

**Rohit Kochhar**

**v.**

**Vipul Infrastructure Developers Ltd. & Ors.**

(Special Leave Petition(Civil) No(s). 10169-10171 of 2008)

26 November 2024

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

### **Issue for Consideration**

Whether the relief sought by the plaintiff in respect to the suit property can be entirely obtained through the personal obedience of the defendants warranting the application of the proviso to Section 16 of the Code of Civil Procedure, 1908.

### **Headnotes<sup>†</sup>**

**Code of Civil Procedure, 1908 – Proviso to s.16 – When not applicable – Suit for specific performance of the contract in respect of the suit property situated in Gurugram, filed in the Delhi High Court – Single Judge held that the suit was maintainable in view of proviso to s.16 – Appeals filed by the defendants were allowed by Division Bench, plaint was directed to be returned to the plaintiff to present it before the appropriate court having territorial jurisdiction to try the suit for specific performance – Correctness:**

**Held:** No error committed by High Court in passing the impugned orders – s.16 deals with territorial jurisdiction of the courts and inter alia provides that suits for recovery, partition, foreclosure, for determination of any other right or interest in immovable property are to be instituted in the court within whose jurisdiction the property is situate – The proviso to s.16 however, provides that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant, may where the relief sought can be entirely obtained through his personal obedience be instituted either in the Court within whose jurisdiction the property is situate, or in the Court within whose jurisdiction the defendant resides, or carries on business, or personally works for gain – A suit for specific performance and delivery of possession is covered under clause (d) to s.16 and thus the parties, even by agreement, cannot confer territorial jurisdiction on a court within whose territory the subject

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matter is not situated – Proviso to s.16 would be applicable to a case where the relief sought by the plaintiff can be obtained through the personal obedience of the defendant, that is, the defendant has not to go out of the jurisdiction of the court at all for the purpose of the grant of relief – However, since the present case would require the defendants to go to Gurugram for the purpose of execution of the sale deed, hence the proviso to s.16 will not be applicable – Further, it is clear from the terms of the alleged contract between the parties that the transfer of possession of the suit property is implicit in the said contract and absence of a specific prayer seeking transfer of possession would not have any bearing on the character of the suit, which is one covered by s.16(d) – Transfer of Property Act, 1882 – s.55. [Paras 13, 18, 21, 33]

**Specific Relief Act, 1963 – s.22 – Import of – Discussed.**  
[Paras 22-30]

### Case Law Cited

*Adcon Electronics Pvt. Ltd. v. Daulat and Another* [\[2001\] Supp. 3 SCR 29](#) : (2001) 7 SCC 698; *Babu Lal v. Hazari Lal Kishori Lal and Others* [\[1982\] 3 SCR 94](#) : (1982) 3 SCR 94; *Harshad Chiman Lal Modi v. DLF Universal Ltd.* [\[2005\] Supp. 3 SCR 495](#) : (2005) 7 SCC 791; *Babasaheb Dhondiba Kute v. Radhu Vithoba Barde*, [2024 INSC 122](#); *Excel Deacom (P) Ltd. v. Asset Reconstruction Co. (India) Ltd.* [\[2015\] 4 SCR 948](#) : (2015) 8 SCC 219 – referred to.

*P.M.A. Velliappa Chettiar v. Saha Govinda Doss* AIR 1929 Mad 721 – referred to.

*Messrs. Moolji Jaitha and Co. v. Khandesh Spinning and Weaving Mills Co. Ltd.* AIR 1950 FC 83 – referred to.

### List of Acts

Code of Civil Procedure, 1980; Specific Relief Act, 1963

### List of Keywords

Suit for specific performance; Suit property situated in Gurgaon/ Gurugram, Suit filed in Delhi High Court; Territorial jurisdiction; To try the suit; Local limits; Court within whose jurisdiction the property is situate, Court within whose jurisdiction the defendant actually and voluntarily resides, carries on business, or personally

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works for gain; Personal obedience of the defendants; Delivery of possession; Court within whose territory the subject matter is not situated; Transfer of possession of the suit property; Absence of specific prayer seeking transfer of possession; Character of the suit; Plaint returned to be presented before the court of competent jurisdiction; willingness and readiness; Flat Buyers Agreement; Immovable property; in rem; in personam; Maxim “equity acts in personam.”

**Case Arising From**

EXTRAORDINARY APPELLATE JURISDICTION: Special Leave Petition (Civil) No(s). 10169-10171 of 2008

From the Judgment and Order dated 11.03.2008 of the High Court of Delhi at New Delhi in FAO Nos. 196, 197 and 205 of 2005

**Appearances for Parties**

Kunal Verma, Somiron Borkataky, Ms. Yugandhara Pawar Jha, Ishvaaku Marwah, Saurav Kumar, Ms. Lavanya Dhawan, Ms. Yasha Goyal, Advs. for the Petitioner.

