

**ALLAHABAD HIGH COURT**

Balmukand

Vs.

Veer Chand

Execution First Appeal of 1954

(Malik, C.J. and Mukerji, J.)

06.02.1954. 12.02.1954

**JUDGMENT**

Malik, C. J.

1. This is a judgment-debtor's appeal. The plaintiff filed a suit for specific performance of a contract and the suit was decreed. Learned counsel has stated that the plaintiff had also asked for delivery of possession of the property but no mention was made in the decree about delivery of possession. The terms of the decree were as follows :

"The plaintiff's suit for specific performance of the contract of sale dated 12-1-1948 is decreed against the defendants and the defendants 1 to 5 are ordered to execute a sale deed of the property in dispute in favor of the plaintiff on payment of....."

It is urged by learned counsel that the plaintiff having claimed possession and possession not having been specifically granted in the decree, it must be deemed that the relief for possession was refused and the plaintiff cannot, therefore, claim delivery of possession.

2. We do not think there is any force in this contention. Section 55(1)(f) of the Transfer of Property Act, 1882 provides that

"The seller is bound  
(f) to give, on being so required, the buyer or such person as he directs such possession of the property as its nature admits;"

The decree for specific performance, which, provides that the property shall be sold to the plaintiff by the defendants and the sale deed shall be executed within a certain time, failing which the court will have the sale deed executed by a person nominated by it, implies that delivery of possession shall be given in accordance with the provisions of Section 55(1)(f), Transfer of

Property Act. Delivery of possession is a necessary ingredient and part of transfer of ownership.

3. Learned counsel has relied on the provisions of Order 21, Rule 32(5), Civil Procedure Code which are as follows :

"Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the Court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree-holder or some other person appointed by the Court, at the cost of the judgment-debtor and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree."

We fail to see how these provisions help the judgment-debtor appellant. The sub-rule quoted above provides what the executing court can do when there is a decree for specific performance and where it is necessary for something to be done by the decree-holder at the cost of the judgment-debtor.

4. In - '*Arjun Singh v. Sahu Maharaj Narain*<sup>1</sup>', a Bench of this Court held that :

"Where in a suit for specific performance of a contract of sale no relief for possession is claimed and consequently the decree passed in the suit contains no relief for delivery of possession, the Court executing the decree is competent to deliver possession, an order directing delivery of possession being merely incidental to the execution of the deed of sale."

Learned counsel has urged the case is distinguishable as in that case relief for possession was not claimed, but in the case before us relief for possession was claimed, but no mention of it was made in the decree. We do not think that it is necessary in a suit for specific performance either to separately claim possession or it is necessary for the Court to pass a decree for possession. A decree for specific performance of contract includes everything incidental to be done by one party or another to complete the sale transaction, the rights and obligations of the parties in such a matter being indicated by Section 55, Transfer of Property Act.

5. There is, therefore, no force in this appeal and it is dismissed under Order 41, Rule 11, Civil Procedure Code

Appeal dismissed.

<sup>1</sup> AIR 1950 All 415