

HIGH COURT OF ANDHRA PRADESH

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CIVIL REVISION PETITION No. 1498 of 2023

Between:

K. V. Srinivasulu Naidu and 3 others

..... PETITIONERS

AND

V. Bhaskar

.....RESPONDENT

DATE OF ORDER PRONOUNCED: **29.08.2023**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
3. Whether Your Lordships wish to see the fair copy of the Judgment? Yes/No

RAVI NATH TILHARI, J

*** THE HON'BLE SRI JUSTICE RAVI NATH TILHARI****+ CIVIL REVISION PETITION No. 1498 of 2023**

% 29.08.2023

K. V. Srinivasulu Naidu and 3 others

...Petitioners

Versus

\$ V. Bhaskar

....Respondent

! Counsel for the Petitioners: Sri S. Lakshminarayana Reddy

^ Counsel for respondent : Sri M. Rahul

< Gist :

> Head Note:

? Cases Referred:

1. (2004) 8 SCC 569
2. 2022 (5) ALD 261 (SC)
3. 2022 LawSuit (SC) 519
4. 2022 LiveLaw (SC) 395
5. AIR 1982 SC 818
6. 2022 SC OnLine AP 1729
7. AIR 2004 AP 377
8. 1976 SCC OnLine AP 191
9. (2000) 6 SCC 259
10. (2004) 1 SCC 453
11. (2009) 12 SCC 175
12. AIR 1977 All 156
13. AIR 1950 All 415
14. AIR 1954 All 643
15. 1999 SCC OnLine AP 1028
16. 2007 (1) APLJ 186 (HC)
17. 2012 SCC OnLine AP 58

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**CIVIL REVISION PETITION No. 1498 of 2023****JUDGMENT:**

Heard Sri S. Lakshminarayana Reddy, learned counsel for the petitioners/Judgment Debtors (J.Drs.) and Sri M. Rahul, learned counsel for the respondent/Decree Holder (D.Hr.).

2. The present civil revision petition under Section 115 of the Code of Civil Procedure (in short 'CPC') is filed by the defendants/J.Drs. against the plaintiff/D.Hr. challenging the order of the Additional Senior Civil Judge, Chittoor, dated 13.06.2023 passed in E.A.No.44 of 2015 in E.P.No.51 of 2012 for execution of the decree dated 07.02.2011 passed in O.S.No.24 of 2001.

3. The plaintiff/D.Hr. filed O.S.No.24 of 2001 against the defendants/J.Drs. for specific performance of contract which was decreed on 07.02.2011 for the plaint schedule properties.

4. In execution of that decree in E.P.No.51 of 2012, the Execution Court executed the sale deed on 23.02.2015 on behalf of the defendants/J.Drs and the same was also registered.

5. The D.Hr. filed E.A.No.44 of 2015 for delivery of possession of the E.P.schedule property basing on the registered sale deed. This application was filed mentioning under Order XXI Rule 95 CPC.

6. The defendants/J.Drs. filed objections taking the plea that the possession could not be delivered as the decree was only for specific performance of contract and there was no decree for delivery of possession.

7. Another objection was taken that in another suit O.S.No.736 of 2004, for money decree, in execution of the decree passed therein E.P.No.54 of 2010 was filed by the D.Hr. for sale of Item Nos. 1 to 5 therein, upon which, direction was issued by the Execution Court for sale of item-1 of the E.P. schedule property, against which the J.Dr. filed CRP No.2033 of 2014 in which on stay application the further proceedings in E.P.No.54 of 2010 were stayed by this Court on 31.10.2014 subject to the conditions imposed and that order is still continuing.

8. By filing additional counter affidavit, the J.Drs. raised another objection that the E.A.No.44 of 2015 was not maintainable under Order 21 Rule 95 CPC, which, as per the objection ought to have been filed under Order 21 Rule 32 CPC.

9. The Execution Court framed the following point for determination:

“Whether the petitioner is entitled to order for deliver of the E.P. schedule mentioned properties to the petitioner/D.Hr, as prayed for?”

10. The learned Additional Senior Civil Judge, Chittoor observed that in a suit for specific performance of agreement of sale, specific prayer for delivery of possession is not necessary. Therefore, the plea taken by the respondents/J.Drs. had no stand. The petitioner/D.Hr. was entitled to order for delivery of possession of E.P. schedule property as prayed for.

11. Consequently, the E.A.No.44 of 2015 was allowed and warrant of delivery to deliver the E.P.schedule property to the petitioner/D.Hr. based on the registered sale deed dated 23.02.2015, was issued.

12. Sri S. Lakshmanrayana Reddy, learned counsel for the petitioners/judgment debtors, raised the following submissions:

- (i) The decree was only for specific performance of the contract. It was not a decree for delivery of possession. Consequently, the application for delivery of possession was not maintainable. The decree could not be executed for delivery of possession and the Court could not proceed beyond the terms of the decree.
- (ii) The application of the decree holder for delivery of possession was not maintainable under Order 21 Rule 95 CPC. In his submission, Rule 95 deals with delivery of property sold, in execution of decree, to the purchaser in Court auction sale in occupancy of the J.Dr. But, here it is not a case of purchase in auction sale. He submitted that the correct provision was Order 21 Rule 32 CPC.
- (iii) In CRP No.2033 of 2014 there was a stay order with respect to the E.P. schedule property as therein, of which part of item No.1, formed part of the E.P. schedule property as in the present case. Consequently, with respect to that property order for warrant of delivery could not be passed.

