

The Decree-holder (The then Vs. Bearing No.2524/1988, Seeking

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SooperKanoon Citation : sooperkanoon.com/924504

Court : Delhi

Decided On : Feb-02-2012

Appellant : The Decree-holder (The then

Respondent : Bearing No.2524/1988, Seeking

Judgement :

. * HIGH COURT OF DELHI: NEW DELHI Order pronounced on: 02.02.2012 + EX. P. No.286/2011 MS. ADARSH KAUR GILL Decree Holder Through Mr. C.A. Sunderam, Sr. Adv. with Mr. Munindra Dwivedi, Ms. Divya Bhalla and Mr. Zafar Inayat, Adv. versus SH. MAWASI and OTHERS Judgment Debtors Through Mr. Pramod Ahuja, Adv. with Dr. Pradeep N. Sharma, Adv. for J.Ds. No.4 and .

5. CORAM: HON'BLE MR. JUSTICE MANMOHAN SINGH MANMOHAN SINGH, J..

1. The decree-holder (the then plaintiff) on 10.10.1988 filed the suit bearing No.2524/1988, seeking relief for specific performance of the agreement to sell dated 02.05.1988 entered into between the decree-holder, namely, Adarsh Kaur Gill and the five judgment-debtors (the then defendants), namely, (i) Mawasi, (ii) Smt. Ramkali, (iii) Satpal, (iv) Satbir, and (v) Vijay Pal, in respect of the land comprising in Mustatil No.90, Killa No.11/2, Mustatil No.91, Killa Nos.7/1, 7/2, 14, 17, 15/2 and 16, total admeasuring 17 Bighas and 4 Biswas, situated within the revenue estate Ex. P. No.286/2011 Page No.1 of 23 of Village Dera Mandi, Delhi, for a sale consideration of ` 7,20,000/- out of which ` 2,50,000/- were paid at

different times. Despite of service, no one appeared on behalf of the judgment-debtors and vide order dated 06.11.1989 they were proceeded ex parte. The Statement of Account and the Certificates from the Bank were filed by the decree-holder which revealed that the decree-holder had necessary funds to perform her part of the contract at the time of institution of the suit as well as on the date of passing of the final order dated 15.11.1990 when the suit of the decree-holder was decreed to the following effect:- ".....that a decree for specific performance of the agreement of sale dated 02.05.1988 in respect of the land comprising in Mustatil No.90, Killa No.11/2, Mustatil No.91, Killa Nos.7/1, 7/2, 14, 17, 15/2 and 16, total admeasuring 17 Bighas and 4 Biswas, situated within revenue estate of Village Dera Mandi, in the Union Territory of Delhi, be and the same is hereby passed in favour of the plaintiff against the defendants with the direction that the plaintiff shall deposit the balance sale consideration in Court within two weeks and thereafter the defendants shall take steps in accordance with the agreement of sale for execution and registration of the sale deed within two weeks thereafter, failing which the Registrar of this Court shall take necessary steps in accordance with the law for getting sale deed executed and registered after obtaining legal sanction."

2. The decree was drawn accordingly by the Registry. The memorandum of costs was also prepared on 31.01.1991. In view of the judgment and decree passed by the Court, the sale deed dated 22.10.1991 was executed by the Registrar of this Court in favour of the decree-holder in respect of the suit property. Ex. P. No.286/2011 Page No.2 of 23.

3. Thereafter, two of the defendants, namely, Satbir and Vijay Pal (judgment-debtors No.4 and 5) filed an application being I.A. No.9784/1998 for setting-aside the ex parte judgment and decree dated 15.11.1990 along with an application being I.A. No.1398/1999 under Section 5 of the Limitation Act for condonation of delay. However, the same were dismissed vide order dated 07.07.1999. The order passed is reproduced here as below:- "..... Heard. I.A. No.1398/99 is an application for condonation of delay under Section 5 of the Limitation Act. The case proceeded ex parte against the defendants on 6th November, 1989. It was decreed on 15th November, 1990. The sale deed has already been executed on 8th October, 1991. If it is assumed for the sake of arguments that the defendants

were minors on the date of agreement to sell, they were not minors on the date of the decree. They were not minors even when the sale deed was executed. It appears that the defendants purposely avoided and now, at this stage, after nearly seven years the present application for condonation of delay has been filed without explaining the delay. I am not inclined to entertain this application for condonation of delay. Accordingly, the application for condonation of delay (I.A. No.1398/99) is dismissed along with the application for setting aside the decree (I.A. No.9784/88).".

