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**Court :** Rajasthan

**Decided On :** May-09-1986

**Reported in :** AIR1987Raj117; 1986(2)WLN44

**Judge :** K.S. Lodha, J.

**Acts :** [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 11; [Specific Relief Act, 1963](#) - Sections 22

**Appeal No. :** Civil Misc. Appeal No. 6 of 1986

**Appellant :** Hemchand

**Respondent :** Karilal

**Advocate for Def. :** H.M. Parekh, Adv.

**Advocate for Pet/Ap. :** M.M. Vyas, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

**K.S. Lodha, J.**

1. This is a misc. appeal by the judgment-debtor against the order of the learned District Judge, Dungarpur dt. 16-12-85, dismissing his objections to the execution of a decree for specific performance of contract.

2. I have heard the learned counsel for the parties at some length.

3. The only objection of the learned counsel for the appellant is that since the decree for specific performance of the contract did not provide for delivery of possession of the property the executing court was wrong in holding that in execution of such a decree the executing court can deliver possession to the decree-holder as the relief of possession is implied in a decree for specific performance of the contract. He has divided his arguments in two limbs. The first limb of the argument is that in the suit the plaintiff had specifically prayed for grant of possession but the trial court did not grant the relief of possession and, therefore, under Section 11 C.P.C. such a relief must be deemed to have been refused. That being so the executing court could not have granted such a relief. The second limb of the argument is that if at all the plaintiff decree-holder wanted to get the relief of possession in the present suit or the executing proceedings, he should have got the plaint amended and asked for the relief of possession as required by Section 22 of the Specific Relief Act.

4. Having heard the learned counsel for the parties, I do not find any substance in either of the contentions. So far as the first limb of the argument is concerned which is based on explanation 5 to Section 11 C.P.C. it may at once be stated that this explanation can apply only to a relief which is independent of the relief which has already been granted by the court because if the relief which is implied in a relief which has already been granted by the court, a specific mention of that relief in the decree may not be strictly necessary. However, if the additional relief sought is independent of the main relief already granted by the court then the explanation will have its effect and such a relief will be deemed to have been refused by the court. The matter would be clear from a reference to the decision of their Lordships of the Supreme Court in Babu Lal v. Hazari Lal Kishori Lal, AIR 1982 SC 813 to which I will refer in a little detail while discussing the other limb of the argument.

5. Now coming to the other limb, it may again be at once stated that the contention is ill founded in as much as there cannot be any reason or justification for the plaintiff asking for an amendment of the plaint when the relief of possession had

already been prayed for and as stated above must be deemed to have been impliedly granted when the decree for specific performance of the contract has been passed. The matter stands concluded by their Lordships decision in the aforesaid case of Babu Lal. It is pertinent to note that before the provisions of Section 22 of the Specific Relief Act as amended in 1963 came into force the settled view was that a decree for specific performance of the contract implied a relief for possession also. Their Lordships of the Supreme Court have referred to all the cases which have taken this view and then they have referred to the amended Section 22 of the Specific Relief Act in 1963. Their Lordships observed that '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.' Their Lordships further observed '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' and it has been pointed out that even after the introduction of Section 22 of the Specific Relief Act in 1963, the plaintiff in a suit for specific performance of the contract need not always ask for the relief for possession because ordinarily such relief would be implied. It is only in appropriate cases that is cases in which ordinarily possession may not follow from the mere decree for specific performance of the contract e.g. where third party has intervened the plaintiff has to ask for the relief of possession and if not asked, the decree will not grant him possession. Their Lordships further observed '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 T. P. 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. 'Then their Lordships referred to the other kind of cases in which a relief for possession cannot be effectively granted to the decree-holder without specifically claiming relief for possession, namely, where the property agreed to be conveyed is jointly held by the defendant with other persons. In such a case the plaintiff has to pray for partition of the property and possession over the share of the defendant, and it has been observed that it is in such cases that a relief for possession must be specifically pleaded. Again it is observed '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 with the relief for specific performance of the contract of sale. It is, therefore, abundantly clear that ordinarily the relief for specific performance of a contract implies the relief for possession of the immovable property also and in such a case the plaintiff need not even ask for the decree for possession and as soon as a decree for specific performance of the contract is passed the plaintiff would be entitled to ask for possession in execution of such a decree. In the present case also the facts do not at all indicate that the possession would not follow the relief of specific performance of the contract. No third party has intervened. The property is in possession of the contracting party and, therefore, the decree for specific performance of the contract would also ensure for possession of the property in execution of that decree.

6. So far as the question of amendment of the plaint in the peculiar circumstance of this case is concerned, it will only be a futile exercise. As already pointed above the plaintiff had claimed for possession and when the decree for specific

performance of the contract has already been passed the mere fact that it specifically did not grant the relief for possession the plaintiff should again amend the plaint. There is no occasion for the plaintiff to amend the plaint when the relief had already been asked for and has impliedly been granted as slated above. I have already pointed above that the explanation 5 to Section 11 would not apply in such a case as the Hon'ble Supreme Court has already clearly indicated in the aforesaid authority, in such a suit the decree for specific performance clearly implies a decree for possession also that is the relief of possession is inherent in the relief of specific performance of the contract of the sale.

7. The learned counsel for the appellant, however, urged that in Babu Lal's case, (AIR 1982 SC (818) (supra) referred to above, their Lordships have observed that the High Court had amended the decree and had directed grant of possession and in any case it had observed that the proper course for the High Court would have been to allow an amendment in the plaint. I am unable to persuade myself to agree with the learned counsel to interpret the observations of the Hon'ble Supreme Court in this manner in this case. It may at once be pointed out that the case before the Hon'ble Supreme Court was one in which the property was not in exclusive possession of the contracting party but a third party had already intervened. Therefore, it was a case which fell in the category of appropriate cases in which relief of possession ought to have been sought. It was in this context that their Lordships referred to the provision for amendment under Section 22 of the Specific Relief Act in respect of the relief of possession and observed 'there has been a protracted litigation and it has dragged on practically for about 13 years and it will be really a travesty of justice to ask the decree-holders to file a separate suit for possession. The objection of the petitioner is hyper-technical. The execution court has every jurisdiction to allow the amendment. The only difficulty is that instead of granting a relief of possession the High Court should have allowed an amendment in the plaint. The mere omission of the High Court to allow an amendment in the plaint is not so fatal as to deprive the decree-holders of the benefits of the decree when Section 55 of T.P. Act authorises the transferee to get possession in pursuance of a sale deed.' It will be pertinent to note that the High Court had not amended the decree for possession as would be clear from the above observations. All that it did was to grant a decree for specific performance

of the contract not only against the original contracting party but also against the other parties who had intervened and had come into possession before the present suit was filed. Again, their Lordships have pointed out that the executing court had ample power to amend the decree and in this respect they say 'we are not prepared to take such a narrow view of Section 22. It was open to the court to allow an amendment and the Court on the basis of that section has allowed delivery of possession in pursuance of the decree passed in the case.'

8. In my opinion the decision of the Hon'ble Supreme Court referred to above is a complete answer to the contention of the learned counsel for the appellant.

9. In this view of the matter the order passed by the learned District Judge, Dungarpur does not call for any interference and the appeal is, therefore, summarily rejected.

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