13. Learned counsel for the petitioners placed reliance in the following cases in support of his contentions:

(1) ***Shamsu Suhara Beevi v. G. Alex***¹

(2) ***Life Insurance Corporation of India v. Sanjeev Builders Pvt. Ltd.***², and

(3) ***Manickam @ Thandapani & Anr v. Vasantha***³.

14. Sri M. Rahul, learned counsel for the respondent raised the following submissions:

- (i) Delivery of possession, pursuant to the decree for specific performance of contract, is implied in such decree, even if a decree for possession is not passed, specifically. So in execution of the decree for specific performance of contract, the Execution Court is competent to deliver possession of the property after execution and registration of the sale deed by the Court.
- (ii) The Execution Court had the power to execute the decree. Mere wrong mention of the legal provision or even no mention, would not be fatal to the application for execution. It will also not take away the jurisdiction of the Court when it had the jurisdiction under some other provision of law. So, it may not be under Order 21 Rule 95 CPC, but was certainly under Order 21 Rules 34 and 35 CPC.

¹ (2004) 8 SCC 569

² 2022 (5) ALD 261 (SC)

³ 2022 LawSuit (SC) 519

- (iii) The stay order in CRP No.2033 of 2014 was with respect to the auction sale pursuant to the money decree in another suit which shall not come in the way of present E.P. proceedings pursuant to a different decree for specific performance of contract in different suit.
- (iv) The prior agreement of sale shall prevail over the subsequent attachment of the same property. The attachment before judgment made in O.S.No.736 of 2004 was subsequent to the agreement of sale in favour of the D.Hr. Consequently, the decree passed in favour of the D.Hr. shall prevail over the order of attachment in O.S.No.736 of 2004.

15. Learned counsel for the respondent placed reliance on the following judgments in support of his contentions.

- (1) ***Manickam @ Thandapani & Anr v. Vasantha***⁴
- (2) ***Babu Lal v. M/s. Hazari Lal Kishori Lal***⁵
- (3) ***Potnuru Ramesh v. Chintada Raja Rao***⁶
- (4) ***Adinarayana v. S. Gafoor Sab***⁷
- (5) ***Kanumuri Satya Suryanarayana Raju v. Sribhashyam Jagannadhaswami***⁸
- (6) ***Deep Chand v. Mohan Lal***⁹
- (7) ***Challamane Huchhha Gowda v. M.R. Tirumala***¹⁰

⁴ 2022 LiveLaw (SC) 395

⁵ AIR 1982 SC 818

⁶ 2022 SCC OnLine AP 1729

⁷ AIR 2004 AP 377

⁸ 1976 SCC OnLine AP 191

⁹ (2000) 6 SCC 259

¹⁰ (2004) 1 SCC 453

(8) *J. Kumaradasan Nair v. IRIC Sohan*¹¹

16. I have considered the submissions advanced by the learned counsels for the parties and perused the material on record.

17. The points arising for determination are as under:

- (i) Whether in execution of the decree for specific performance of contract dated 22.02.1997, the Execution Court has acted within or without jurisdiction, in directing delivery of possession of the E.P. scheduled property to the D.Hr.?
- (ii) Whether the judgment under challenge deserves interference on the grounds of challenge raised in this petition?

18. The decree dated 07.02.2011 passed by the learned Additional Senior Civil Judge, Chittoor, in O.S.No.24 of 2001 is as under:

“Suit for Specific Performance directing the defendants to execute the regular regd. Sale deed in favour of plaintiffs by receiving the balance of sale consideration in respect of the plaint schedule mentioned property through process of law and for costs.

The suit is coming up for final hearing before me in the presence of Sri V. Suresh Babu, Advocate for the plaintiff and Sri P.V.Asrithavatsulu, Advocate, for defendant No.1 and Sri Chandramouli, Advocate for defendant No.2 and defendants are called absent and having been remained set exparte, and this Court doth order and decree as follows:

1. That the suit be and the same is hereby decreed.
2. That the defendants are directed to execute the regular registered sale deed in favour of the plaintiff by receiving the balance of sale consideration, in

¹¹ (2009) 12 SCC 175

respect of the plaint schedule property failing which the plaintiff is entitled to get the same through process of law.

3. That the defendants do also pay the plaintiff a sum of Rs.9379/- being the cost of the suit.”

19. It is undisputed that the decree as passed does not contain the direction to deliver possession also. In view thereof, the submission advanced by the learned counsel for the petitioners is that since there is no decree for delivery of possession, the Execution Court is not competent to execute it for delivery of possession. In this respect, he placed reliance on Section 22 of the Specific Relief Act, 1963 (in short 'the Act 1963') and in particular laid emphasis on sub-section (2). He submitted that the Court shall not grant a decree for delivery of possession unless it is specifically prayed for. He submitted that such a decree was not prayed in the suit, neither originally in plaint nor by way of amendment of the plaint. Therefore, once the relief for possession was not specifically claimed and was also not granted, the decree was not for delivery of possession. It was only for execution of the sale deed. The sale deed having been executed by the Court and got registered, the decree stood satisfied and no further application for delivery of possession pursuant to that decree was maintainable. The Court had no jurisdiction to pass order for delivery of possession in execution. Whereas, learned counsel for the respondent submitted that the grant of delivery of possession after execution of the sale deed and its registration, pursuant to the decree of specific performance, is ancillary and follows from the decree of specific performance. There was no need to claim the relief of possession specifically. Even if it was not so claimed

and not granted specifically, it was implied in the decree of specific performance of contract to deliver possession also, in view of the liability and duty imposed upon the Seller under Section 55 of the Transfer of Property Act. Consequently, in his submission, the Execution Court has rightly passed the order for delivery of possession within its jurisdiction.