4. Feeling aggrieved by the above said order dated 07.07.1999, the said defendants/judgment-debtors No.4 and 5 in the month of August, 1999 filed an appeal before the Division Bench, being FAO(OS) No.228/1999. On 30.04.2001 the appeal was admitted and in the interim application being C.M. No.2789/1999, the following order was passed:- "..... Heard. No other or further order is required to be passed on this application except by directing respondent not to Ex. P. No.286/2011 Page No.3 of 23 transfer, alienate, part with or create any third party interest in the property in question during pendency of the appeal. Ordered accordingly.....".

5. Vide order dated 16.08.2011 the appeal filed by judgment-debtors No.4 and 5 was dismissed by the Division Bench of this Court. The relevant extract of the said order reads as under:- "Insofar as we are concerned, vide the impugned order the learned Single Judge has dismissed both the aforesaid applications. We are thus faced with a situation where, really speaking, there is no application before the learned Single Judge either under Order 9 Rule 13 r/w Section 151 CPC or under Section 5 of the Limitation Act, 1963 as the appellants have stated before us that they have not appended their signatures on these applications, affidavits filed in support thereof as also on the vakalatnama. The situation from the point of view of the appellants is no different qua the appeal. The appellants state that they have not signed on the appeal, the affidavits filed in support of the appeal as also the vakalatnama accompanying the appeal. In the given facts of the case, we refrain from saying anything further, but dismiss the appeal as incompetent as the same is neither supported by any affidavits, nor signed by the appellants nor is there any authority in favour of the lawyer to appear on their behalf. We would have

proceeded to prosecute these appellants, but for the fact that they have not had much education and any further enquiry would place the counsel for the appellants in an awkward position. Ordered accordingly."

6. It appears from the above said order that the Division Bench before dismissing the appeal, also recorded the statements of Satbir and Vijay Pal Ex. P. No.286/2011 Page No.4 of 23 (the then appellants) on the very same date. One of the specimen of the statements reads as under:- "STATEMENT OF SATBIR, S/O SH.RAGHUWAR, AGED: 40 YEARS, R/O OF VILLAGE MANDI (NEAR PRIMARY SCHOOL) ON S.A. I have been educated till 10th class. I have had my education throughout in Hindi medium. I do not know how to read, write, understand, speak or sign in English. I have been shown an affidavit affirmed on 03.08.1999 in FAO(OS) No.228/1999. I have been shown signatures at two places i.e. A to A and B to B. They are not my signatures as I cannot write in English. I have also been shown page 9 of the appeal which purports to bear my signatures at the end of the prayer clause(s) from point C to C. They are not my signatures. I have also been shown the vakalatnama which purports to bear my signatures at point I-2. These are not my signatures. I have appended my signatures in the Court, on a sheet of paper, at three places, which are collectively exhibited as Ex A-1. I have been shown the signatures on notices sent for 14.05.1991 in Suit No.2524/1988, which are signed on 09.05.1991. They have been circled as C, D, E and F qua notices of my mother-Smt.Ramkali, my brother-Satpal, myself and my brother-Vijay Pal. These are not my signatures. I have also been shown my purported signatures on the application under Order 9 Rule 13 r/w Section 151 CPC in Suit No.2524/1988 as also the affidavit filed in support thereof at points L-1 and J-1 and J-2 respectively. These are not my signatures. I have also been shown my purported signatures on the application under Section 5 of the Limitation Act, 1963 in Suit Ex. P. No.286/2011 Page No.5 of 23 No.2524/1988 as also the affidavit filed in support thereof at points M-1 and N-1 and N-2. These are not my signatures. (The court records that all questions were put to the witness in Hindi and the consequences thereof were explained to the witness in Hindi before recording the same in English.)".