Ankit Virmani, Ajit Pudussery, Krishen Tewary, Ms. Ruchika Agarwala, Ashutosh Bamezai, Ms. Mayuri Raghuvanshi, Manish Sharma, Vyom Raghuvanshi, Ninad Dogra, Adya Rao, Advs. for the Respondents.

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

1. These petitions arise from a common order passed by a Division Bench of the High Court of Delhi dated 11.03.2008 in FAO(OS) Nos.196-197/2005 and FAO(OS) No.205/2005 respectively, by which the appeals filed by the respondents herein came to be allowed and the plaint was ordered to be returned to the petitioner herein for presenting it before the appropriate court having territorial jurisdiction to try the suit for specific performance.
2. The petitioner herein, who is the original plaintiff, instituted Civil Suit No.1138/2004 in the Delhi High Court on its original side for permanent injunction and specific performance of the contract dated

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16/20.01.2004 entered into with the respondents herein, the original defendants, in connection with a commercial property admeasuring 10,747 sq. ft. situated on the second floor of the Fortune Global Hotel & Commercial Complex in Gurgaon ("**suit property**").

3. It is the case of the plaintiff that sometime in September 2003, the original defendant no. 2 offered to sell to it commercial space of approximately 10,000 sq. ft. on the second floor of the commercial complex of the Fortune Hotel and Commercial Complex project which was being developed by the defendants. After discussions and negotiations regarding the same, a written communication was received by the plaintiff on 16.01.2004 containing the aforesaid offer in relation to the suit property and the terms and conditions for the transaction.
4. The offer was accepted by the plaintiff vide letter dated 20.01.2004 and a cheque dated 20.01.2004 for Rs 20,000,00/- was issued by the plaintiff in favour of original defendant no. 3 in furtherance of the said acceptance. Further payment of Rs 20,000,00/- was made by the plaintiff on 06.02.2004.
5. Thereafter, disputes cropped up between the parties regarding certain terms contained in the "Flat Buyers Agreement". It is the case of the plaintiff that despite several attempts on its part to negotiate the terms of the said agreement so as to arrive at a settlement, the defendants insisted upon unreasonable, arbitrary and unconscionable terms with a view to wriggle out of their liability arising out of the binding contract dated 16/20.01.2004.
6. Aggrieved by the defendant's alleged refusal to honour the binding contract despite the expression of willingness and readiness by the plaintiff on multiple occasions, the plaintiff instituted the aforesaid suit for specific performance and permanent injunction.
7. The defendants in their written statements, inter alia, raised a preliminary objection as regards the territorial jurisdiction of the Delhi High Court to entertain the suit instituted by the plaintiff. The defendants submitted that there was no concluded and binding contract between the parties and the letters dated 16.01.2004 and 20.01.2004 respectively were only a part of the ongoing discussion and negotiations between the parties in relation to the suit property. The letter dated 16.01.2004 was only a letter of intent and was to be followed by a property buyer agreement to be signed by the plaintiff

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which would contain detailed terms and conditions regarding the sale of the suit property. Further, in the alternative, the defendants submitted that the plaintiff failed to show his readiness and willingness to pay the balance amount at any point in time and thus cannot seek specific performance of the contract.

8. The learned Single Judge *vide* its order dated 25.04.2005 overruled the objection raised by the defendants as regards the territorial jurisdiction and took the view that it had the jurisdiction to entertain the suit. The Court took the view that as the plaintiff was seeking the relief of specific performance simpliciter and had not prayed for a decree to put him in possession of the suit property, such a relief could be granted and enforced by the personal obedience of the vendor and thus the Court in whose territorial jurisdiction the vendor resides or carries on business or works for gain would have the jurisdiction to entertain the suit.
9. Placing reliance on the decision of this Court in [\*Adcon Electronics Pvt. Ltd. v. Daulat and Another\*](#) reported in (2001) 7 SCC 698, the Single Judge drew a distinction between a suit relating to specific performance of a contract for sale of immovable property simpliciter and a suit where additional claim for delivery is prayed for, and observed that a suit of the former category, that is, one for the enforcement of contract of sale and for execution of a conveyance, cannot be said to be a suit for determination of title to land or that the decree in it would operate on the land. The Court further observed that Section 22 of the Specific Relief Act has been specifically held to be an enabling provision by the decision in [\*Adcon Electronics\*](#) (*supra*) and thus the observations made by this Court in [\*Babu Lal v. Hazari Lal Kishori Lal and Others\*](#) reported in (1982) 3 SCR 94 would not be applicable to the facts of the present case as the issue has been directly answered by the decision in [\*Adcon Electronics\*](#) (*supra*). The relevant observations made by the Single Judge are extracted hereinbelow:

