

Velayudhan Vs. Chandran

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Court : Kerala

Decided On : Dec-02-2003

Reported in : 2004(2)KLT980

Judge : A. Lekshmikutty, J.

Acts : [Specific Relief Act, 1963](#) - Sections 22

Appeal No. : C.R.P. No. 1963/03

Appellant : Velayudhan

Respondent : Chandran

Advocate for Def. : V. Chithambaresh and; T.C. Suresh, Advs.

Advocate for Pet/Ap. : Sajan Varghese K. and; M.P. Liju, Advs.

Disposition : Petition dismissed

Judgement :

ORDER

A. Lekshmikutty, J.

1. The revision petitioner is the judgment-debtor in E.P.No. 34/2003 in O.S.No. 589/1995 on the file of the Sub Court, Palakkad. The suit was filed for specific performance of an agreement dated 4th August, 1994. The suit was decreed

allowing specific performance. Since the judgment-debtor has not executed the sale deed in pursuance of the decree in favour of the plaintiff within one month from the date of deposit of the balance sale consideration before Court, the decree holder got it executed through Court on 2nd January, 2002. But in spite of the execution of the sale deed, the judgment-debtor has not handed over possession of the plaint schedule property to the decree-holder. Hence, E.P. was filed for recovery of possession.

2. The judgment-debtor filed objection resisting the execution. He contended that Order 21, Rule 35 C.P.C. is not applicable since there is no specific decree for delivery of the property. It is further stated that the decree-holder is not entitled to get possession of the property on the basis of the sale deed executed through Court. Even though in the suit it was specifically prayed for recovery of possession of the plaint schedule property, it was not granted except the decree for specific performance. But the Court below repelled the objection filed by the Judgment-debtor and delivery of possession was ordered, against which this Civil Revision Petition is filed.

3. There is no dispute that the specific performance was granted in O.S. No. 589/1995. There was specific pleadings in the plaint for recovery of possession of the property. The suit was decreed with costs, directing the plaintiff to deposit the balance sale consideration outstanding as per Ext. A1 agreement within a period of one month from the date of judgment, directing the defendant to execute the sale deed in respect of the plaint schedule property within one month from the deposit of the said amount and on failure of the defendant to comply with the said direction, the plaintiff was permitted to get the sale deed executed through Court. As per the revision petitioner, there is no decree for delivery of possession of the property. It is not disputed that a decree granting specific performance was allowed by the trial Court with a direction to execute the sale deed on deposit of the balance sale consideration. Since the judgment-debtor has not complied with the direction contained in the Decree and the judgment, the sale deed was got executed through Court as per order in I.A. No. 3988/1999. But possession was not handed over to the decree-holder. So E.P. was filed for delivery of the property. The contention of the Judgment-debtor is that since there is no specific

direction for delivery of the property, he is not liable to surrender possession. It cannot be disputed that a decree was passed for specific performance of Ext.A1 agreement for sale. There could not be any sale without transferring possession. The execution of sale deed implies delivery of possession also. The execution Court correctly ordered delivery of the property to the decree-holder. The learned Counsel for the judgment-debtor argued that since there is no decree directing the judgment-debtor to hand over possession of the property, the remedy open to the decree-holder is to correct the decree and the execution Court is not competent to pass an order for delivery.

4. The fact that the Court below passed a decree for specific performance of the agreement for sale is not disputed. Execution of sale deed implies delivery of possession also. There is specific provision in the agreement itself that executant shall execute the sale deed and hand over possession of the property on receipt of the balance sale consideration. It was the said agreement that is to be enforced through execution of the decree. Handing over possession also is specifically stated in the agreement itself. Since the judgment-debtor has not executed the sale deed in terms of the contract, the suit is filed and a decree was obtained. As per Section 55(1)(f) of the Transfer of Property Act, the vendor is bound to give possession of the property to the vendee. Transfer of possession is incidental to a sale. The specific performance cannot be completed without giving possession of the property to the vendee. Here in the instance case the sale deed was executed through Court and handing over possession is an essential ingredient for a sale deed. Since the respondent refused to hand over possession, the decree-holder filed the E.P.

5. Section 22 of the [Specific Relief Act, 1963](#) provides that any person suing for the specific performance of a contract for the transfer of immovable property may, in 'an appropriate case' ask for 'possession' or partition and separate possession of the property, in addition to such performance. Under Section 122(2) read with the proviso thereto, the Court can grant a relief only if it is specifically claimed. Even if it has not been claimed, the Court shall at any stage of the proceeding, allow the plaintiff to amend the plaint for including a claim for such relief. Prima facie, Section 22 of the [Specific Relief Act, 1963](#) permits the Court to grant a

decree for possession of the property in decreeing specific performance of the contract. Here there is specific pleadings in the plaint for recovery of possession from the judgment-debtor. Even though in the judgment it was stated that the suit is decreed and the judgment-debtor was directed to execute the sale deed on the plaintiff depositing the balance sale consideration if the defendant did not execute the sale deed even after the deposit of the balance sale consideration. Even if there is no specific direction, a sale implies delivery of possession also. It cannot be disputed that there is no decree for specific performance of the contract. As per the contract, the defendant is bound to hand over possession of the property on deposit of the balance sale consideration. So the decree-holder is entitled to get possession of the property in a suit for specific performance.

6. Even the executing Court was competent to grant delivery of property in a case where no such relief is granted by a decree for specific performance of contract for sale. In such circumstances, it cannot be found that the execution Court has gone beyond the decree passed by the trial Court. In a suit for specific performance of contract for sale of immovable property containing stipulation that on execution of the sale deed the possession of the immovable property will be handed over to the purchaser, it is implied that delivery of possession of the immovable property is part of the decree of specific performance of contract.

On going through the entire facts and circumstances, I find that there is no illegality, impropriety or irregularity in the impugned order. Hence the Civil Revision Petition is dismissed.

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