20. Section 22 of the Specific Relief Act, 1963 (in short 'the Act 1963') reads as under:

“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 1[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 sub-section (1) shall be without prejudice to its powers to award compensation under section 21.”

21. Sub-section (2) of Section 22 of the Act 1963 provides that no relief under clause (a) or clause (b) of sub-section (1) shall be granted by the Court unless it has been specifically claimed. The proviso to sub-section (2) provides 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. Clause (a) of Sub-

section (1) of Section 22 of the Act 1963 provides for the claim for possession, or partition and separate possession of the property, in addition to such performance. Such performance in Clause (a) means specific performance of the contract for the transfer of the immovable property. A reading of Sub-section (1) along with Sub-section (2) of Section 22 of the Act 1963 makes it clear that the plaintiff may ask for the relief under clauses (a) or (b) in a suit for specific performance of contract for transfer of immovable property 'in an appropriate case'.

22. Section 22 of the Act 1963, came up for consideration before the Hon'ble Apex Court in ***Babu Lal*** (supra). The Hon'ble Apex Court considered the legal position as was existing prior to the amendment to Section 22 and after the amendment of the Act 1963. It was held that 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'. It observed that in view of Order 2, Rule 2 of the CPC, 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 visualized 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.

23. In ***Babu Lal*** (supra) it was held that in a case where exclusive possession is with the contracting party, a decree for specific performance of the contract of sale simpliciter, without specifically providing for delivery of possession, may give complete relief to the decree holder. In order to satisfy the decree against him completely he is bound not only to execute the sale deed but also to put the property in possession of the decree-holder. This is in consonance with the provisions of Section 55(1) of the Transfer of Property Act which provides that the seller is bound to give, on being so required, the buyer or such person as he directs, such possession of the property as its nature admits.

24. In ***Babu Lal*** (supra) the Hon'ble Apex Court further held that there may be circumstances in which a relief for possession cannot be effectively granted to the decree holder without specifically claiming relief for possession, 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.

25. It is apt to refer paragraphs-11 to 16 of ***Babu Lal*** (supra) 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.

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 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 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.

15. In the instant case, it is pointed out on behalf of the petitioner that the possession was not with Respondents 6 to 9 but was with a third person namely, the petitioner, who was subsequent purchaser and, therefore, this was an

appropriate case where the relief for possession should have been claimed by the plaintiffs-Respondents 1 to 5.

16. It may be pointed out that the Additional Civil Judge had decreed the suit for specific performance of the contract. The High Court modified the decree to the extent that the sale deed was to be executed by Respondents 6 to 9 together with the petitioner. In short, the decree was passed by the High Court not only against Respondents 6 to 9 but also against the subsequent purchaser i.e. the petitioner and thus the petitioner was himself the judgment-debtor and it cannot be said that he was a third person in possession and, therefore, relief for possession must be claimed. The contention on behalf of the petitioner is that the relief for possession must be claimed in a suit for specific performance of a contract in all cases. This argument ignores the significance of the words “in an appropriate case”. The expression only 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 a contract for the transfer of the immovable property. That has to be done where the circumstances demanding the relief for specific performance of the contract of sale embraced 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 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”.

26. It is thus settled by the Hon'ble Apex Court in ***Babu Lal*** (supra) that the expression 'in an appropriate case' only 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 a contract for the transfer of the immovable property. That has to be done where the circumstances demanding

the relief for specific performance of the contract of sale embraced 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 of possession being inherent in the relief for specific performance of the contract of sale.

27. In ***Gyasa v. Smt. Risalo***¹², the Allahabad High Court on consideration of Section 22 of the Specific Relief Act 1963 and under the similar circumstances where also in a suit for specific performance of contract of sale no separate relief for possession was claimed and the decree also did not, in express terms, direct delivery of possession over the property in suit, took the view that the property being in possession of the judgment debtor, there was no hurdle in satisfying the decree by putting the decree holder in possession over it through execution of the decree as it stood. The objection of the judgment debtor to the executability of the decree by delivery of possession was held untenable.

28. In ***Gyasa*** (supra), the Allahabad High Court took into consideration its previous judgments in ***Sardar Arjun Singh v. Sahu Maharaj Narain***¹³ as also ***Pt. Balmukund v. Veer Chand***¹⁴ which were under old Specific Relief Act 1877. In those cases it was held that the nature of the relief granted by the decree in a suit for specific performance of a contract for sale was such that

¹² AIR 1977 All 156

¹³ AIR 1950 All 415

¹⁴ AIR 1954 All 643

everything which was necessary for the contract to be specifically performed should be held to be comprised in it. It was held that a contract for sale 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 vests in the vendee. The delivery of possession by the Execution Court, therefore, was something incidental to the right of the decree holder to have the contract specifically performed. The deed of conveyance was itself executed by the Execution Court. An order directing delivery of possession to the vendee was merely incidental to the execution of the deed of sale.

