

2022 LiveLaw (SC) 395

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
HEMANT GUPTA; V. RAMASUBRAMANIAN, JJ.**

APRIL 05, 2022

**CIVIL APPEAL NO. 2726 OF 2022 (ARISING OUT OF SLP (CIVIL) NO. 15653 OF 2017)
MANICKAM @ THANDAPANI & ANR. *VERSUS* VASANTHA**

Specific Relief Act, 1963; Section 22(2) - Section 22(2) of the Act is only directory - Relief of possession is ancillary to the decree for specific performance and need not be specifically claimed - The expression "at any stage of proceeding" is wide enough to allow the plaintiffs to seek relief of possession even at the appellate stage or in execution even if such prayer was required to be claimed. (Para 25 - 30)

Interpretation of Statutes - To examine whether a provision is directory or mandatory, one of the tests is that the court is required to ascertain the real intention of the legislature by carefully attending to the whole scheme of the statute. (Para 29)

(Arising out of impugned final judgment and order dated 14-03-2017 in CRP No. 722/2017 passed by the High Court of Judicature at Madras)

For Petitioner(s) Mr. M.S. Ganesh, Sr. Adv. Mr. R. Ayyam Perumal, AOR Mr. K. Seshachary, Adv.

For Respondent(s) Mr. Rakesh Kumar, Adv. Ms. Preeti Kashyap, Adv. Mr. Lav Dhawan, Adv. Mr. Saurabh Mishra, AOR

ORDER

HEMANT GUPTA, J.

1. The present appeal is directed against an order dated 14.3.2017 passed by the High Court of Judicature at Madras whereby the Execution Petition filed by the appellants-decree holders to seek possession of the property of which sale deed was executed in their favour was found to be not maintainable.

2. The brief facts leading to the present appeal are that the respondentdefendant, as owner of the vacant plot admeasuring 2400 sq. feet, had entered into a sale agreement with the appellants. One of the conditions in the agreement was that the respondent would handover vacant possession of the suit property to the appellants. The relevant clause reads as thus:

“5.WHEREAS the 1st Party handed over all the original title deeds of the schedule property on this day, to the 2nd and 3rd Parties. It has been agreed by the 1st Party that at her costs, she will produce Nil-Encumbrance Certificate before registration, and she will handover vacant possession of the schedule property to the 2nd and 3rd Parties.”

3. The appellants filed a suit seeking specific performance of the said agreement and to direct the respondent herein to execute the sale after receiving the balance sale consideration, failing which the Court may execute the sale deed in favour of the appellants. In the written statement filed, the respondent stated that there cannot be sale of any vacant plot unless the competent authority under the Urban Land Ceiling enactment gives the necessary permission. The respondent admitted the agreement and averred that the appellants had failed to take steps for permission from the competent authority. It was the stand of the respondent that she was pressing for the transaction to be completed but the appellants alone protracted the execution of the sale.

4. In the additional statement filed on 29.3.1985, the respondent pleaded that she sold another plot to one Lakshmipathy in order to discharge the debt of Lakshmipathy. It was pleaded as under:

“2. ...But unfortunately the plaintiff who appeared to have had no sufficient sources to complete the transaction caused the delay and as such this defendant sold another plot to the same Lakshmipathy and had to discharge the debt in that manner.”

5. The learned trial court vide order dated 27.11.1985 declined to grant decree for specific performance but granted nominal damages of Rs.5,000/- to the appellants and recovery of the amount deposited. The defendant was given two months' time to pay the entire amount with interest and cost.

6. The High Court in the first appeal decreed the suit as prayed while setting aside the decree passed by the learned trial court vide judgment dated 23.11.2001. The appellants were given time till 31.1.2002 for depositing the balance sale consideration. An intra-court appeal was preferred by the respondent which was dismissed on 14.9.2006. The Special Leave Petition against the said order was also dismissed on 19.3.2007.