*“28. I need not, therefore, deal with the various decisions of this Court and other High Courts relied upon by Counsel for the defendants for the reason that the decision of the Supreme Court in Adcon Electronic’s case (supra) holds the field. The said decision has taken into account Section 22*

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*of the Specific Relief Act. Decision categorically holds that a suit seeking specific performance of an agreement to sell simplicitor even if it relates to immovable property is not a suit in which the relief claimed relates to title or to land. The suit is for enforcement of terms of contract. Decision categorically holds that it is at the option of the plaintiff to seek delivery of possession. Decision categorically holds that unless possession of immovable property is specifically prayed for, suit could be instituted within the local limits of the Court having jurisdiction where the defendant resides, carries on business or personally works for gain.*

*29. Section 55 of the Transfer of Property Act is also an enabling provision and need not be enforced by the buyer.*

*30. In respect of the submission made by Counsel for the defendants Pertaining to the provisions of Order 2 Rule 2 of the Code of Civil Procedure, the point that the rule is directed to secure the exhaustion of the reliefs in respect of a cause of action and not to the inclusion in one and the same action, different causes of action, even though they arise from the same transaction (see decision of Privy Counsel reported as 26 IC 228, Payana v. Panna Lal) has been lost sight of by Counsel.*

*31. Order 2 Rule 2 is aimed against multiplicity of the suits in respect of same cause of action. Complete identity of cause of action and various reliefs flowing therefrom has not to be confused with various causes of action which may accrue under same transaction.*

*32. A vendee may be happy to gain title to immovable property at the pains of the vendor having lost title and since possession was pursuant to title, being labelled as an unauthorised occupant if after execution of sale deed and possession being required to the delivered refuses to do so. In such eventuality, the vendor would be liable to pay damages/mesne profits for unauthorised occupation. This would be an entirely separate cause of action post-execution of the sale deed.*

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*33. I accordingly decide the objection raised by the defendants against them. It is held that this Court has jurisdiction to entertain the suit.”*

10. The defendants, being aggrieved by the order passed by the learned Single Judge, preferred three appeals before a Division Bench of the High Court under Section 10 of the Delhi High Court Act, 1966.
11. The Division Bench of the High Court allowed the appeals and ordered the plaint to be returned to the plaintiff in accordance with law so as to be presented before the court of competent jurisdiction.
12. The Division Bench of the High Court in its impugned order took into consideration the provisions of Section 16 of the Code of Civil Procedure, 1908 as also Section 55 of the Transfer of Property Act, 1882 and recorded the following findings:-

*“18. In the present case, it is an admitted position that the appellant had entered into the aforesaid alleged contract at its Corporate office at Delhi. It is the specific stand of the appellant that they were initially residents of Delhi and that they had moved to Gurgaon and their corporate office is now also located at Gurgaon. It is the contention of the counsel appearing for the respondents that the proviso to Section 16 of Code of Civil Procedure is applicable which is sought to be invoked, for, the relief which is sought for could be entirely enforced through the personal obedience of the defendants in Delhi. There is however not only a prayer in the plaint for declaration of the right and title, but also to transfer the right, title and interest in the suit premises situate at Gurgaon. As, in our opinion, the suit can be decreed in favour of the plaintiff only when the Court can get the sale deed executed and registered in favour of the plaintiff which would confer the title of the suit premises on the plaintiff, and the execution and the registration of the sale document would have to take place at Gurgaon and, for this the Court will also have to pass a decree directing the defendant to get the sale deed executed and registered at Gurgaon, implication of the same will be that a direction will have to be given to the defendant*

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*that he shall have to move out of Delhi and go to Gurgaon and get the same registered. No sale deed is sought to be registered at Delhi and, therefore, in our considered opinion such a relief cannot be entirely obtained through the personal obedience of the defendant, who in this case has to go to the jurisdiction of another court to get the decree executed and the sale deed registered.*

19. Accordingly, we are of the considered opinion that the submissions of the learned counsel for the respondent and the findings recorded by the learned Single Judge that the present case is covered by the proviso of Section 16 of the Code of Civil Procedure are misplaced. In the facts and circumstances of the case as delineated, the relief in the present suit cannot be entirely obtained through the personal obedience of the defendants. The proviso to Section 16 of the Code of Civil Procedure would be applicable to a case where the relief sought for by the plaintiff was entirely obtainable through the personal obedience of the defendant, i.e., the defendant has not at all to go out of the jurisdiction of the Court for the aforesaid purpose. The present case is not a case of the aforesaid nature. In the present case for execution of the sale deed the defendants will have to go out of the jurisdiction of this Court and get the same executed and registered in Gurgaon.