29. It is apt to refer paragraphs-3 to 8 of ***Gyasa*** (supra) as under:

“3. It was contended that in a suit for specific performance of contract for the sale of immovable property, the plaintiff must always claim possession or partition or separate possession of the property in addition to the relief for specific performance of contract and where the plaintiff omits to do so specifically no such relief could be granted by the court. Since the court is precluded from granting the relief for possession in a suit where relief for possession has not been specifically claimed, it is not competent for the execution court to deliver possession of the property to the decree holder in execution of a decree for mere specific performance of the contract of sale of the immovable property. 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.

4. 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. Earlier in view of Order 2 Rule 2 Civil Procedure Code, 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 for such a person is not bound by the contract sought to be enforced. It appears that Section 22 of the Specific Relief Act was enacted to get over such technical difficulties and to avoid multiplicity of suits. In a case where exclusive possession is with the contracting party, a decree for specific performance of the contract of sale simpliciter, without specifically providing for delivery of possession, may give complete relief to the decree holder. In order to satisfy the decree against him completely he is bound not only to execute the sale deed but also to put the property in possession of the decree holder. This is in consonance with the provisions of Section 55(1)(f) 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.

5. 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 (?) All. 415. The court observed:—

“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 sale 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 something 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.”

6. This principle was reiterated by a bench of this Court in *Pt. Balmukund v. Veer Chand*, AIR 1954 All. 643.

7. It was contended that the principle laid down in the aforesaid cases no longer holds good in view of the specific provision contained in Section 22 of the Specific Relief Act. As observed earlier this argument ignores the expression ‘in an appropriate case’ contained in sub-section (1) of section 22 of the Specific Relief Act. The use of the word ‘may’ in sub-section (1) also indicates that it is not always incumbent on such a plaintiff to claim specifically relief for possession or partition or separate possession. The principle enunciated in the aforesaid cases is not shaken by Section 22 and still holds good.

8. In the present case, the property being in possession of the judgment-debtor, there is no hurdle in satisfying the decree by putting the decree-holder in possession over it through execution of the decree as it stands. The objection of the judgment-debtor to the executability of the decree by delivery of possession is untenable.”

30. In **V. Narasimha Chary v. P. Radha Bai**¹⁵ this Court, after taking into consideration the judgment of the Hon'ble Apex Court in **Babu Lal** (supra), held that though the relief of possession is not claimed in the suit, and was not granted in the decree, the executing Court can grant the relief of possession to the decree holder in execution proceedings.

31. In **Smt. Suluguru Vijaya v. Pulumati Manjula**¹⁶ also in consideration of Section 22 of the Specific Relief Act and Section 55 of the Transfer of Property Act and the judgment of the Hon'ble Apex Court in **Babu Lal** (supra), it was held that the judgment debtors being in possession of the property, the mere fact that such specific prayer was not made, the same cannot be taken advantage of principally for the reason that the decree for execution of sale deed would imply the decree of delivery of possession too inasmuch as these are the obligations which would flow from the relief relating to execution of the sale deed.

32. It is apt to refer paragraphs-9 & 10 of **Smt. Suluguru Vijaya** (supra) as under:

“9. The decision of the Apex Court in *Adcon Electronics Pvt. Ltd. v. Daulat and Anr.* (cited 1 supra) was relied on wherein the Apex Court held that

¹⁵ 1999 SCC OnLine AP 1028

¹⁶ 2007 (1) APLJ 186 (HC)

Section 22(1) of Specific Relief Act, 1963, is an enabling provision and the relief of possession can be granted only if specifically prayed for, and hence, simpliciter for specific performance of a contract for sale of land is a suit for enforcement of the terms of the contract and cannot be treated as a "suit for land" and title to the land concerned is not subject-matter of a suit for specific performance. On a careful analysis, the facts of this decision appear to be distinguishable. In *S.S. Rajabathar v. N.A. Sayeed* (2nd supra) it was held that where a suit for specific performance of a contract of sale had been decreed, the executing Court while executing the decree, can direct delivery of possession in the absence of a specific direction to that effect in the decree. The view expressed in *Brij Mohan Matulal v. Mt. Chandrabhagabai* (7) AIR 1948 Nag.406 was dissented from. In *Mahender Nath Gupta v. Moti Ram Rattan Chand and Anr.* (8) AIR 1975 Del 155 the learned Judge of the Delhi High Court while dealing with the suit for specific performance of contract of sale which was filed before the commencement of the Specific Relief Act, 1963, and decree made after the commencement of the said Act, relief of delivery of possession neither claimed in the plaint nor granted in the decree and whether executing Court can grant delivery of possession, after referring to AIR 1967 SC 1541, AIR 1954 All 643, AIR 1952 Calcutta 362, AIR 1950 All 415, held in the affirmative mainly on the ground that Section 22 of the Specific Relief Act, 1963, indicates a rule of pleading. In *Lotu Bandu Sonavane v. Pundalik Nimba Koli*.(9) AIR 1985 Bom. 412 Section 22(1) and Section 22(2) Proviso of the Specific Relief Act, 1963 had been dealt with. The expression "in an appropriate case" in Section 22(1) and "at any stage of the proceeding" in proviso to Section 22(2) it was held that decree directing specific performance of agreement of sale against defendant in possession of property specific prayer for delivery of possession is not necessary. In *Hemchand v. Karilal* (10) AIR 1987 Raj 117 it was held that in a suit for specific performance, property in possession of contracting party and no third party had intervened, relief of possession would be implied in decree for specific performance and need not be specifically asked for and the question of amendment of plaint does not arise.