7. The appellants deposited the balance sale consideration but the respondent did not come forward to execute the sale deed. Therefore, the representative of the learned Executing Court i.e., learned Principal Sub Judge, Puducherry executed the sale deed on 26.4.2007. The sale deed had the following assertions:

“NOW by this deed of sale the property fully described in the schedule hereunder is hereby transferred, conveyed and assigned to the purchasers with all privileges, easements and advantages whatsoever to the said property to be occupied and enjoyed with absolute right, title and interest without any claim of demand whatsoever to any one, free from all encumbrances.

THE PURCHASERS shall hereafter peacefully and quietly possess and enjoy the property, described hereunder without any interruption or disturbances whatsoever from the vendors or any person claiming through her.”

8. Thereafter, the appellants filed Execution Petition No. 60 of 2009 for directing the respondent to put the decree-holders in possession of the property conveyed. Such application was resisted on the ground that the petition had been filed under Order XXI Rule 35(3) of the Code of Civil Procedure, 1908 which deals with delivery of possession

of any building but does not include vacant site and that such application was required to be filed under Order XXI Rule 35(4). It was pointed out that as per the decree-holders, the plot was not a vacant plot and had a pucca brick built double-storey house property and that the judgment debtor is only in possession of 750 sq. feet. Such application was allowed by the Executing Court on 20.7.2010. It was held as under:

“14. Since the petitioner/decreed holder already obtained a decree of specific performance and the sale deed is also executed by this court in their favour and as per their sale deed and as per the decree, this court is of the opinion that the petitioner/decreed holders are entitled for the relief of delivery of possession. Accordingly, the petition is allowed and the respondent is liable to hand over possession of the property to the petitioners/decreed holders as per the decree.”

9. An appeal was filed against the said order which was dismissed on 2.12.2016.

10. The respondent still aggrieved filed a petition under Article 227 of the Constitution of India which has been allowed by the High Court on the ground that no decree was granted to the appellants in respect of delivery of possession to the decree-holders, therefore, the execution for delivery of possession is not maintainable. The High Court relied upon a judgment of the Federal Court reported as **Messrs Moolji Jaitha & Co. v. Khandesh Spinning and Weaving Mills Co. Ltd.**¹ and judgment of this Court reported as **Adcon Electronics Pvt. Ltd. v. Daulat & Anr.**² to hold that without claiming for delivery of possession in a suit for specific performance, there could not be any such order for possession in terms of Section 22 of the Specific Relief Act, 1963³. The High Court granted liberty to the appellants to file a separate suit for possession as per the decree passed.

11. We find that the High Court has completely misdirected itself in accepting the petition under Article 227 of the Constitution of India and directing the decree-holders to file a suit for possession by misreading the judgments referred to.

12. There was no provision in the Specific Relief Act, 1877 corresponding to Section 22 of the Act. Section 22 came to be part of the Act, in pursuance of the recommendation of Law Commission in its 9th Report submitted on 19th July, 1958. The Law Commission was chaired by Mr. M.C.Setalvad and had members including Mr. S.M.Sikri, Mr. G.S.Pathak and Mr. N.A.Palkhivala. The Law Commission had recommended as under:-

“35. It will be useful, we think to introduce a rule which has been now settled by judicial decisions, 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 specific performance is decreed (Krishnaji v. Sangappa, A.I.R. 1925 Bom. 181, Velayuda v. Kumaraswami, 52 I.C. 700 (Mad.)). No doubt, it has been laid down that possession can be asked for in execution of a decree for specific performance even though possession was not claimed in the plaint, on the ground that the relief of possession is merely incidental to that of execution of a deed of conveyance (Kartik v. Dibakar, A.I.R. 1952 Cal. 362; Arjun Sing v. Sahu, A.I.R. 1950 All. 415). At the same time it has been held that the plaintiff decree-holder does not acquire title or the

¹ AIR 1950 FC 83

² (2001) 7 SCC 698

³ For short, the 'Act'

right to recover possession unless a sale deed is executed in execution of the decree for specific performance (Enayat Ullah v. Khalil Ullah, A.I.R. 1938 All. 432.). We think it would be simpler to make 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 (Cf. Abdul v. Abdul, 46 Mad. 148.)”