7. It has been informed by the parties that after the dismissal of the appeal, both the judgment-debtors No.4 and 5 filed a review petition being R.P. No.755/2011 before the Division Bench. The same was also dismissed with cost of ` 50,000/-..

8. As already stated that after the execution and registration of the sale deed dated 22.10.1991 by the Registrar of this Court in respect of the suit property in favour of the decree-holder, she also filed an application before the Revenue Assistant for mutation of the suit property in her favour. The same is still pending adjudication..

9. After the dismissal of the appeal, the decree-holder has now filed the present execution petition under Order XXI, Rule 11(2) read with Section 151 CPC for enforcement and execution of the decree dated 15.11.1990, on the grounds that because of the pendency of the proceedings in respect of the suit land before the Division Bench of this Court and the status-quo order passed therein, no execution proceedings were filed earlier. It is also stated that without prejudice, if it is required by the Court that the plaint be amended to include a specific prayer for possession by way of abundant caution, the decree-holder also seeks a suitable amendment of the plaint to incorporate such prayer for possession (as earlier not sought). It is also averred that in terms of the agreement to sell Ex. P. No.286/2011 Page No.6 of 23 whose specific performance was ordered by this Court, it was incumbent upon the judgment-debtors to put the decree-holder in possession of the suit land. Therefore, it is prayed that the plaint and decree be amended to include the prayer to put the decree-holder in possession of the suit land. It is further prayed in the execution that the warrants of possession of the immovable property of land comprising in Mustatil No.90, Killa No.11/2, Mustatil No.91, Killa Nos.7/1, 7/2, 14, 17, 15/2 and 16, total admeasuring 17 Bighas and 4 Biswas, situated within the revenue estate of Village Dera Mandi, Delhi, be issued and in case, this prayer cannot be granted without amendment of the plaint and the decree, then the following relief be included as relief No.(a)1 in the plaint:- "It is most respectfully prayed that the judgment and decree be passed against the defendants jointly and severally to put the plaintiff in vacant and peaceful possession of the suit land."

10. Mr. Sunderam, learned Senior counsel appearing on behalf of the decree-holder has argued that the alternative prayer has been sought by the decree-holder only for the purpose of abundant caution, otherwise the execution qua possession is maintainable, despite having no specific prayer in the plaint. The learned counsel has further argued that since the suit was for specific performance of the agreement to sell entered into between the parties in respect of the land in question and the sale deed was executed after passing of the decree, the judgment-debtors who are in possession of the suit property, were duty bound to hand over the possession after receiving the balance sale consideration which was already deposited by the decree-holder in the Court. The learned Senior counsel has further Ex. P. No.286/2011 Page No.7 of 23 submitted that after the registration of the sale deed, the next step was to be performed by the judgment-debtors to hand over the possession. In case this court feels proper and necessary, the decree be amended on the basis of the amendment sought in the prayer clause, as the Executing Court has got the jurisdiction to allow the said amendment..

11. Mr. Pramod Ahuja, Advocate who is appearing on behalf of judgment-debtors filed the reply supported by the affidavit of Satbir, one of the judgment-debtors who only executed the vakalatnama in favour of Mr. Ahuja. The following points have been raised in the reply:- (i) The amendment sought by the decree-holder cannot be allowed, otherwise it would be denova trial. (ii) The execution cannot be entertained, at this stage, for amendment of the decree dated 15.11.1990 and the same is liable to be dismissed, as the said amendment has been sought after a period of more than 20 years..

12. Mr. Ahuja has also argued that the suit filed by the decree holder was not maintainable, as when the agreement between the parties was entered into, two of the judgment-debtors, namely Satbir and Vijay Pal were minors and not competent to enter into any such contract. It was a void agreement and the same could not be enforced in view of the provisions of Section 11 of the Indian Contract Act, 1872. The learned counsel has further argued that the judgment-debtors No.4 and 5 are co-bhumidars in the land in question and the other co-bhumidars could not sell the right, title or interest therein of the minors by means of the agreement to

sell in question. Ex. P. No.286/2011 Page No.8 of 23.

