

DELHI HIGH COURT

Mahender Nath

Vs.

Moti Ram Rattan Chand (Delhi)

Ex. Second Appeal No. 4 of 1973.

(Avadh Behari Rohtagi, J.)

26.3.1975

JUDGMENT

Avadh Behari Rohtagi, J.

1. These are three execution appeals against the order of the Additional District Judge Delhi. The facts in all the cases are similar. I will first take Execution Second Appeal No. 4 of 1973.

2. Mohinder Nath, appellant, instituted a suit for specific performance against M/s. Moti Ram Rattan Chand, respondents, for specific performance. This suit was instituted in June, 1963, in the court of the Subordinate Judge, Delhi He decreed the suit on August 31, 1968. A decree for specific performance was passed in favour of the appellant.

3. The appellant made an application for execution of the decree. He prayed for the delivery of possession of the plot of land which he had agreed to buy from the respondents. The respondents made an application under Section 47 of the Civil Procedure Code to the executing court. Their sole objection was that the appellant was not entitled to get possession of the property as no such relief was granted to him by the Court and as none was asked for in the plaint in the suit. The executing court upheld the objection and dismissed the prayer of the appellant for delivery of possession.

4. The appellant appealed to the District Court. His appeal was dismissed by the Additional District Judge on August 24, 1972. The appellant now appeals to this Court.

5. The suit was filed in June, 1963. It was decided on August 31, 1968. as I have said. During the pendency of the suit the new Specific Relief Act (Act 47 of 1963) came into force. On March 1, 1964, it was brought into force.

6. Section 22 of the new Act provides:

"22. (1) notwithstanding anything to the contrary contained in the Civil Procedure Code, 1908 any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for-

(a) Possession, or partition and separate possession of the property, in addition to such performance; or

(b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or made by him, in case his claim for specific performance is refused.

(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed:

Provided that where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

(3) The power of the court to grant relief under clause (b) of sub-section (1) shall be without prejudice to its powers to award compensation under Section 21."

7. This section makes it incumbent on a plaintiff to ask for possession of the property in addition to specific performance. Sub-section (2) provides that if in a suit for specific performance the plaintiff has omitted to ask for possession of the property in addition to specific performance no relief shall be granted by the court unless it has been specifically claimed. The effect of the section is that in a suit for specific performance prayer for possession must be distinctly and specifically made.

8. The courts below took the view that Section 22 applied to the suit of the appellant. He should have asked for the relief of possession and should have amended his plaint so as to bring it in line with the new section, they said.

9. Reference was also made to Section 44 of the new Act of 1963 which reads:

"The Specific Relief Act, 1877, is hereby repealed."

10. On the basis of this section the courts below held that the legislature intended that the proceedings in the pending suits should also be governed by the new Act and not by the old Act.

11. When the appellant brought the suit in June, 1963, the Act in force was the Specific Relief Act of 1877 (Act 1 of 1877). He instituted the suit under that Act. He claimed only a decree for specific performance. He did not specifically ask for the relief of possession. The reason for this was simple. Under the old Act the High Courts had held that it was not necessary for a plaintiff to ask for the relief of possession separately and specifically. Such a relief was comprehended in the decree for specific performance. The claim to possession was involved in the claim to specific performance, the courts held. It was laid down in decided cases that possession can be asked for in execution of a decree for specific performance even though possession was not claimed in the plaint on the ground that the relief of possession is merely incident to that of execution of a deed of conveyance: See *Arjun Singh v. Sanu Maharaj Narain*,¹ and *Kartik Chandra v. Dibakar Bhattacharjee*,²

12. *Pt. Balmukand v. Veer Chand*,³ may be taken as fairly representative of the views which prevailed before the enactment of the new Act in 1963. A Division Bench held that where in a suit for specific performance of a contract for sale relief for possession is not claimed and consequently the decree passed in the suit contains no relief of 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.

13. In that case the plaintiff filed a suit for specific performance of a contract and the suit was decreed. The plaintiff had also asked for delivery of possession of the property, but no mention was made in the decree about the delivery of possession. The judgment-debtor contended 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 could not claim delivery of possession.

14. The Division Bench rejected the argument and said:

"We do not think there is any force in this contention. Section 55 (1) (f) of the Transfer of Property Act of 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 defendant 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) T. P. Act. Delivery of possession is a necessary ingredient and part of transfer of ownership."

The learned Judges continued:

"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. T. P. Act."

15. The appellant, therefore, thought that according to the prevailing view of the law then it was enough for him to ask for a decree of specific performance. So he brought the suit in that form.

16. On March 1, 1964, Specific Relief Act of 1963 came into force. This Act altered the law by enacting Section 22. It made it necessary for a plaintiff to ask specifically the relief of possession in suits for specific performance.

17. Both the courts have held that it is the new Act which applied to the appellant and it was necessary for him to amend his plaint so as to claim the relief of possession. Since the appellant did not amend the plaint and did not ask for possession the court at the time of passing the decree did not give him the relief of possession. Since the decree did not give him that relief the courts thought that they were powerless to put the appellant in possession of the property though he had a decree for specific performance in his favor. Therefore this decree became valueless to the appellants to all intents and purposes.