13. The Act was enacted thereafter with newly added Section 22 to avoid multiplicity of proceedings. Section 22 reads thus:

“22. Power to grant relief for possession, partition, refund of earnest money, etc.—(1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 (5 of 1908), any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for—

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

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

(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed:

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

(3) The power of the court to grant relief under clause (b) of subsection (1) shall be without prejudice to its powers to award compensation under Section 21.”

14. Section 28 (3) & (4) and Section 55(1)(f) of the Transfer of Property Act, 1882 are also relevant here, which read thus:-

“28. Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed.—

(1) xx xx xx

(2) xx xx xx

(3) If the purchaser or lessee pays the purchase money or other sum which he is ordered to pay under the decree within the period referred to in sub-section (1), the court may, on application made in the same suit, award the purchaser or lessee such further relief as he may be entitled to, including in appropriate cases all or any of the following reliefs, namely—

(a) the execution of a proper conveyance or lease by the vendor or lessor;

(b) the delivery of possession, or partition and separate possession, of the property on the execution of such conveyance or lease.

(4) No separate suit in respect of any relief which may be claimed under this section shall lie at the instance of a vendor, purchaser, lessor or lessee, as the case may be.”

Section 55(1)(f) of the Transfer of Property Act, 1882

“55. Rights and liabilities of buyer and seller.—In the absence of a contract to the contrary, the buyer and the seller of immovable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following, or such of them as are applicable to the property sold:

(1) The seller is bound—

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(f) to give, on being so required, the buyer, or such person as he directs, such possession of the property as its nature admits;”

15. There were divergence of opinions in the regime prior to the enactment of the Act as to whether relief of possession is to be specifically claimed. In **Brijmohan v. Chandrabhagabai**⁴, it was held that where there is no prayer for delivery of possession and the decree passed in the suit does not direct delivery of possession, the Executing Court has no jurisdiction to deliver possession in execution of a decree, whereas other High Courts had taken a view such as the Patna High Court in the judgments reported as **Atal Behary v. Barada Prasad**⁵, **Janardan Kishore Lal v. Girdhari Lal**⁶ and **Parameshwar Mandal v. Mahendra Nath**⁷; the Calcutta High Court in the judgments reported as **Kartik Chandra v. Dibakar**⁸, **Subodh Kumar v. Hiramoni Dasi**⁹; the Allahabad High Court in the judgments reported as **Pt. Balmukand v. Veer Chand**¹⁰, **Arjun Singh v. Sahu Maharaj Narain**¹¹; the Mysore High Court in a judgment reported as **Venkatesh v. Parappa**¹²; the Madras High Court in a judgment reported as **Sundara Ramanujam Naidu v. Sivalingam Pillai & Anr.**¹³ and the Madhya Pradesh High Court in a judgment reported as **Dadulal Hanumanlala v. Smt. Deo Kunwar Bai w/o. Shantilal, Durg**¹⁴ that relief of possession is inherent in a decree for specific performance and need not be specifically claimed. But only to clarify the position in law, on the basis of recommendation of the Law Commission, Section 22 was introduced in the Act. The purpose of introducing Section 22 was a rule of pleading with the purpose to avoid multiplicity of proceedings. Though, the right of possession accrues only when the suit for specific performance is decreed, but now the Court is empowered to provide in the decree itself that upon payment by the plaintiff of the consideration amount within the time given, the defendant shall execute the deed and put the plaintiff in possession.

