

**Joseph and anr. Vs. Joseph**

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**SooperKanoon Citation :** [sooperkanoon.com/719974](http://sooperkanoon.com/719974)

**Court :** Kerala

**Decided On :** Mar-03-1997

**Reported in :** AIR1997Ker301

**Judge :** B.N. Patnaik, J.

**Acts :** [Specific Relief Act, 1963](#) - Sections 28(3)

**Appeal No. :** C.R.P. No. 790 of 1996-C

**Appellant :** Joseph and anr.

**Respondent :** Joseph

**Advocate for Pet/Ap. :** S. Sreekumar, Adv.

**Judgement :**

ORDER

**B.N. Patnaik, J.**

1. The plaintiffs in O.S. No. 782 of 1994, on the file of the Sub Court, Ernakulam have preferred this revision against the order dated 13-3- 1996 in I.A. No. 6988 of 1995 arising out of the said suit, by which the learned Additional Sub Judge directed the petitioners to file an Execution Petition in order to execute the decree which was one for specific performance of a contract.

2. By the judgment and decree dated 31-8-1995 of the Court below in the said suit, the defendant/respondent was directed to execute the sale deed in favour of the plaintiff's in respect of the plaint schedule property after receipt of the balance sale consideration of Rs. 62,500/- within one month from the date of judgment failing which the plaintiffs shall be at liberty to get the decree executed by depositing the balance amount in the Court below. On 16-9-1995, the plaintiffs deposited the sale consideration amount of Rs. 62,500/- in the Court below as directed in the decree. But the defendant/respondent did not execute the sale deed as per the decree in spite of the fact that the balance consideration money was deposited within one month from the date of the judgment. Hence the plaintiffs/petitioners have filed a petition (II.A. 6988/96) on 13-12-1995 praying therein to give a direction to execute the sale deed under Section 28(3) of the [Specific Relief Act, 1963](#). But the learned Sub Judge declined to do so and passed the impugned order by saying that a separate execution petition should be filed for execution of the said decree.

3. Although due notice was served on the respondent herein, neither he nor the Advocate on his behalf appeared when the case was taken up for hearing.

4. Heard the learned Counsel for the petitioners. It is contended that Section 28(3) of the Specific Relief Act provides that the Court may execute a conveyance and deliver possession of the property to the purchaser if the purchaser pays the purchase money under the decree. After a decree for specific performance the remedy of the purchaser is to apply under Sub-section (3) of Section 28 of the Specific Relief Act. No separate execution petition is necessary, and the Court below ought to have taken steps to execute the sale deed as per the decree on the defendants' failure to do so.

5. The question that arises for consideration is whether the Court can execute the decree for specific performance of a contract in pursuance of Sub-section (3) of Section 28 of the Specific Relief Act, 1963 without a separate execution petition being filed to execute the decree.

6. Sub-section (3) of Section 28 of the [Specific Relief Act, 1963](#) reads as follows :

'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.'

7. The Supreme Court in *Ramankutly Guptan v. Avara*, (1994) 2 SCC 642 : (AIR 1994 SC 1699), laid down that the Execution Court is not the 'same Court' within the meaning of Section 28 of the Specific Relief Act. The question that arose there was whether an application under Section 28 of the [Specific Relief Act, 1963](#) should be filed on the original side or execution side. It was held that the Section indicates that it should be 'in the same suit'. It would obviously mean in the suit itself and not in the execution proceedings. It is equally settled law that after passing the decree for specific performance, the Court does not cease to have any jurisdiction. The Court retains control over the decree even after the decree has been passed. Earlier in the same case as reported in ILR(1993) 1 Ker 197, this Court took the identical view while interpreting the expression 'in the same suit' occurring in Sub-section (1) of Section 28 of the Specific Relief Act, 1963.

8. In view of the authoritative pronouncements of the Supreme Court, the impugned order of the learned Sub Judge is found to be one without jurisdiction. Hence, it cannot be sustained in law.

9. For the reasons stated above, the revision is allowed. The Court below is directed to act in accordance with Sub-section (3) of Section 28 of the Specific Relief Act, 1963 and pass appropriate orders according to law, in the same suit and not in a separate execution proceeding.

Order on C.M.P. 1357/1996 in C.R.P. 790/ 1996-C. Dismissed.

