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Gyasa Vs. Smt. Risalo

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Court : Allahabad

Decided On : Aug-25-1976

Reported in : AIR1977All156

Judge : K.N. Seth, J.

Acts : Specific Relief Act, 1963 - Sections 22; Transfer of Property, 1882 - Sections 55(1)

Appeal No. : Ex. Second Appeal No. 3083 of 1971

Appellant : Gyasa

Respondent : Smt. Risalo

Advocate for Def. : Radha Krishna and ;Prakash Krishna, Advs.

Advocate for Pet/Ap. : S.P. Gupta, Adv.

Disposition : Appeal partly allowed

Judgement :

K.N. Seth, J.

1. The appellant's suit for specific performance of the contract of sale of the land was decreed. The decree directed that the plaintiff shall deposit Rs. 4,000/- in Court within two months whereafter the defendant shall execute the sale deed of

the property in question in favour of the plaintiff failing which the plaintiff may get the same done through Court. The decree holder deposited the amount in Court. As the judgment debtor failed to execute the requisite sale deed it was got executed through Court. In execution of the decree arrest and detention of the judgment-debtor in civil prison, attachment of the judgment-debtor's entire property and possession over the property covered by the sale deed were claimed'. The judgment debtor filed objections and resisted her arrest and detention in civil prison and attachment of her property and also the prayer for delivery of possession. The execution Court accepted the objection that the decree holder was not entitled to possession over the property covered by the sale deed on the reasoning that since no relief for possession was claimed in the suit and the decree also did not direct delivery of possession, the decree-holder was not entitled to claim possession in view of Section 22 of the Specific Relief Act. The Court also negatived the claim of the decree-holder for arrest and detention of the judgment-debtor in civil prison and attachment of her entire property. The decree-holder's appeal to the District Judge against the order of the execution Court upholding the objections of the judgment-debtor proved infructuous.

2. It is not in dispute that in the suit for specific performance of the contract of sale no separate relief for possession was claimed. The decree also did not in express terms direct delivery of possession over the property in suit. The question for consideration is whether the decree-holder is entitled to possession in execution of the decree as it stands or Section 22 of the Specific Relief Act bars the relief of possession. The relevant part of Section 22 provides :--

'22. (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...

(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.'

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 immoveable 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., 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. 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.

4. The principle that the relieffor possession is inherent in the relief forspecific performance of the contract ofsale and that in execution of a decree forspecific performance of a contract of salethe decree holder is entitled to possessionover the property even if no such reliefwas specifically claimed in the suit orgranted under the decree, was acceptedby this Court in Arjun Singh v. SahuMaharaj Narain : AIR1950 All415 . TheCourt 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 some thing incidental to the right of the decree-holder to have the contract specifically performed. 'The deed of conveyance is itself executed by the execution Court. An order directing delivery of possession to the vendee is merely incidental to the execution of the deed of sale.'

This principle was reiterated by a Bench of this Court in Balmukund v. Veer Chand : AIR1954 All643 .

5. 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.

6. 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.

7. As regards the relief for arrest and detention of the judgment-debtor in civil prison and attachment of her entire property, on the material on record, it has not been established that the judgment-debtor has wilfully failed to obey the decree. The view taken by the Court below on this aspect of the case must be upheld.

8. In the result, this appeal is allowed in part. The objection of the judgment-debtor relating to delivery of possession over the property in suit is rejected. The execution Court shall proceed to execute the decree for possession of the said property. In the circumstances of the case the parties shall bear their own costs.

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