16. Such provision of the Act had come up for consideration before this Court in **Babu Lal v. Hazari Lal Kishori Lal & Ors.**¹⁵ at the instance of a purchaser pendente lite. This Court has explained the expression “in an appropriate case” appearing in sub-section

⁴ AIR 1948 Nagpur 406

⁵ AIR 1931 Patna 179

⁶ AIR 1957 Patna 701

⁷ AIR 1961 Patna 466

⁸ AIR 1952 Calcutta 362

⁹ AIR 1955 Calcutta 267

¹⁰ AIR 1954 Allahabad 643

¹¹ AIR 1950 Allahabad 415

¹² (1966) 1 Mys LJ 799

¹³ AIR 1924 Mad 360

¹⁴ AIR 1963 MP 86

¹⁵ (1982) 1 SCC 525

(1) of Section 22 of the Act. The Court also examined the question as to whether the relief for possession can be effectively granted to the decree-holders where the property agreed to be conveyed is jointly held by the defendant with other persons. In such cases, the plaintiff must claim partition of the property and possession over the share of the defendant. Hence, relief for possession must be specifically pleaded in these particular cases. This Court held that as against the third person, a decree for possession must be specifically claimed as such a person is not bound by the contract to be enforced. The argument that the plaintiff must claim possession in a suit for specific performance of a contract in all cases was also negated as Section 22 talks about the relief of possession in appropriate case. This Court addressed the history of the provision so enacted and held as under: -

“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.

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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.....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 decreeholder. 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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16. ...It may not always be necessary for the plaintiff to specifically claim possession over the property, the relief of possession being inherent in the relief for specific performance of the contract

of sale. Besides, the proviso to sub-section (2) of Section 22 provides for amendment of the plaint on such terms as may be just for including a claim for such relief “at any stage of the proceeding”.

17. The various High Courts had taken a view even before the said judgment of this Court in **Babu Lal** to hold that relief of possession is inherent in a decree of suit for possession, while examining Section 22 of the Act Reference may be made to a judgment of Madras High Court reported as **S.S. Rajabather v. N.A. Sayeed**¹⁶ wherein it was held that possession of property specifically directed to be sold is a part and parcel of a decree for specific performance of an agreement. The High Court quoted the order passed by Hon'ble Mr. Justice Venkatasubba Rao agreeing with Hon'ble Mr. Justice Krishnan wherein it was held as under:

“There is no doubt that the plaintiff's suit was for specific performance of contract of sale. It would have been quite enough for him if he would have simply prayed that the defendant be directed to specifically perform the contract for sale. If that relief was granted by the decree everything which was necessary for the contract to be specifically performed could have been ordered and enforced in the execution”.

18. In **Gyasa v. Smt Risalo**¹⁷, the Allahabad High Court held that the expression ‘in an appropriate case’ indicates that it is not always incumbent on the plaintiff to claim possession or partition or separate possession in a suit for specific performance of contract for the transfer of immovable property. That is to be done where the circumstances demand it. The relief for specific performance of the contract of sale embraces within its ambit not only the execution of the sale deed but also possession over the property conveyed under the sale deed. The High Court held as under:

“3. This argument ignores the significance of the words ‘in an appropriate case’ occurring in sub-section (1). The expression ‘in an appropriate case’ indicates that it is not always incumbent on the plaintiff to claim possession or partition or separate possession in a suit for specific performance of contract for the transfer of the immovable property. That is to be done where the circumstances demand it. The relief for specific performance of the contract of sale embraces within its ambit not only the execution of the sale deed but also possession over the property conveyed under the sale deed. It may not always be necessary for the plaintiff to specifically claim possession over the property, the relief for possession being inherent in the relief for specific performance of the contract for sale. It cannot, however, be disputed that in certain circumstances relief of possession cannot be effectively granted to the decree holder without specifically claiming relief for possession e.g., whether 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...”

4. The principle that the relief for possession is inherent in the relief for specific performance of the contract of sale and that in execution of a decree for specific performance of a contract of sale the decree holder is entitled to possession over the property even if no such relief was specifically claimed in the suit or granted under the decree, was accepted by this Court in **Arjun Singh v. Sahu Maharaj Narain**, AIR 1950 Allahabad 415.”

