a contract of sale, brings a second suit for possession of the property on the basis of the same agreement. We are not concerned with a second suit here. What we have to consider is whether it is within the competence of the execution Court not only to execute the deed of sale, but also to deliver possession of the property, in pursuance of the decree for specific performance of a contract for sale. There can be no doubt that if a person sues another for specific performance of an agreement to sell, and subsequently on the basis of the same agreement, sues for possession, the second suit would be barred by Order 2, Rule 2, but if the subsequent suit is based on the cause of action flowing from the conveyance obtained in pursuance of the decree in the first suit, it will not be barred by Order 2, Rule 2 as the cause of action for the second suit is quite distinct.

11. Order, 21, Rule 32 (5), Civil P. C. clearly provides that in case a decree for the specific performance of a contract for sale is not obeyed the Court may direct that the not required to be done under the decree may be done so far as practicable by the decree-holder or some other person appointed by the Court at the cost of the judgment-debtor. The nature of the relief granted by the decree in a suit for specific performance of a contract for sale is such that everything which is necessary for the contract to be specifically performed should be held to be comprised in it. A contract for Bale includes not only the execution of the sale deed as required by the Transfer of Property Act, but also putting the vendee in possession of the property sold. As soon as the deed of conveyance is executed, the title to the property in question vests in the vendee. The delivery of possession by the execution Court, therefore, appears to be some thing incidental to the right of the

decree-holder to have the contract specifically performed. The deed of conveyance is itself executed by the execution Court. An order directing delivery of possession to the vendee is merely incidental to the execution of the deed of sale. It is true that it was open to the plaintiff-decree-holder to sue not only for the execution of a deed of sale, but also for possession, but he was not bound to do so for the simple reason that at the time when he instituted that suit the right to possession was not vested in him. He acquired that right only on the execution of the deed of conveyance and this was done by the execution Court in the course of execution proceedings.

12. After giving anxious consideration to the relevant provisions of the law as well as to the ruling referred to above, we have reached the conclusion that the view taken by the patna High Court in the case of Atal Behary (A. I. R. (18) 1931 Pat. 179 : 131 I. C. 529) (*ubi supra*) is sound.

13. In the result, therefore, we dismiss the appeal with costs.