20. In the present case also it is an admitted position that possession of the said property was with the seller and, therefore, in terms of the provisions of Section 55(1) of the Transfer of Property Act, 1882, the relief of possession is inherent in the relief of specific performance of the contract. In our considered opinion the ratio of the decision of the Supreme Court in [Babu Lal](#)(supra) and the principles laid down in the case of [Harshad Chiman Lal Modi](#) (supra) are applicable to the facts of the present case. In [Harshad Chiman Lal Modi](#) (supra) it was found that in addition to passing decree, the court was also required to deliver possession of the property. It was held that such a relief can be granted only by sending the concerned person



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*responsible for delivery of possession to Gurgaon and the court at Delhi does not have the jurisdiction to get the aforesaid decree enforced for the property situate outside territorial jurisdiction of Delhi High Court. The Court while referring to the provisions of Section 16 of the CPC held that the location of institution of a suit would be guided by the location of the property in respect of which and for determination of any right or interest whereof the suit is instituted. The proviso to Section 16 CPC is also not applicable to the case, as the relief sought for cannot be entirely granted or obtained through the personal obedience of the respondent.*

21. The decision of the Supreme Court in the case of [\*Adcon Electronics Pvt. Ltd. v. Daulat and Another\*](#) (2001) 7 SCC 698, relied upon by the respondents, would also not be applicable to the facts of the present case. The said decision was rendered in the context of the expression “suit for land”. The Supreme Court in the said decision held that suit for specific performance of an agreement for sale of the suit property, without a claim for delivery of possession, cannot be treated as a “suit for land” and is, therefore, triable under clause 12 if the other conditions thereunder are fulfilled. The facts of the said case are, therefore, distinguishable and are not applicable to the case in hand. The said decision was rendered due to specific provision therein and it is also apparent from the fact that the case of [\*Babu Lal\*](#)(supra) was not even referred to in that case.

22. Another decision of the Supreme Court which needs reference at this stage is the case of *Begum Sabiha Sultan v. Nawab Mohd. Mansur Ali Khan and others* (2007) 4 SCC 343. In para 12 of the said judgment it was held by the Supreme Court that reading the plaint as a whole in this case, there cannot be much doubt that the suit is essentially in relation to the relief of partition and declaration in respect of the properties situate in Village Pataudi, Gurgaon, outside the jurisdiction of court at Delhi. In that view of the matter it was also held that the Delhi Court will have no jurisdiction to try and decide the aforesaid

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*suit. It was also held in the said decision by following the decision of [Harshad Chiman Lal Modi](#) (supra) that the relief of partition, accounting and declaration of invalidity of the sale executed in respect of immovable propertied situated situate in village Pataudi, Gurgaon could not entirely be obtained by personal obedience to the decree by the defendants in the suit. It was further held that applying the test laid down therein, it is clear that the present suit could not be brought within the purview of the Section 16 of the Code or entertained relying on Section 20 of the Code on the basis that three out of the five defendants are residing within the jurisdiction of the court at Delhi.*

*23. In view of the above facts and circumstances, we are of the considered opinion that the Delhi court would not have the territorial jurisdiction to entertain and decide the aforesaid suits. Consequently, we hold that the decision rendered by the learned Single judge cannot be upheld. The same is accordingly set aside and quashed.*

*24. The appeals are allowed accordingly, the plaint be returned to the plaintiff in accordance with law.”*

13. Having heard the learned counsel appearing for the parties and having gone through the materials on record, we are of the view that no error not to speak of any error of law could be said to have been committed by the High Court in passing the impugned orders.
14. Section 16 of the CPC deals with territorial jurisdiction of the courts and provides that suits for recovery or partition of immovable property or for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property or for determination of any other right to or interest in immovable property, or for compensation for wrong to immovable property, or for recovery of movable property actually under distraint or attachment, shall be instituted in the court within the local limits of whose jurisdiction the property is situate. Further, the proviso provides that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant, may where the relief sought can be entirely obtained through his personal obedience be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the

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defendant actually and voluntarily resides, or carries on business, or personally works for gain.

15. Thus, the pivotal question before us is whether the relief being sought by the plaintiff in respect to the suit property can be entirely obtained through the personal obedience of the defendants. If yes, then the facts of the present case would warrant the application of the proviso to Section 16 of the CPC and the High Court on its original side would be competent to entertain the suit instituted by the plaintiff.
16. This Court in [Harshad Chiman Lal Modi v. DLF Universal Ltd.](#) reported in **(2005) 7 SCC 791** observed that Section 16 of the CPC recognises a well-established principle that actions against *res* or property should be brought in the forum where such *res* is situate. A court within whose territorial jurisdiction the property is not situate has no power to deal with and decide the rights or interests in such property. In other words, this Court held that a court has no jurisdiction over a dispute in which it cannot give an effective judgment.
17. On the proviso to Section 16, the Court observed that the proviso, no doubt, states that though the court cannot, in case of immovable property situate beyond jurisdiction, grant a relief *in rem* still it can entertain a suit where relief sought can be obtained through the personal obedience of the defendant. The proviso is based on a well-known maxim “equity acts in personam”, recognised by the Chancery Courts in England. The Equity Courts had jurisdiction to entertain certain suits relating to immovable properties situated abroad through personal obedience of the defendant. The Court observed that the principle on which the maxim was based was that the courts could grant relief in suits relating to immovable property situated abroad by enforcing their judgments by process *in personam* i.e., by arrest of the defendant or by attachment of his property.
18. The Court held that a suit for specific performance and delivery of possession was covered under clause (d) to Section 16 of the CPC and thus the parties, even by agreement, cannot confer territorial jurisdiction on a court within whose territory the subject matter is not situated.
19. Recently, this Court in [Babasaheb Dhondiba Kute v. Radhu Vithoba Barde](#) reported in **2024 INSC 122** held that the conveyance by way of sale would take place only at the time of registration of a sale