¹⁶ AIR 1974 Madras 289

¹⁷ AIR 1977 Allahabad 156

19. In **Narayana Pillai Krishna Pillai v. Ponnuswami Chettiar Subbalekshmi Ammal**¹⁸, the Kerala High Court held “that the preponderance of judicial opinion is in favour of the competency of the Executing Court to grant delivery of property even where no such relief is granted by a decree for specific performance of the contract of sale”.

20. The Division Bench of Calcutta High Court in a judgment reported as **Debabrata Tarafder v. Biraj Mohan Bardhan**¹⁹ held that “the delivery of possession is a part of the agreement between the parties in a suit for specific performance of such an agreement, the prayer for specific performance necessarily contemplates specific performance of the entire agreement including the agreement to deliver possession and an omission on the part of the plaintiff-purchaser to make an express prayer in that regard would not necessarily bring in the bar under subsection (2) of Section 22 of the Specific Relief Act.”

21. Later, after the Judgment in **Babu Lal**, the High Courts have consistently held that relief of possession is inherent in the decree of specific performance. The Full Bench of Calcutta High Court in a judgment reported as **Sm. Dhiraj Bala Karia v. Jethia Estate Pvt. Ltd.**²⁰ was examining the question of court fee payable under the West Bengal Court-fees Act, 1970 as well as the scope of Section 22 of the Act. The Court held as under:

“19. Therefore, in our view, relief for possession in favour of the successful plaintiff in a suit for specific performance cannot be considered as a separate and distinct one. The same is only an ancillary or consequential one. Accordingly, the said prayer for delivery of possession of the property agreed to be transferred cannot be treated as an additional relief chargeable with courtfees under Clause (v) of Section 7 of the West Bengal Court-fees Act, 1970. We have already held that when an agreement for transfer of an immovable property is enforced by the Court, upon the plaintiff fulfilling his part of the obligation, the defendant vendor is bound not only to execute necessary documents in favour of the plaintiff-vendee and to register the same but also to put the said vendee in possession in discharge of the vendor's obligations under the said agreement. The said obligation of the vendee (vendor?) has been recognised both in Section 55(1)(f) and S. 108(b) of the Transfer of Property Act.”

22. The Bombay High Court in a judgment reported as **Lotu Bandu Sonavane v. Pundalik Nimba Koli**²¹ held that relief of possession is to be claimed “in an appropriate case”. It means a case in which the relief does not necessarily flow from the decree for specific performance of the agreement of sale. If such a relief is ancillary to and necessarily flows from a decree for specific performance, then it is not necessary to specifically seek such a relief and the bar of S. 22(2) would not be attracted. The Court held as under:

“5. ...No doubt sub-sec. (2) specifically lays down that no relief under Cl. (a) or Cl. (b) of the said sub-section shall be granted by the Court unless it has been specifically claimed. But it is not always necessary to claim such a relief. The requirement to claim the relief under Cl. (a) or (b) of S. 22(2)

¹⁸ AIR 1978 Kerala 236

¹⁹ AIR 1983 Calcutta 51

²⁰ 1982 SCC OnLine Cal 152

²¹ AIR 1985 Bombay 412

is qualified by the clause “in an appropriate case”. ‘An appropriate case’ means a case in which the relief does not necessarily flow from the decree for specific performance of the agreement of sale. If such a relief is ancillary to and necessarily flows from a decree for specific performance then it is not necessary to specifically seek such a relief and the bar of S. 22(2) would not be attracted. If the defendant is in possession of the property agreed to be sold and the decree directs a specific performance of the agreement of sale, the defendant is bound to execute the sale deed as per the decree and to put the plaintiff in possession of the property as contemplated by S. 55(1)(f) of the Transfer of Property Act. In such a case it is not necessary to specifically claim the relief of possession in the suit.