Reliance also was placed on a decision in *V. Narasimha Chary v. P. Radha Bai and Ors.*(11) 1999 (5) ALT 499.

10. In the light of the statutory duties and obligations cast on the seller by virtue of Section 55 of the Transfer of Property Act, 1882, and also in the light of the scope and ambit of Section 22 of the Specific Relief Act, 1963, this Court is of the considered opinion that when there is no dispute or controversy that the judgment debtors-defendants are in possession of the property, the mere fact that such specific prayer was not made, the same cannot be taken advantage of principally for the reason the decree for execution of sale deed would imply the decree of delivery of possession too inasmuch as these are the obligations which would flow from the relief relating to execution of the sale deed. Hence, this omission cannot be taken advantage of. It is pertinent to note that it is nobody's case that any third party rights had intervened. When that being so, this Court is of the considered opinion that the impugned order does not suffer from any illegality, whatsoever.”

33. To the same effect, is the judgment of this Court in ***Nakshatrapu Venkateswarlu v. Bathula Ankamma***¹⁷ in which also it was held that though the relief of possession is not claimed in the suit and was not granted in the decree, the executing Court can grant the relief of possession to the decree holder in execution proceedings. The relevant paras from ***Nakshatrapu Venkateswarlu*** (supra) is reproduced as under:

“In *Babu Lal* (1 supra), the question which has arisen in this case was dealt with by the Supreme Court. After referring to the case law, the Supreme Court held that a mere relief for specific performance of contract of sale may not entitle the plaintiff to obtain possession as against the party in actual possession of the property and that in a case where exclusive possession is with the contracting party, a decree for specific performance of the contract of sale

¹⁷ 2012 SCC OnLine AP 58

simpliciter without specially providing for delivery of possession, may give complete relief to the decree holder. It was further held that 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 and that this is in consonance with Section 55 of the Transfer Property Act, 1882, 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.

This Court in *V. Narasimha Chary* (2 supra), following the ratio laid down by the Supreme Court in the above noted judgment, held that though the relief of possession is not claimed in the suit and was not granted in the decree, the executing Court can grant the relief of possession to the decree holder in execution proceedings also.”

34. The argument of Sri S. Lakshminarayana Reddy proceeds on the assumption that in every case of suit for specific performance of the contract, the plaintiff must seek the relief for delivery of possession, specifically in the plaint, may be by way of amendment at a later stage, but there must be prayer for possession and there must be a decree specifically providing for delivery of possession. The aforesaid submission runs contrary to the settled legal position.

35. In the present case, it is undisputed that the delivery of possession is being sought from the defendants/petitioners/J/Drs. as they are in possession of the suit property. It is not a case of seeking delivery of possession from a third party to the agreement of sale nor that for delivery of possession some partition was required with respect to the share of the J.Drs or some other owners of the same property, as it is not such a case of the J.Dr. In view thereof, the property being in possession of the J.Drs. who are party to the agreement to sell, based upon which, the suit for specific performance having

been decreed and the sale deed also having been executed by the Court and registered, the decree for delivery of possession not only flows from the decree of specific performance of contract, but is inherent in such a decree. There was no such requirement of claiming the relief of possession in the plaint. Such relief was inherent in relief of specific performance of contract. So, there was also no requirement of granting the relief for delivery of possession separately or specifically, it being inherent in a decree of specific performance of contract.

36. Learned counsel for the petitioners placed reliance in ***Shamsu Suhara Beevi*** (supra). In this case, the admitted position was that in the original plaint the respondents did not claim compensation for the breach of agreement of sale either in addition to or in substitution of the performance of the agreement. They did not amend their plaint and ask for compensation either in addition to or in substitution of the performance of the agreement of sale. In that respect Sub-section (5) of Section 21 was referred, which provides that no compensation shall be awarded under Section 21 (5) unless the relief for compensation has been claimed either in the plaint or included later on by amending the plaint at any stage of the proceedings. Placing reliance on the portion of the judgment in para-11 of ***Shamsu Suhara Beevi*** (supra), learned counsel for the petitioners submitted that as Section 22 (2) also stands in the same language, therefore unless there was a claim for possession specifically in the plaint as filed originally or after amendment, the relief of delivery of possession could not be granted and as the relief was also not granted

specifically, it cannot be read into decree of specific performance and consequently, could not be executed.

37. ***Shamsu Suhara Beevi*** (supra), the judgment is not on Section 22 of the Specific Relief Act 1963, but is on Section 21 sub-section (5). Though Sub-section (5) of Section 21 is on the same lines, as Sub-section (2) of Section 22, but there being direct judgments on Section 22, the proposition of law as laid down with respect to Section 21 (5) in ***Shamsu Suhara Beevi*** (supra) and that too without taking into consideration those judgments directly on Section 22, in the view of this Court, cannot be of any help to the petitioners.

38. Besides, delivery of possession is, barring exceptions ('in appropriate case'), inherent in suit for specific performance of contract, considering Section 55 of the Transfer of Property Act, which may be not be, so, for as a claim of compensation is concerned, as Section 55 of the Transfer of Property Act, shall have no application to such a claim. Additionally, the plaintiff in a suit for specific performance of contract may or may not ask for compensation, as he may not wish to claim compensation, but this will not be so for seeking delivery of possession of the sold property.