13. As far as the first submission of Mr. Ahuja is concerned that on the date of the agreement in question, his client Satbir was a minor. As per the Matriculation Certificate of Satbir, his date of birth is recorded as 15.10.1970. Obviously, on the date of passing of the judgment and decree, i.e. on 15.11.1990, he was about 20 years of age. On the date of registration of the sale deed, i.e. 22.10.1991, his age was more than 21 years. It is a matter of fact that after passing of the decree, the said Satbir filed an application before the Court for setting-aside the ex parte judgment and decree wherein he raised the same objection. The said application was dismissed vide order dated 07.07.1999 after considering the said objection. Satbir and Vijay Pal filed an appeal against the said order. Subsequently, as per orders passed by the Division Bench in the appeal and the statements of Satbir and Vijay Pal recorded in the Court on 16.08.2011, both the judgment-debtors admitted before the Division Bench that the appeal, application, affidavit and vakalatnama did not bear their signatures. In view of that, in a way, there was no appeal filed on their behalf. It is also the admitted position that despite of service in the suit, they did not appear before the Court and they were proceeded ex parte on 06.11.1989. The same objection after the expiry of more than 22 years cannot be re-agitated when the same was already determined by the Court. In view of above said reasons, it is clear that they lost the opportunity after the order dated 07.07.1999 was passed. Therefore, this objection raised by Satbir is accordingly rejected..

14. The second point as raised by the objector Satbir is that the execution filed by the decree-holder is not maintainable, as it has been filed after a period of more than 20 years. Mr. Ahuja has also referred the judgment Ex. P. No.286/2011 Page No.9 of 23 passed by the Supreme Court in the case of Ram Bachan Rai and Ors. vs. Ram Udar Rai and Ors. reported in AIR 2006 Supreme Court 2248, the relevant para-11 at page 2250 reads as under:- "11. In view of the said decision, the inevitable conclusion is that the Executing Court was not correct in its view. It is to be noted that learned counsel for the respondents conceded to the position that the period of limitation is not to be reckoned from the date of dismissal of the Civil Revision which was filed relating to rejection of the application under Order IX

Rule 13, CPC. The entire focus was on the date from which the period of limitation is to be reckoned. Reliance was placed on a decision of the Calcutta High Court in *Ram Nath Das and Ors. v. Saha Chowdhury and Co. Ltd. and Ors.* (AIR 1974 Cal 246) where it was held that the decree was enforceable and when cost is assessed. The ratio in the said judgment clearly runs counter to what has been stated in *Dr. Chiranji Lal's case (supra)*."

15. Now, the issue before this Court is, when the period of limitation for execution would commence. Article 136 of the Indian Evidence Act, 1872 reads as under:-
Description of Period of Time from which period begins to application limitation run
For the Twelve Years When the decree or order becomes execution of any enforceable or where the decree or decree (other any subsequent order directs any than a decree payment of money or the delivery granting a of any property to be made at a mandatory certain date or at recurring periods, injunction) or when default in making the payment order of any civil or delivery in respect of which Court. execution is sought, takes place; Ex. P. No.286/2011 Page No.10 of 23
Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation..

16. In the present case, admittedly, the decree was passed on 15.11.1990. It is specifically mentioned in the ex parte judgment passed against the defendants with the direction that the plaintiff (decree-holder herein) would deposit the balance sale consideration in Court within two weeks and thereafter, the defendants (judgment-debtors herein) would take steps in accordance with the agreement of sale for execution and registration of the sale deed within two weeks, failing which the Registrar of this Court would take necessary steps in accordance with law for getting the sale deed executed and registered after obtaining legal sanction. The memo of costs was prepared in the present suit and was accepted on 31.01.1991. The decree-holder/plaintiff had deposited bank draft dated 21.11.1990 for the remaining consideration, in favour of the Registrar General of this Court in terms of the ex parte judgment and decree. The draft of the sale deed was submitted by the plaintiff on 29.05.1991. The requisite stamp papers filed were also taken on record by order dated 24.09.1991. Thereafter, vide order dated 08.10.1991 the Superintendent of this Court was appointed as Local Commissioner for execution

of the sale deed which was executed and registered on 22.10.1991..