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

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

23. In **Adcon Electronics**, the defendant was in appeal before this Court. The plaintiffs had filed a suit in the High Court of Judicature at Bombay with the leave of the Court under clause 12 of the Letters Patent. The defendant took out chamber summons in the suit for revocation of the leave granted to the plaintiffs. Such chamber summons were dismissed. Still aggrieved, the defendant was before this Court. This Court examined the Federal Court’s judgment in **Moolji Jaitha** in respect of the expression “suit for land” which could be filed in exercise of Original Jurisdiction of the High Court. The issue was not whether such a suit was a “suit for land” before this Court. Considering Section 22 of the Act, this Court held as under :

“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.”

24. The learned Single Bench in the impugned judgment herein has not taken into consideration the judgment of the Madras High Court in **Krishnamurthy Gounder v. Venkatakrishnan & Ors.**²². The said judgment arose on the fact that the plaintiff filed the suit for Specific Performance of an Agreement of Sale and also for recovery of possession but the decree for possession was not granted. The Court held as under:

“6. In the Judgment of this Court reported in S. Sampooram v. P.V. Kuppaswamy, 2007 (3) CTC 529, also the same principles are reiterated and it was held that even in the absence of any prayer for possession once a Suit for Specific Performance is decreed the Court has got every power to order delivery of possession. Further, according to me, the Court has got power to grant the relief of possession even in the absence of any such prayer as per the proviso to Section 22(2) of the Specific Relief Act the Court shall at any stage of the proceedings allow the Plaintiff to amend the Plaint to include the relief. In my opinion, a discretion is vested on the Court to allow the amendment and even in the absence of any prayer and even in the absence of any Application for amendment, the Court can grant the relief of recovery of possession once the Suit is decreed for Specific Performance. These aspects were not properly appreciated by the Court below and the Court below approached the Application in a pedantic manner and dismissed the application without appreciating the Judgments of the Hon'ble Supreme Court and of our High Court.”

25. A perusal of the aforesaid judgments would show that relief of possession is ancillary to the decree for specific performance and need not be specifically claimed. That was the position even under the Specific Relief Act, 1877. Section 22 of the Act was introduced in pursuance of the recommendation of the Law Commission to avoid multiplicity of proceedings and to cut down the delay. Therefore, though the preponderance of judicial opinions under the Specific Relief Act, 1877 was in favour of the fact that relief of possession is ancillary to the decree for specific performance, it was further clarified by introducing Section 22 of the Act.

26. The matter can be examined from another angle as well. Section 22(2) of the Act, though is worded in negative language, “no relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed”, but the proviso takes out the mandatory nature from the substantive provision of sub-section (2) when the plaintiff is allowed to amend the plaint on such terms as may be just for including the plaint for such relief “at any stage of the proceeding”. “At any stage of the proceeding” would include the proceeding in suit or in appeal and also in execution. The proviso to sub-section (2) of Section 22 of the Act contemplates that the Court shall, at any stage of the proceedings, allow the plaintiff to amend the plaint on such terms as may be just for including a claim for such relief. The said proviso makes the provision directory as no penal consequences follow under sub-section (2) of Section 22. Therefore, sub-section (2) of Section 22 is a rule of prudence to ask for possession “in

²² AIR 2012 Madras 105

an appropriate case”. The appropriate case would not include a suit for specific performance simpliciter but may include a suit for partition or a suit when the decree is to be executed against a transferee. Subsection (2) cannot be said to be a mandatory provision as the power to claim relief at any stage of the proceeding makes sub-section (2) directory. Sub-section (2) is a matter of procedure to avoid multiplicity of proceedings. The procedural laws are handmaid of justice and cannot defeat the substantive rights. Reference may be made to **M/s. Ganesh Trading Co. v. Moji Ram**²³ wherein it was held as under:

“2. Procedural law is intended to facilitate and not to obstruct the course of substantive justice. Provisions relating to pleadings in civil cases are meant to give to each side intimation of the case of the other so that it may be met, to enable courts to determine what is really at issue between parties, and to prevent deviations from the course which litigation on particular causes of action must take.”