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deed in accordance with Section 17 of the Registration Act, 1908. Till the time of such registration, no conveyance could be said to have taken place.

20. Thus, even if the suit for specific performance is decreed without a specific decree for transfer of the possession of the suit property, the same can be enforced only when the trial court directs the defendants to convey the suit property to the plaintiff by getting a sale deed registered with respect to the suit property, as it is only after registration that the transfer of title would take place from the defendants to the plaintiff. The registration of the sale deed in the present case would have to take place at Gurugram as the suit property is situated there. The sale deed is not sought to be registered at Delhi and the implication of the grant of specific relief would be that the trial court will have to direct the defendants to move out of Delhi and go to Gurugram to get the sale deed registered. As rightly held by the Division Bench of the High Court, such a relief cannot be obtained entirely by the personal obedience of the defendants as the defendants will have to go to the jurisdiction of another court to get the decree executed.
21. We agree with the view expressed by the High Court in the impugned order that the proviso to Section 16 would be applicable to a case where the relief sought by plaintiff can be obtained through the personal obedience of the defendant, that is, the defendant has not to go out of the jurisdiction of the court at all for the purpose of the grant of relief. However, since the present case would require the defendants to go to Gurugram for the purpose of execution of the sale deed, hence the proviso to Section 16 of the CPC will not be applicable.
22. It is also necessary to understand the true import of Section 22 of the Specific Relief Act for a better appreciation of the issue before us. The said provision provides that any person suing for specific performance of a contract for transfer of immovable property may, in an appropriate case, sue for possession, or partition and separate possession of the property, in addition to such performance. It is further provided in sub-section (2) of the said provision that no relief under the said provision 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

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of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

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 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. The relevant observations made by the Court are extracted hereinbelow:

*“11. Section 22 enacts a rule of pleading. The legislature thought it will be useful to introduce a rule that in order to avoid multiplicity of proceedings the plaintiff may claim a decree for possession in a suit for specific performance, even though strictly speaking, the right to possession accrues only when suit for specific performance is decreed. The legislature has now made a statutory provision enabling the plaintiff to ask for possession in the suit for specific performance and empowering the court to provide in the decree itself that upon payment by the plaintiff of the consideration money within the given time, the defendant should execute the deed and put the plaintiff in possession.*

*12. The section enacts that a person in a suit for specific performance of a contract for the transfer of immovable property, may ask for appropriate reliefs, namely, he may ask for possession, or for partition or for separate possession including the relief for specific performance. These reliefs he can claim, notwithstanding anything contained in the Code of Civil Procedure, 1908, to the contrary. Sub-section (2) of this section, however, specifically provides that these reliefs cannot be granted by the court, unless they have been expressly claimed*

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*by the plaintiff in the suit. Sub-section (2) of the section recognised in clear terms the well-established rule of procedure that the court should not entertain a claim of the plaintiff unless it has been specifically pleaded by the plaintiff and proved by him to be legally entitled to. The proviso to this sub-section (2), however, says that where the plaintiff has not specifically claimed these reliefs in his plaint, in the initial stages of the suit, the court shall permit the plaintiff at any stage of the proceedings, to include one or more of the reliefs, mentioned above by means of an amendment of the plaint on such terms as it may deem proper. The only purpose of this newly enacted provision is to avoid multiplicity of suits and that the plaintiff may get appropriate relief without being hampered by procedural complications.*

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 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

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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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26. Sub-section (3) of Section 28 clearly contemplates that if the purchaser or lessee pays the purchase money or other sum which he is ordered to pay under the decree, the court may on application made in the same suit, award the purchaser or lessee such further relief as he may be entitled to. Clause (b) of sub-section (3) of Section 28 contemplates the delivery of possession or partition and separate possession of the property on the execution of such conveyance or lease. Sub-section (4) of Section 28 bars the filing of a separate suit for any relief which may be claimed under this section."