17. In the present case, it is not disputed that in view of decree passed by the court, the sale deed was registered on 22.10.1991. The suit was not restored by the Court, as the application filed by the judgment-debtors also Ex. P. No.286/2011 Page No.11 of 23 stood dismissed on 07.07.1999. The appeal was also dismissed on 16.08.2011. The present execution has been filed in October, 2011, i.e., about two months later. It is also not in dispute that the Division Bench on 30.04.2001, while admitting the appeal, passed the interim order directing the judgment debtors not to transfer, alienate, part with or create any third party interest in the property in question during the pendency of the appeal. Not only that, on 07.10.2010 further interim order was passed in the appeal to the effect that no further construction would take place. Therefore, in case both the interim orders are read together, it is clear that the judgment-debtors were precluded to part with possession of the suit property otherwise it would have been breached of the order passed by the Division Bench. Similarly, by the said orders, the decree-holder was impliedly asked not to receive the possession..

18. In the case referred by Mr. Ahuja, the facts are different i.e. the suit was filed for declaration of title and recovery of possession. There was no stay at any stage, granted by the court and the execution was filed after the expiry of twelve years. But in the present case, the Appeal Court has passed the specific order not to part with the possession of the suit property. Further, in the present case, in terms of decree, the sale deed was already registered in the name of decree holder in the year 1991 and next steps was merely to hand over the possession of the suit property which could not be parted with because of interim orders. Thus, the period, in which the interim orders were operated against the parties, is to be excluded for the purpose of limitation. It is also the admitted position that after the Ex. P. No.286/2011 Page No.12 of 23 dismissal of appeal filed by the judgment-debtors, who failed to handover the possession of the suit property in terms of agreement, the decree-holder was within her right to file the present execution for the purpose of remaining in compliance. The objection now raised about limitation is misconceived and is not tenable to the facts of the present case, as it was an obligation on the part of the judgment-debtors to deliver the possession in terms of

agreement, in consonance with the provisions of Section 55(1) of the Transfer of Property Act, 1882 which mandates that the seller to give, on being so required, to the buyer, the possession of the suit property as its nature admits. The entire scheme is that it has to be done in order to avoid multiplicity of proceedings and such duty is to be performed by the party who is also a party to the agreement, meaning thereby it would be implied..

19. Since, after the dismissal of the appeal, the judgment-debtors did not come forward to handover the possession, the decree-holder is entitled to recover the same by filing of execution proceedings. Thus, the decision referred by the judgment-debtors does not help the case of objector, as the facts of the present case are materially different..

20. Now, coming to the last submission of Mr. Ahuja that the relief sought by the decree holder for possession cannot be granted mainly on two reasons, namely, (a) the plaintiff/decreed holder in her plaint did not ask for such relief; and (b) same has been claimed after the long gap of 20 years and even amendment sought by the decree-holder in the execution proceedings cannot be allowed..

21. Admittedly, in the present case, when the suit for specific performance was filed in the year 1988, no relief for possession asked for. Ex. P. No.286/2011 Page No.13 of 23 A decree for specific performance of the agreement was passed against the judgment debtors on 15.11.1991. The sale deed was registered on 22.11.1991 in favour of the decree holder..

22. It is settled law that an Executing Court cannot go behind the decree nor can it question its legality or correctness. But, there is one exception to this rule that where the decree sought to be executed is null and void for lack of inherent jurisdiction in the court passing it, its invalidity can be set up in an execution proceedings. In the present case, there is no such position to the effect that the decree was passed for lack of inherent jurisdiction..