27. A three-Judge Bench of this Court in a judgment reported as **Salem Advocate Bar Association, T.N. v. Union of India**²⁴ while interpreting the word “shall” in Order VIII Rule 1 of the Code of Civil Procedure, 1908 held as under:

“20. The use of the word “shall” in Order 8 Rule 1 by itself is not conclusive to determine whether the provision is mandatory or directory. We have to ascertain the object which is required to be served by this provision and its design and context in which it is enacted. The use of the word “shall” is ordinarily indicative of mandatory nature of the provision but having regard to the context in which it is used or having regard to the intention of the legislation, the same can be construed as directory. The rule in question has to advance the cause of justice and not to defeat it. The rules of procedure are made to advance the cause of justice and not to defeat it. Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred. The rules of procedure are the handmaid of justice and not its mistress. In the present context, the strict interpretation would defeat justice.”

28. A three-Judge Bench of this Court in a judgment reported as **C. Bright v. District Collector & Ors.**²⁵ was examining Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and held as under:

“8. A well-settled rule of interpretation of the statutes is that the use of the word “shall” in a statute, does not necessarily mean that in every case it is mandatory that unless the words of the statute are literally followed, the proceeding or the outcome of the proceeding, would be invalid. It is not always correct to say that if the word “may” has been used, the statute is only permissive or directory in the sense that non-compliance with those provisions will not render the proceeding invalid [State of U.P. v. Manbodhan Lal Srivastava, AIR 1957 SC 912] and that when a statute uses the word “shall”, prima facie, it is mandatory, but the Court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute [State of U.P. v. Babu Ram Upadhyaya, AIR 1961 SC 751] . The principle of literal construction of the statute alone in all circumstances without examining the context and scheme of the statute may not serve the purpose of the statute [RBI v. Peerless General Finance & Investment Co. Ltd., (1987) 1 SCC 424].”

²³ (1978) 2 SCC 91

²⁴ (2005) 6 SCC 344

²⁵ (2021) 2 SCC 392

29. To examine whether a provision is directory or mandatory, one of the tests is that the court is required to ascertain the real intention of the legislature by carefully attending to the whole scheme of the statute. Keeping in view the scheme of the statute, we find that Section 22(2) of the Act is only directory and thus, the decree-holder cannot be nonsuited for the reason that such relief was not granted in the decree for specific relief.

30. The defendant in terms of the agreement is bound to handover possession of the land agreed to be sold. The expression “at any stage of proceeding” is wide enough to allow the plaintiffs to seek relief of possession even at the appellate stage or in execution even if such prayer was required to be claimed. This Court in **Babu Lal** has explained the circumstances where relief of possession may be necessary such as in a suit for partition or in a case of separate possession where the property conveyed is a joint property. In the suit for specific performance, the possession is inherent in such suit, therefore, we find that the decree-holders are in fact entitled to possession in pursuance of the sale deed executed in their favor.

31. The judgment debtor in the written statement has admitted that the property is a vacant land and that she has sold other portion in favor of one Lakshmi pathy. The stand of the judgment debtor now that the respondent is in possession of 750 sq. feet would not defeat the right of possession of 2400 sq. feet of an area which she has agreed to sell to the plaintiffs in respect of which decree was passed. All sales affected, and the construction, if any, raised are subject to lis pendens and no legal or equitable rights arise in favour of the purchasers during the pendency of the proceedings. Therefore, the decree-holders are entitled to actual physical possession of 2400 sq. feet of land which was agreed to be sold to the appellants.

32. The appeal is thus allowed. The order passed by the High Court is hereby set aside. The Executable Court shall ensure that such decree is executed and if any construction is raised on any part of the land agreed to be sold, the possession shall be delivered with or without construction in accordance with law.

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