

CALCUTTA HIGH COURT

Kartik Chandra Pal

Vs.

Dibakar Bhattacharjee

A.F.O.O. No. 119 of 1948

(R.P. Mookerjee and J.P. Mitter, JJ.)

24.02.1949

JUDGMENT

R.P. Mookerjee, J.

1. This is an appeal on behalf of the J. D. against an order passed by the Additional Subordinate Judge, Burdwan dismissing an objection filed under Section 47, Civil Procedure Code.
2. The Plaintiff-respondent had brought a suit for specific performance of a contract against the Defendant. The suit was decreed on 21-2-1948 in the following terms : Claim for

"Properties mentioned in the Schedule below belonged to one Raman Dhara and Defendant became owners of the same after the death of said Raman Dhara. Defts on different dates took Rs. 600 as earnest money from the Plaintiff and executed a bainanama in favor of the Plaintiff and promised to sell those properties to Plaintiff by executing and registering a sale deed. A deed of sale was drafted on proper stamps on the advice of the deft. 1. But as Defendant subsequently refused to execute and register the said deed, Plaintiff's claims are for a decree of specific performance of contract in respect of the said deed against the deft. and on deft. failing to execute and register the deed within the same limit prescribed by the Court to have the deed executed and registered by the Court and to have costs of this suit from the Defendant and if claim of specific performance of contract be refused to the Court then to have the amount of money paid by the Defendant with interest. Claims valued for Rs. 9024 Rupees nine thousand twenty four only.

(Schedule omitted)

This suit coming on this day for final disposal before Sreejot Jyotindra Mohan Bir Sub-Judge in the presence of Babu Haradas Banerjee, pleader for Plaintiff and of Babu Darga Pada Choudhury pleader for the deft. It is ordered and decreed that the suit be decreed on contest with costs. Deft. do execute and register the sale deed Ex. 3 within one month from today upon plff's. depositing

in Court, the sum of Rs. 2998.1 less costs of the present suit awarded in plff's favor in defense the Plaintiff may have valid and proper kobala through Court and that the sum of Rs. 1071 4-9 paid by the deft. to the Plaintiff on account of the costs of this suit."

3. After the decree had been passed, a joint application was filed on behalf of the Plaintiff and deft. 1 (deft. 2 having died in the meantime leaving deft. 1 as the sole legal representative) stating inter alia that the deft. intended to have the document registered 4 that he "amicably gives up khas possession from this day to the properties sold out" and the Plaintiff also

"amicably paid to the deft. the balance of the consideration money getting the kobala duly executed and registered in respect of property included in Ex. 3 and getting khas possession this day of the property sold."

The pRayer was in the following terms:

"It is accordingly prayed that in the aforesaid circumstances a proper order may be passed directing due execution and registration of the said deed on the deft.'s acknowledging receipt of the balance of the consideration money and for granting khas possession to the Plaintiff"

The document was accordingly returned on a joint receipt by the lawyers of both the parties.

4. On 10-8-1948 the D. H. filed an application in execution of the decree aforesaid with a pRayer for khas possession of the properties mentioned in the schedule by evicting the J. D. therefrom under Order 21, Rule 32, Civil Procedure Code. The J.-D. filed an objection under Section 47 of the Code raising various points in opposition. We need refer only to those which are relevant for the present appeal. They are : (1) That after the execution of the document in terms of the decree there is nothing further which can be put into execution. (2) That even if the D. H. was entitled to pRay for delivery of khas possession in execution of the decree he is not entitled to do so in as much as the D.-H. had admitted in the joint petition filed in Court on 21-2-1948 that possession had been delivered on that day.

5. The learned Subordinate Judge overruled the objections raised and directed the execution to proceed.

6. On behalf of the appellant the contentions as made in the Court below are reiterated.

7. Before we consider the terms of the decree which is under execution, it is necessary to consider the scope and function of a suit for specific performance. It is incontestable that in a suit for specific performance of contract for the sale of land it is open to the Plaintiff to join in the same suit two pRayers, one for the execution of the deed of transfer and another for recovery of possession of the land in question. *Ranjit Singh v. Kalidasi Devi*¹, Mookerjee, J., in *Madanmohan Singh v. Gaja Prasad Singh*², repelled the argument that the Plaintiff in a suit for specific performance has no cause of action for delivery of

¹37 Cal 57

²14 CLJ 159

possession until the conveyance is actually executed in his favor and the title is completed. It was also held that the right to recover possession springs out of the contract which is being specifically enforced and not on the narrower view expressed in some of the cases that it was only as a result of the execution and completion of the conveyance that such a right arises. The same view was expressed by the Patna High Court in *Deonandan Prasad v. Janki Singh*³,

"In a suit for specific performance of a contract for the sale of land it is open to the Plaintiff to join with his pRayer for specific performance a claim for delivery unless the contract expressly disentitles him to such relief."