23. It is also well established law that it may not always be necessary for the plaintiff to specifically claim possession over the property. The relief of possession is inherent in the relief for specific performance of the contract of sale..

24. The proviso to sub section (2) provides for amendment of the plaint on such terms, as may, for including a claim for such relief at "Any stage of the proceedings." The word "proceedings" in Section 22 includes execution proceedings, meaning thereby, any stage in litigation which can have various stages. Thus, the Court executing the decree is competent to deliver the possession. On 01.03.1964, the Specific Relief Act of 1963 came into force and the Act was amended by enacting Section 22 which makes it mandate for the plaintiff to ask for the relief of possession in suit for specific performance. In fact, the said provision was enacted in order to avoid multiplicity of proceedings so that the party may claim a decree for possession in a suit for specific performance. However, despite of that the proviso to Section 22 provides power to a court to allow the Ex. P. No.286/2011 Page No.14 of 23 amendment of plaint "at any stage of the proceedings" on such term as may be just for including a claim for possession where the plaintiff did not claim such relief in its original plaint..

25. This Court in the case of M/s. Ex-service-men Enterprises (P) Ltd. vs. Sumey Singh, reported in AIR 1976 Delhi 56 while relying upon the judgment of the Allahabad High Court in Rameshwar Nath vs. U.P. Union Bank, reported in AIR 1956 All 586, has held as under:- ".....the word "proceeding" is a very comprehensive term meaning generally a prescribed course of action for enforcing a legal right and the expression "at any stage" in its literal and actual meaning means without limitation either in frequency or duration or length of time."

26. Now the question before this Court is as to whether the decree-holder asked to amend the plaint or the decree already granted in favour of decree-holder would imply the decree of delivery of possession also in view of fact that it would flow from the relief relating to execution of sale deed. In the present case, admittedly the sale deed has already executed in favour of the decree-holder after passing the decree..

27. The similar question has arisen in various cases which are referred as under :
(a) AIR 1987 Rajasthan 117 by Sh. K.S. Lodha, J., in the case of Hemchand vs. Karilal, the relevant paras of which read as under:- "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 Ex. P. No.286/2011 Page No.15 of 23 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 Ex. P. No.286/2011 Page No.16 of 23 specific performance of the contract of sale simplicitor 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 Ex. P. No.286/2011 Page No.17 of 23 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." (b) AIR 2007 Andhra Pradesh 35 by Sh. P.S. Narayana, J., in the case of Smt. Suluguru Vijaya and Ors. vs. Pulumati Manjula, the relevant paras of which read as under:- "9.In S.S. Rajabathar v. N.A. Sayeed, AIR 1974 Madras 289 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, AIR 1948 Nag 406 was dissented from. In Mahender Nath Gupta v. Moti Ram Ex. P. No.286/2011 Page No.18 of 23 Rattan Chand and Anr., AIR 1975 Delhi 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 Allahabad 643, AIR 1952 Calcutta 362, AIR 1950 Allahabad 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, AIR 1985 Bombay.

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*, AIR 1987 Rajasthan 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.*, 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. Ex. P. No.286/2011 Page No.19 of 23 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." (c) The Supreme Court in the case of *Babu Lal vs. Hazari Lal Kishori Lal*, reported in (1982) 1 SCC 525 made the following observations: "Specific Relief Act, 1963 (47 of 1963) - Section 22 - In appropriate cases of specific performance of contract of sale of immovable property, held, court competent to order delivery of possession of the property, even if not specifically asked for, by allowing suitable amendment in the plaint Order for delivery of possession without corresponding amendment in the plaint would be a mere omission, not fatal to the relief of possession, especially when the order made in furtherance of cause of justice and in view of applicability of Section 28(3) Expressions "in an appropriate case" in Section 22(1) and "at any stage of the

proceeding" in proviso to Section 22(2). 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. In a case where exclusive possession is with the contracting party, a decree for specific performance of the contract of sale simplicitor, without specifically providing for delivery of possession, may give complete relief to the decree-holder in order to satisfy the decree 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..