39. In ***Life Insurance Corporation of India*** (supra), upon which also, learned counsel for the petitioner placed reliance, the facts were that the plaintiffs filed the suit for specific performance of contract based on agreement and also prayed for the damages. In the suit, the plaintiffs' application for amendment seeking enhancement of the amount towards the alternative claim for damages was allowed by the learned single Judge on its ordinary original

civil jurisdiction, which was affirmed by the Division Bench of the High Court, against which the matter was before Hon'ble the Apex Court.

40. Sri S. Lakshminarayana Reddy relied upon para-58 in ***Life Insurance Corporation of India*** (supra), to contend that a plaintiff who claims specific performance of a contract for the transfer of immovable property, may in appropriate case, ask for possession, partition and separate possession of the property, in addition to specific performance. And in view of proviso to Section 22 (2), the Court shall at any stage of the proceedings allow the plaintiff to amend the plaint to claim such relief where it has not been originally claimed on such terms which may appear just. As per the submission, prayer for possession is must in plaint, may be by making amendment.

41. Para-58 of ***Life Insurance Corporation of India*** (supra) is reproduced as under:

“58. Section 22 has a *non-obstante* provision which overrides the CPC. A plaintiff who claims specific performance of a contract for the transfer of immovable property, may in an appropriate case ask for possession, partition and separate possession of the property, in addition to specific performance. The plaintiff may also claim any other relief including the refund of earnest money or deposit paid, in case the claim for specific performance is refused. Corresponding to the provisions of sub-section (5) of Section 21, sub-section (2) of Section 22 stipulates that such relief cannot be granted by the Court unless it has been specifically claimed. However, the proviso requires that the Court shall at any stage of the proceedings allow the plaintiff to amend the plaint to claim such relief where it has not been originally claimed on such terms which may appear just.”

42. ***Life Insurance Corporation of India*** (supra) is not a case relating to the relief for possession in the suit for specific performance of contract. The question, if the prayer for delivery of possession is inherent in the relief of specific performance of contract and the decree for possession is inherent in the decree of specific performance of contract was not involved in that case. So, the issue as in the present case, was not involved. Though one of the questions of law was whether that appeal was covered by proviso to Section 21 (5) and 22 (2) respectively of the Specific Relief Act, 1963, but from reading of the judgment, it is evident that Section 22 (2) of the Act 1963 was referred for the purposes of considering Sub-section (5) of Section 21, as the proviso to both the Sections 21 (2) and 22 (2) are *pari materia*.

43. The judgment in ***Life Insurance Corporation of India*** (supra) is of no help to the petitioners.

44. Learned counsel for the petitioners placed reliance in ***Manickam @ Thandapani*** (supra), mainly emphasizing on paras-29 & 30, to contend that Section 22 is only directory and that the plaintiff can seek amendment in view of the proviso to Section 22 (2), the prayer could be made in execution proceedings, by amendment for the delivery of possession and as no such prayer was made even at the execution stage, the Execution Court could not direct for delivery of possession.

45. Paras 29 & 30 of ***Manickam @ Thandapani*** (supra) are reproduced as under:

“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 non-suited 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.”

46. The Hon’ble Apex Court in *Manickam @ Thandapani* (supra) held that 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, the Hon’ble Apex Court held that Section 22 (2) of the Act is only directory and thus, the decree holder cannot be non-suited for the reason that such relief was not granted in the decree for specific relief.

47. In fact, this judgment *Manickam @ Thandapani* (supra) does not support the petitioners’ contention. The Hon’ble Apex Court clearly held that “the decree holder cannot be non-suited for the reason that such relief was not granted in the decree for specific relief”. It was further held by Hon’ble the

Apex Court that the defendant in terms of the agreement was bound to handover the 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. Referring to the judgment in the case of **Babu Lal** (supra), in **Manickam @ Thandapani** (supra) it was reiterated that, 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; and further that in the suit for specific performance, the possession is inherent. Therefore, the Apex Court held that the decree holders were entitled to possession in pursuance of the sale deed executed in their favour.

48. What has been held in **Manickam @ Thandapani** (supra), upon which, the learned counsel for the petitioners placed much emphasis is that sub-section (2) of Section 22 of the Act 1963 is directory and therefore, an application for amendment can be made at the stage of execution also, but in the present case that was also not made in execution proceedings. In the view of this Court, the law that has been laid down is that in an appropriate case, where the relief of possession was necessary to be claimed in plaint, but was not claimed and consequently, simple decree for specific performance of contract was passed, an application for amendment could be filed even at the stage of execution, in view of the expression 'at any stage of proceedings' used in the proviso to Section 22 (2) of the Act 1963. This Court is of the further

view that if such amendment is not required at all, the possession being with J.Dr., the decree for specific performance of contract would inherently contain decree for delivery of possession, and in such a case, there would be no requirement of filing amendment at any stage.

49. In **Potnuru Ramesh** (supra), upon which, learned counsel for the respondent placed reliance, the matter arose out of the order passed under Section 28 (3) of the Specific Relief Act. The provision of Section 28 of the Act 1963, it was observed by this Court, prescribed the procedure as was under Section 22 and therefore, being procedural law, the same analogy was drawn as was with respect to the interpretation given to Section 22 of the Act 1963, placing reliance in the case of **Babu Lal** (supra) and **Manickam @ Thandapani** (supra). There is no dispute that Section 22 (2) of the Act 1963 has been held to be procedural law and directory.