(Emphasis supplied)

24. Section 22 of the Specific Relief Act was considered by this Court in [Adcon Electronics](#) (*supra*). The Court was called upon to interpret the expression "suit for land" appearing in Clause 12 of the Letters Patent to the High Court of Judicature at Bombay, and whether a suit for specific performance simpliciter where no prayer seeking

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possession was made could be said to be a “suit for land” within the meaning of the said clause. The Court referred to the decision of a five-Judge Bench of the Federal Court in **Messrs. Moolji Jaitha and Co. v. Khandesh Spinning and Weaving Mills Co. Ltd.** reported in **AIR 1950 FC 83** and observed that there was a difference of opinion as to the import of the expression “suit for land”. *Inter alia*, the Court expressed its agreement with the following observations made by Justice Mahajan in the said decision:

*“...In my opinion, if the suit is for specific performance and a decree for possession of the land sold is claimed, such a suit would certainly be a suit for land; but if the suit is simpliciter for specific performance, i.e., for the enforcement of the contract of sale and for execution of a conveyance, in that event there can be no good ground for holding that such a suit is a suit for determination of title to land or that the decree in it would operate on the land. ...”*

25. The Court further expressed agreement with a Full Bench decision of the Madras High Court in **P.M.A. Velliappa Chettiar v. Saha Govinda Doss** reported in **AIR 1929 Mad 721** and observed thus:

*“[...] [I]t seems to me fairly clear that the expression ‘suit for land’ occurring in clause 12 Letters Patent, means a suit which is instituted with the object of establishing claims regarding title to the property or possession of it. Whether or not possession is claimed, if title to any immovable property is to be directly affected by the result of the decision, the suit would be a suit for land.”*

26. Concluding on the basis of the aforesaid, the Court held the following as regards the meaning of the expression “suit for land”:

*“15. From the above discussion it follows that a “suit for land” is a suit in which the relief claimed relates to title to or delivery of possession of land or immovable property. Whether a suit is a “suit for land” or not has to be determined on the averments in the plaint with reference to the reliefs claimed therein; where the relief relates to adjudication of title to land or immovable property or delivery of possession of the land or immovable property, it will be a “suit for land”. We are in respectful agreement with the view expressed by Mahajan, J. in Moolji Jaitha case.”*



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27. Further, on the aspect of Section 22 of the Specific Relief Act, the Court took the view that although the said provision is enabling in nature yet as per the mandate of sub-section (2), the relief of possession of immovable property which is the subject matter of the agreement for sale cannot be granted by the court unless the relief for possession is specifically prayed for. The relevant observations are extracted hereinbelow:

*“17. It may be seen that sub-section (1) is an enabling provision. A plaintiff in a suit of specific performance may ask for further reliefs mentioned in clauses (a) and (b) thereof. Clause (a) contains reliefs of possession and partition and separate possession of the property, in addition to specific performance. The mandate of sub-section (2) of Section 22 is that no relief under clauses (a) and (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed. Thus it follows that no court can grant the relief of possession of land or other immovable property, subject-matter of the agreement for sale in regard to which specific performance is claimed, unless the possession of the immovable property is specifically prayed for.*

*18. In the instant case the suit is for specific performance of the agreement for sale of the suit property wherein relief of delivery of the suit property has not been specifically claimed, as such it cannot be treated as a “suit for land”.*

*19. We cannot also accept the contention of Mr Chitale that the suit is for acquisition of title to the land and is a “suit for land”. In its true sense, a suit simpliciter for specific performance of contract for sale of land is a suit for enforcement of terms of contract. The title to the land as such is not the subject-matter of the suit.”*

28. What appears from a close reading of the decision in [Adcon Electronics](#) (*supra*) is that the decision of this Court in [Babu Lal](#) (*supra*) was not considered and reliance was placed on the decision of the Federal Court in **Moolji Jaitha** (*supra*) which was rendered in the context of the old Specific Relief Act. The Federal Court had no occasion to consider the amended regime brought into being by virtue of the Specific Relief Act enacted in 1963. The decision in

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**Babu Lal** (*supra*) took note of the divergent views occupying the field prior to the enactment of the Specific Relief Act in 1963. The relevant paragraphs from **Babu Lal** (*supra*) wherein the conflict in position of law was noted are extracted hereinbelow:

*“6. It would be appropriate to refer to the state of law as it existed prior to the amendment of the Specific Relief Act in 1963. One view was that the decree-holder does not acquire title or right to recover possession unless a sale deed is executed, in execution of the decree for specific performance. In Hakim Enayat Ullah v. Khalil Ullah Khan [AIR 1938 All 432 : ILR 1938 All 677 : 1938 All LJ 569 : 176 IC 436] a Division Bench of the Allahabad High Court dealing with the question observed:*