21. If once we accept the legal position that neither a contract for sale nor a decree passed on that basis for specific performance of the contract gives any right or title to the decree-holder and the right and the title passes to him only on Ex. P. No.286/2011 Page No.20 of 23 the execution of the deed of sale either by the judgment-debtor himself or by the court itself in case he fails to execute the sale deed, it is idle to contend that a valuable right had accrued to the petitioner merely because a decree has been passed for the specific performance of the contract. The limitation would start against the decree-holders only after they had obtained a sale in respect of the disputed property. It is, therefore, difficult to accept that a valuable right had accrued to the judgment-debtor by lapse of time. Section 22 has been enacted only for the purpose of avoiding multiplicity of proceedings which the law courts always abhor..

23. 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-holder to file a separate suit for possession. The objection of the petitioner is hyper-technical. The Executing 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-holder of the benefits of the decree when Section 55 of the Transfer of Property Act authorizes the transferee to get possession in pursuance of a sale deed."

28. After having considered the abovementioned judgments, it is very clear that the grant of relief for delivery of possession is just a formality and even though, no specific prayer is made in the plaint and even the decree is silent about the delivery of possession, the Executing Court is empowered and bound to grant such relief. If I go through the judgments referred above, it is not even necessary to amend the plaint, as it is the admitted position in the present case that the sale deed in terms of the decree has already been executed in favour of the decree-holder and there is no involvement of the third party regarding the possession. This fact has not Ex. P. No.286/2011 Page No.21 of 23 been controverted by the judgment-debtors in the pleadings also as status- quo orders passed by this Court till the disposal of the appeal. Thus, it is clear that the possession was with the judgment-debtors. Therefore, the facts of the cases directly apply to the facts and circumstances of the present case. However, since the objection is raised by the judgment- debtors and the decree-holder has also sought amendment of the plaint for including the relief for possession of the property in question, coupled with the fact that a conflicting view has been taken by the Courts in some of the cases and the proviso to sub-section (2) of Section 22 of the Specific Relief Act, 1963 allows the plaintiff who has not claimed any such relief provided by Clauses (a) or (b) of sub-section (1) of Section 22 to amend the plaint for including a claim for recovery of possession. The amendment, under these circumstances, can be allowed at any stage of proceedings including the execution proceedings..

29. Under these circumstances, the prayer made by the decree-holder for amendment of the plaint has to be granted, even though such amendment was not necessary. Ordered accordingly and consequent thereto, the decree is also amended..

30. Under Order VII, Rule 7 of CPC, it is provided that it shall not be necessary to ask for general or other relief which may always be given as the court may think just to the same extent as if it had been asked for. It is settled law that relief to be provided by the court is to be based on the pleadings of the plaintiff. Ex. P. No.286/2011 Page No.22 of 23.

31. This Court is of the considered view that the relief of possession is ancillary and it springs out and is comprised in the relief to that for the specific performance of the contract to sell..

32. In view of the reasons stated earlier, there is no impediment for the Court to grant the relief claimed in the execution proceedings. The judgment-debtors are, however, entitled to receive the balance sale consideration which has been deposited by the decree-holder with this Court. As it is now incumbent upon the judgment-debtors to put the decree-holder in possession of the suit property in view of the amendment in the plaint and the decree which include the relief of possession also..

33. Hence, it is directed that the warrants of possession qua the immovable property, i.e. land comprising in Mustatil No.90, Killa No.11/2, Mustatil No.91, Killa Nos.7/1, 7/2, 14, 17, 15/2 and 16, total admeasuring 17 Bighas and 4 Biswas, situated within the revenue estate of Village Dera Mandi, Delhi, be issued for grant of peaceful and vacant possession thereof to the decree-holder through Bailiff to be appointed by the concerned Court. The Bailiff is also authorized to take the police assistance if necessary to ensure the compliance of the direction. The decree holder would take necessary steps by filing of process fee and to deposit other requisite charges. The execution petition is accordingly disposed of.

MANMOHAN SINGH, J. FEBRUARY 02, 2012/ka Ex. P. No.286/2011 Page No.23
of 23