49. Learned counsel for the respondent also placed reliance in the case of **Deep Chand** (supra). In the said case, suit for specific performance of contract was decreed. The decree was amended. Later on the appeal was dismissed. The judgment debtors failed to abide by the terms of the decree. The decree holder filed execution application which was dismissed. However, the decree holder got the sale deed executed and registered in his favour through the process of execution from the Execution Court. Despite the mutation of ownership, the judgment debtor did not deliver the possession of land in question. The decree holder filed an application for execution in April 1994, which was dismissed by the executing Court on 24.09.1998 holding that

the same was barred by limitation. The High Court, however, allowed the revision and the said order was under challenge before the Hon'ble Supreme Court. The Hon'ble Apex Court held that Article 136 of the Limitation Act is a specific article prescribing and dealing with the application for execution of decrees and orders. The case in *Govind Prasad v. Pawankumar* the Privy Council was referred, in which it was held that successive applications for execution are permitted to be filed but only within the period of limitation provided by law. On consideration of Article 136, the Hon'ble Apex Court held that generally a decree or order becomes enforceable from its date, but in appropriate cases the Court passing the decree may prescribe the time wherefrom the decree becomes enforceable on a future date. The Hon'ble Apex Court further held that it must be remembered that the purpose of an execution proceeding is to enable the decree holder to obtain the fruits of his decree. In case where the language of the decree is capable of two interpretations, one of which assists the decree holder to obtain the fruits of the decree and the other prevents him from taking the benefits of the decree, the interpretation which assists the decree holder should be accepted. The execution of the decree should not be made futile on mere technicalities which does not, however, mean that where a decree is incapable of being executed under any provision of law it should, in all cases, be executed notwithstanding such bar or prohibition. A rational approach is necessitated keeping in view the prolonged factum of litigation resulting in the passing of a decree in favour of a

litigant. The policy of law is to give a fair and liberal and not a technical construction enabling the decree holder to reap the fruits of his decree.

50. There cannot be any dispute on the settled proposition of law, if decree is capable of two interpretations, one of which favours the advancement of the decree by getting its execution, the same is to be preferred.

51. By placing reliance on such proposition of law, the learned counsel for the respondent is right in his submission that the decree cannot be interpreted as not granting decree for delivery of possession and therefore, the decree of specific performance as in the present case should be considered as inherently containing the decree for delivery of possession. The same is the law as declared in ***Babu Lal*** (supra).

52. The judgment in ***Kanumuri Satya Suryanarayana Raju*** (supra) is not on the point inasmuch as the sale deed has already been executed by the Execution Court and registered in execution proceedings. That judgment holds that failure on the part of a party to a contract to perform the obligations arising under the agreement by executing a document of sale is rendered statutorily redressable through the obtainment of a decree for specific performance of a contract under the Specific Relief Act, 1963 by filing a suit, and after such a decree was obtained, if the party refuses to execute the sale deed, the judge is required to assume the role of an executant under Order 21 Rule 34 (4) of the Code of Civil Procedure and execute a sale deed signing even the name of the vendor, the transferor. It was further observed that when such a document is found to be compulsorily registerable under the Indian

Registration Act, 1908, the Judge is further obliged under Order 21 Rule 34 (6) of the Code of Civil Procedure to cause such a document to be registered, and such a duty and power conferred or enjoined upon the Judge under Order 21 Rule 34 (5) CPC to cause the document registered carries along with it all necessary, incidental and ancillary powers and duties including the one pertaining to the signing of the declaration in order to render the aforesaid provision of law immediately and the entire legal system of which it forms an integral part ultimately effective and operative.

53. There is no dispute on the aforesaid proposition of law, but after the execution of the sale deed by the Court and its registration, there is no applicability of the judgment at this stage, to the facts of the present case, as that stage has already been reached.

54. The next submission of the learned counsel for the petitioners is that the application under Order 21 Rule 95 was not applicable and therefore, the execution application filed under that provision was not maintainable. However, during arguments, learned counsel for the petitioners fairly admitted that if the decree for specific performance of contract is considered as also for delivery of possession of the immovable property on the premise that the decree for specific performance, as in the present case, inhers in itself delivery of possession also, the power of execution would be under Order 21 Rule 35 CPC, which provides that where decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his

behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.

55. In view of the aforesaid provisions, once the power and jurisdiction of execution is there, it cannot be said that merely because the application of the D.Hr. mentioned under Order 21 Rule 95 CPC, it could not be executed taking recourse to the correct legal provision by the Execution Court. Mention of Rule 95 would not be fatal to the application for execution for delivery of possession.

56. In ***Challamane Huchha Gowda*** (supra), the Hon'ble Apex Court held that it is a settled position of law that a mere non-mentioning or wrong mentioning of a provision in an application is not a ground to reject the application.

57. In ***J. Kumaradasan Nair*** (supra) also, the Hon'ble Apex Court held that it is now well settled principle of law that mentioning of a wrong provision or non-mentioning of any provision of law would, by itself, be not sufficient to take away the jurisdiction of a Court if it is otherwise vested in it in law. While exercising its power, the Court will merely consider whether it has the source to exercise such power or not.

58. In the present case also, the decree for specific performance inhere within it the decree for delivery of possession of immovable property. Consequently, the power to execute was under Order 21 Rule 35 CPC. Mere mentioning of Rule 95 would not take it out of the purview of the Code Civil Procedure or the power of the Execution Court.