*“A decree for specific performance only declares the right of the decree-holder to have a transfer executed in his favour of the property covered by the decree. The decree by itself does not transfer title. That this is so is apparent from the fact that in order to get title to the property the decree-holder has to proceed in execution in accordance with the provisions of Order 21 of the Code. So long as the sale deed is not executed in favour of the decree-holder, either by the defendant in the suit or by the court, the title to the property remains vested in the defendant and till the execution of the sale deed the decree-holder has no right to the possession of the property. It is only the execution of the sale deed that transfers title to the property.”*

*7. In Kartik Chandra Pal v. Dibakar Bhattacharjee [AIR 1952 Cal 362 : ILR (1950) 1 Cal 350] a Division Bench of the Calcutta High Court, however, after reviewing a number of reported cases viz. Ranjit Singh v. Kalidasi Debi [ILR (1910) 37 Cal 57 : 14 Cal WN 527 : 5 IC 205], Madanmohan Singh v. Gaja Prasad Singh [(1911) 14 CLJ 159 : 11 IC 228], Deonandan Prasad v. Janki Singh [(1920) 5 Pat LJ 314 : 1 Pat LT 325 : 56 IC 322] and Atal Behary Acharya v. Barada Prasad Banerji [AIR 1931 Pat 179 : 12 Pat LT 636 : 131 IC 529], observed:*

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*“...It is incontestable that in a suit for specific performance of contract for the sale of land it is open to the plaintiff to join in the same suit two prayers, one for the execution of the deed of transfer and another for recovery of possession of the land in question....*

\* \* \*

*We ought to remember in this connection that no special form of decree in a suit for specific performance is supplied by the Civil Procedure Code. Chapter II, Specific Relief Act, deals with the various circumstances under which a contract may be enforced specifically and where it cannot be allowed. When a contract is to be specifically enforced, it means simply this that when the parties do not agree to perform the contract mutually the intervention of the Court is required and the Court will do all such things as the parties would have been bound to do had this been done without the intervention of the Court. A sale of a property after payment of the consideration and upon due execution of the deed of sale presupposes and requires the vendor to put the purchaser in possession of the property. It cannot be suggested that when a party comes to Court for the specific performance of a contract he is to be satisfied with simply the execution of the document on payment of the consideration money. The Court when 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. By the decree for specific performance, the Court sets out what it finds to be the real contract between the parties and declares that such a contract exists and it is for the executing court to do the rest.*

*It may be noticed further that a decree in a suit for specific performance has been considered to be somewhat in the nature of preliminary decree which cannot set out in the fullest detail all the different steps which are required to be taken to implement the main portion of the order directing specific performance of*

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*the contract. The executing court is in such a case vested with authority to issue necessary directions.”*

8. In Balmukand v. Veer Chand [AIR 1954 All 643 : 1954 All LJ 255 : 1954 All WR (HC) 424] the decree for specific performance of a contract of sale was silent as to the relief of delivery of possession even though such relief was claimed in the suit. It was held by the Allahabad High Court that the executing court was still competent to deliver the possession. It was further held that it was not necessary in a suit for specific performance either to separately claim possession nor was it necessary for the court to pass a decree for possession. A decree for specific performance of a contract includes everything incidental to be done by one party or another to complete the sale transaction, the rights and obligations of the parties in such a matter being governed by Section 55 of the Transfer of Property Act. In Janardan Kishore v. Girdhari Lal [AIR 1957 Pat 701 : 1957 BLJR 368] the Patna High Court took the view that the relief of possession is inherent in a relief for specific performance of contract for lease, and the court executing a decree for specific performance of such a contract can grant possession of the property to the decree-holder even though the decree did not provide for delivery of possession. In Subodh Kumar Banerjee v. Hiramoni Dasi [AIR 1955 Cal 267] the Calcutta High Court took a similar view that the right to recover possession springs out of the contract which was being specifically enforced and not as a result of the execution and completion of the conveyance, and as such the judgment-debtor was bound to deliver possession to the decree-holder.

9. In Mohammed Ali Abdul Chanimomin v. Bisahemi Kom Abdulla Saheb Momin [AIR 1973 Mys 131 : (1973) 1 Mys LJ 130] the Mysore High Court observed that the liability to deliver possession for specific performance was necessarily implied in a decree for specific performance directing the defendant to execute a sale deed on the principle of clause (f) of sub-section (1) of Section 55 of the Transfer of Property Act, according to which the liability to deliver possession arises immediately upon execution

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of a sale deed unless by agreement the date for delivery of possession is postponed.

10. In this state of the law the legislature intervened and on the basis of the report of the Law Commission enacted Section 22 in 1963 as it stands.”