In a more recent decision *Atal Behary v. Barada Prasad*⁴, the Patna High Court has reiterated the same view and has held that even when in an order for the execution of the necessary document the Court makes no specific direction for possession being delivered, yet the executing Court has a right to order delivery of possession of the property which is the subject matter of the suit. Some of the Courts have gone so far as to hold that if the Plaintiff in a suit for specific performance omits to ask for delivery of possession he might be barred under the provisions of Order 2, Rule 2, Civil Procedure Code *Deonandan Prasad v. Janki Singh* (Supra); *Narayana KaviRayan v. Kandasami*⁵, *Nathu v. Budhu*⁶, We do not overlook the contrary view expressed in a later case by the Madras High Court in *Krishnammal v. Soundararaja Aiyar*⁷, but in a more recent case reported in *Sundara Ramanujam Naidu v. Sivalingam Pillai*⁸, this view was not followed and dissented from. It was also pointed out that if the learned Judges in the case reported in *Krishnammal v. Soundararaja Aiyar*⁹, intended to dissent from the earlier view there should have been a reference to a larger Bench and that decision was not taken to represent the view of the Madras High Court.

8. On a reference to the plaint in the present case, it is evident that the entire case was based on the agreement evidenced by Ex. 3. The pRayer was for specific performance of the contract as contained in that document. On a reference to the decree passed in the present case also it will appear that the opening words of the ordering portion of the decree are in the following terms : "It is ordered and decreed that the suit be decreed on contest with cost." No doubt there are further directions given as to the due execution of the document as also for the payment of the balance of the consideration money. As observed by Rankin, C.J., in the case of *Heramba Chandra v. Jyotish Chandra*¹⁰, the usual form of a decree in a suit for specific performance is that; the agreement is referred to be specifically performed and carried into execution with a further provision about the details of the steps to be taken by the parties. The most important part of the decree is that portion where the Court directs the contract to be specifically performed. The details which follow do not in any way limit the jurisdiction of the executing Court to the particular steps which are mentioned in the decree but all such other steps which ought to be taken for giving full effect to the decree for specific performance are not only within the competence of the Court but the Court is bound to assist the party to that extent. Rankin, C.J., quotes with approval the observation by Sergeant, C.J., in *Karim Mahomed v. Rajooma*¹¹, where a decree was allowed to be amended to be put in the proper and usual form so as to declare "that the agreement ought to be specifically

³ Pat LJ 314

⁵22 Mad 24

⁷38 Mad 698

⁹38 Mad 698

⁴ AIR 1931 Pat 179

⁶18 Bom 537

⁸47 Mad 150

¹⁰59 Cal 501

¹¹12 Bom 174

performed and the Court doth order and decree that the same be specifically performed accordingly," for the purpose of avoiding any doubt as to its scope and implication.

9. When the decree in the present case is in the general form that the suit be decreed on contest reference has to be made to the plaint along with the agreement, Ex. 8. There is no doubt that the declaration made by the trial Judge was for the purpose of giving all the reliefs which the party required for giving effect to the agreement.

10. We ought to remember in this connection that no special form of decree in a suit for specific performance is supplied by the Civil Procedure Code. Chap. II, Specific Relief Act, deals with the various circumstances under which a contract may be enforced specifically and where it cannot be so allowed. When a contract is to be specifically enforced, it means simply this that when the parties do not agree to perform the contract mutually the intervention of the Court is required and the Court will do all such things as the parties would have been bound to do had this been done without the intervention of the Court. A sale of a property after payment of the consideration and upon due execution of the deed of sale pre-supposes and requires the vendor to put the purchaser in possession of the property. It cannot be suggested that when a party comes to Court for the specific performance of a contract he is to be satisfied with simply the execution of the document on payment of the consideration money. The Court when allowing the prayer for specific performance vests the executing Court with all the powers which are required to give full effect to the decree for specific performance. By the decree for specific performance, the Court sets out what it finds to be the real contract between the parties and declares that such a contract exists and it is for the executing Court to do the rest.

11. It may be noticed further that a decree in a suit for specific performance has been considered to be somewhat in the nature of preliminary decree which cannot set out in the fullest detail all the different steps which are required to be taken to implement the main portion of the order directing specific performance of the contract. The executing Court is in such a case vested with authority to issue necessary directions.

12. In our view, therefore, the directions given by the trial Court for putting the D. H. in possession is correct and must be maintained unless of course the next point taken on behalf of the judgment-debtor is sustainable.

13. As already indicated, the J. D. relies upon the passages already quoted in the joint petition filed on behalf of the Plaintiff and the deft. on 21-2-1948. The interpretation which Mr. Mukherji wants to put on this petition if given effect to would introduce clear contradictions between the body of the petition and the prayer as made. We have gone through the original petition in Bengali and have no doubt that what the parties recited in the body of the petition was not what has already been done but what was purported to be done by the parties. The parties clearly stated that they wanted directions from the Court on the points referred to therein including the prayer for delivery of possession. That this was the real intent of the parties is clear from the last portion of the prayer where both the parties pray for delivery of possession to the Plaintiff under the orders of the Court. This point must therefore be overruled.

14. The appeal is accordingly dismissed with costs.

J. P. Mitter, J.

15. I agree.

Appeal dismissed.