59. The other contention advanced by Sri S. Lakshminarayana Reddy was that in view of the interim order passed in CRP No.2033 of 2014 by this Court, there was a stay of all further proceedings in E.P.No.54 of 2010 in O.S.No.736 of 2004 with respect to item-1 of EP schedule immovable property, consisting of an extent of Ac.3.41 cents Hec.1.215 Dry in Sy.No.39. From the records and as argued, it is evident that in O.S.No.736 of 2004 a decree was passed in favour of the decree holder against the same judgment debtor for money decree. When the amount was not paid towards decretal amount, the EP schedule property therein was attached before judgment and for sale thereof, for realization of the EP amount, E.P.No.54 of 2010 was filed. In the said EP with respect to item Nos.1 & 2 therein, objection was taken that those item Nos.1 & 2 suffered from **non-celebrity**. It was contended that they belong to the wife of the present judgment debtor/petitioner No.4. But the said objection was rejected by order dated 08.05.2014 also taking into consideration that earlier also on the said objection a claim petition was filed in EP and the same was dismissed on 07.05.2013 on merits and consequently, the same objection could not be adjudicated again with respect to the items No.1 & 2 of the EP schedule property therein. The order was passed for sale of item No.1 of EP schedule property alone for recovery of EP amount pursuant to the decree in favour of the decree holder, the present respondent, in O.S.No.736 of 2004. That order was challenged in CRP No.2033 of 2014 in which, as stated above, there was a conditional order granted by this Court staying further proceedings of EP schedule property item-1 therein.

60. So far as the present case is concerned, it is for delivery of possession pursuant to a different decree passed in different suit. In the view of this Court, the interim order granted in CRP No.2033 of 2014 is not coming in the way of execution of the present decree as item-1 of EP schedule property in O.S.No.736 of 2004 is not being sold or put to auction pursuant to the decree passed in that suit, on which there is stay. But the delivery of possession has been ordered in favour of the decree holder in execution of the decree for specific performance of contract, which decree has attained finality, pursuant to which the sale deed has been executed and now the delivery of possession remained. Consequently, the submission of Sri S.Lakshminarayana Reddy, based on the interim order passed in CRP No.2033 of 2014 is of no help. The stay of sale etc., item-1 of the EP schedule property does not come in the way of delivery of that property of item-1 to the decree holder pursuant to another decree passed in another suit for specific performance of contract.

61. Learned counsel for the respondent in support of his contention that a prior agreement shall prevail over subsequent attachment, placed reliance in the case of ***Adinarayana*** (supra). The said question, in the view of this Court, does not arise for consideration, as no such ground has been taken nor argument advanced on that aspect by the learned counsel for the petitioner to challenge the impugned order. This Court has already observed that the interim order passed in CRP No.2033 of 2014 does not come in the way of the impugned order for execution, for delivery of possession.

62. Accordingly, I hold as under:

- (i) That it is not always incumbent on the plaintiff to claim possession of the property, subject matter of the agreement of sale, in a suit for specific performance of contract. It is only 'in an appropriate case' the plaintiff has to claim specifically the delivery of possession in the plaint, originally or if not so claimed, by way of amendment, which can be made even at the stage of execution.
- (ii) 'In an appropriate case' means, a case in which a relief of 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 judgment debtor with other persons, or the possession is with third party.
- (iii) In other cases, (other than 'an appropriate case') the relief of possession is inherent in the relief of specific performance of contract. The decree for specific performance of contract when granted would inhere decree for the execution of the sale deed, its registration and also the delivery of possession of such property, even if relief of delivery of possession was not claimed nor granted specifically.
- (iv) In the present case, the possession is with the judgment debtors/defendants/petitioners. Consequently, the plaintiff was not required to claim relief of possession specifically in the plaint. Such relief was inherent in the relief claimed and the decree granted for specific performance of contract would include in itself, the decree for delivery of possession.

(v) Consequently, the question of seeking the prayer for delivery of possession, specifically by way of amendment, at any stage, including the stage of execution, does not arise at all.

(vi) The Execution Court was within its jurisdiction and power to execute the decree as passed, for delivery of possession as well, after the sale deed had been executed by the Court and the Court got it registered.

(vii) Mere mention of wrong provision or no provision at all in application for delivery of possession did not take away the jurisdiction of the Execution Court to execute the decree, as it had the jurisdiction, under the provisions of Order 21 Rule 35 CPC, for execution of decree, for delivery of possession as well.

(viii) The interim order dated 08.05.2014 in CRP No.2033 of 2014, did not come in the way of execution of the present different decree with respect to the EP schedule property, passed in different suit. The interim order would not apply to the decree in the present suit.

63. In view of the aforesaid, the points for determination, as framed in para-17 supra, are answered as under:

- i. In execution of the decree for specific performance of contract dated 22.02.1997, the Execution Court has not acted without jurisdiction in directing the delivery of possession of the EP schedule property to the decree holder.

- ii. The judgment under challenge does not call for any interference in the exercise of the revisional jurisdiction by this Court, as it does not suffer from any error of law or of jurisdiction.

64. For the aforesaid reasons, I do not find any illegality in the order impugned, calling interference of this Court.

65. In the result, the civil revision petition is dismissed. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

RAVI NATH TILHARI, J

Date: 29.08.2023
Dsr

Note:
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