(Emphasis supplied)

29. Thus, while the decision in [Adcon Electronics](#) (*supra*) proceeds on the understanding that a suit for specific performance of an agreement to sell is an action *in personam*, the decision in [Babu Lal](#) (*supra*) takes into account the change brought about by the introduction of Sections 22 and 28 to the Specific Relief Act, 1963 respectively which has changed the nature of the relief available under Section 22 by allowing the plaintiff to seek the relief of possession, partition, etc. simultaneously along with the prayer for specific performance.
30. Even otherwise, we are of the view that the decision in [Adcon Electronics](#) (*supra*), is of no avail to the plaintiff. It was expressly held by this Court therein that to determine whether a suit is a “suit for land” or not has to be determined on the basis of the averments made in the plaint with reference to the reliefs claimed therein. In yet another decision [Excel Dealcomm \(P\) Ltd. v. Asset Reconstruction Co. \(India\) Ltd.](#) reported in (2015) 8 SCC 219 dealing with the meaning of the expression “suit for land” appearing in Clause 12 of the Letters Patent of the High Court of Judicature at Calcutta, this Court observed thus:

“13. A suit for land is a suit in which the relief claimed relates to the title or delivery of possession of land or immovable property [see [Adcon Electronics \(P\) Ltd. v. Daulat](#) [[Adcon Electronics \(P\) Ltd. v. Daulat](#)]]. Further, it is an established rule that to determine whether it is a suit for land, the court will look into barely the plaint and no other evidence ([Indian Mineral & Chemicals Co. v. Deutsche Bank](#) [(2004) 12 SCC 376]). If by the averments in the plaint and prayers therein, it appears that the suit is one for land, it shall be so held and if it does not so appear, then the suit shall continue under leave granted under Clause 12. ...

XXX XXX XXX

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16. It may be noted that the sale certificate sought under the prayer requires the delivery of possession of the suit property. Thus, we find that the prayer for delivery of possession was an implicit one in the present case. The prayer as sought in the plaint could not have been granted without the delivery of possession of the suit property as the sale certificate itself contemplates the delivery of the immovable property. Thus, in view of this we find that Adcon Electronics [Adcon Electronics (P) Ltd. v. Daulat] would not apply as there was a prayer for delivery of possession in the present case. Therefore, we hold that the present suit was indeed a suit for land."

(Emphasis supplied)

31. Similarly, in **Moolji Jaitha** (*supra*), His Lordship Kania, C.J. held that a Suit as a whole should be taken into consideration to find out whether it is for the purpose of obtaining a direction for possession or a decision on title to land, or the object of the Suit is something different but involves the consideration of the question of title to land indirectly. His Lordship further held that the nature of the Suit and its purpose have to be determined by reading the Plaint as a whole and it is not proper to dissect the prayers and consider whether the Court has jurisdiction on the limited points. It was further held that the inclusion or absence of a prayer is not decisive of the true nature of the Suit, nor is the order in which the prayers are arrayed in the Plaint. The substance or object of the Suit has to be gathered from the averments made in the Plaint and on which the reliefs asked in the prayers were based.
32. In the present case, the alleged contract for the sale executed between the parties through exchange of communications dated 16.01.2004 and 20.01.2004 respectively contains the stipulation that 10% of the total sale consideration has to be paid immediately by the plaintiff upon booking, 85% of the sale consideration has to be paid by 28.02.2004 and the balance 5% of the sale consideration has to be paid at the time of notice for possession of the premises. Further, there is a stipulation that the possession of the suit property has to be handed over by the defendants to the plaintiff upon payment of the balance 5% of the total sale consideration. Further, section 55(1) (f) of the Transfer of Property Act also stipulates that the seller of an

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immovable property is required to handover the possession of the property to the buyer pursuant to the execution of the sale deed. It was also held in [Babu Lal](#) (supra) that in view of the interplay between Sections 22 and 28 of the Specific Relief Act respectively and Section 55 of the Transfer of Property Act, the handing over of the possession of the immovable property in respect of which a decree of specific performance has been granted is only incidental.

33. Thus, it is clear from the terms of the alleged contract between the parties that the transfer of possession of the suit property is implicit in the said contract and absence of a specific prayer seeking transfer of possession would not have any bearing on the character of the suit, which is one covered by Section 16(d) of the CPC.
34. If we were to hold otherwise, then it would give rise to a situation where a plaintiff would be allowed to file a suit for specific performance simpliciter and having obtained a decree therein, the plaintiff would pray for the transfer of the execution proceedings to the court within whose territorial jurisdiction the suit property lies and thereafter seek amendment of the plaint to include a prayer for transfer of possession, which has been expressly held to be permissible in [Babu Lal](#) (supra). An interpretation which gives rise to the possibility of such misuse of law cannot be allowed.
35. For all the aforesaid reasons, the Special Leave Petitions fail and are hereby dismissed.
36. Interim relief granted earlier stands vacated.
37. In view of the aforesaid, it is now for the plaintiff to take appropriate steps to present the plaint before the court of competent jurisdiction and get his suit adjudicated on merits in accordance with law.
38. Pending applications, if any, also stand disposed of.

*Result of the case:* Special Leave Petitions dismissed.