18. In my view, the courts have not taken the correct view. Section 22 is a new section in the Act of 1963. There was no corresponding or analogous provision in the old Act. The new Section 22, therefore, will apply only to suits which are instituted after the commencement of the new Act, that is, on or after March 1, 1964. I think this section does not apply to pending suits.

19. It is true that Section 44 of the new Act repealed the Specific Relief Act of 1877. What is the effect of that repeal? That is precisely the question to be determined in this case.

20. Section 6 of the General Clauses Act says:

"6. Effect of repeal. - Where this Act or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made. then, unless a different intention appears, the repeal shall not-

(a) Revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered there under; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) Affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

And any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

21. Under Section 6 the repeal of an enactment does not *prima facie* affect pending actions which are to be decided as if the repealed enactment was still in force. This is the general rule: See *Adarsh Bhandar v. Sales Tax Officer*.⁴

22. But when the repeal is followed by fresh legislation on the same subject the

court would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention.

23. The line of inquiry would be, not whether the new Act expressly keeps alive old rights and liabilities, but whether it manifests an intention to destroy them. I cannot, therefore, subscribe to the broad proposition that Section 6 of the General Clauses Act is ruled out when there is repeal of an enactment followed by a fresh legislation. Section 6 would be applicable in such cases also unless the new legislation manifests an intention incompatible with or contrary to the provisions of the section. Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new law and the mere absence of a saving clause is by itself not material: See *State of Punjab v. Mohar Singh*,⁵

24. As the Supreme Court said in the case of (AIR 1955 Supreme Court 84) (Supra).

"Whenever there is a repeal of an enactment, the consequences laid down in Section 6 of the General Clauses Act will follow unless, as the section itself says, a different intention appears. In the case of a simple repeal there is scarcely any room for expression of a contrary opinion."

25. Here in the new Act we have Section 44. This is a simple repeal. There is no saving clause (Section 3 of the Act of 1963 though deals with "savings" contains no reference to the old Act of 1877). The repeal is followed by fresh legislation on the same subject. But there is nothing in the new Act to show an intention of the legislature to destroy the old rights and liabilities of the party which accrued under the old Act. The repeal of the old Specific Relief Act will not affect any right, liability acquired or incurred under the repealed enactment or any legal proceedings or remedy in respect of such right or liability etc., and such legal proceeding or remedy may be continued as if the repealing Act has not been passed: See *G. Ekambarappa v. Excess Profits Tax Officer*,⁶

26. It is a settled principle of law that the rights of the parties to an action are to be governed by the law in force when the action was commenced that a change in the law would not affect pending actions unless there is a clear provision to that effect in the new enactment.

27. In general when the substantive law is altered during the pendency of an

action the rights of the parties are decided according to the law as it existed when the action was begun, unless the new statute shows a clear intention to vary such rights (Maxwell - Interpretation of Statutes 12th Edition, page 220). The rights of the litigants are generally to be determined according to the law in force at the date of the suit. If an alteration in the law occurs pending action the rights of the parties are to be decided by the law and equity existing when the action was begun.

28. In my opinion Section 22 did not apply to the appellant's suit. He was not bound to amend the plaint. The old law did not require him to do so. The new law does not apply to him.

29. A reading of Section 22 also shows that this section applies to those persons who sue for specific performance of a contract for the transfer of immovable property after the coming into force of the new Act. The opening part of the section says "any person suing for specific performance of a contract". This shows that the legislature wants this provision to apply to those who instituted suits for specific performance after the new Act came into force. There is nothing in this section or in any other part of the Act to evince an intention on the part of the legislature that pending suits be also governed by the new section. I think the section contains clear words which show that the legislature has no intention that the Act should operate on pending proceedings.

30. The first appellate court was of opinion that the Specific Relief Act, 1963 merely deals with procedure and does not affect substantive rights of the parties. Therefore, it applied to pending actions as well as to future actions. I cannot, I am afraid, share this view.

31. 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 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: See the Ninth Report of the Law Commission page 35.

32. Now this section modifying or amending existing rules of pleading was enacted when the appellant's action was pending in court. In such a case the statute should, unless it clearly appears to be intended otherwise, be held inapplicable: (See Crawford Statutory Construction, page 588).

33. It is true that as a general rule the law relating to procedure operates retrospectively. No one has a vested right in the course of procedure. But there is another equally important principle, viz., that a statute should not be so construed as to create new disabilities or obligations or impose new duties in respect of transactions which were complete at the time the amending or the new Act came into force: See *In re a Debtor x In re Vernazza*,⁷ and *N. G. Mitra v. State of Bihar*,⁸ The same principle is embodied in Section 6 of the General Clauses Act.

34. Here it is well to remember the advice of Lord Reid:

"The canons of construction are not so rigid as to prevent a realistic solution."

(*Connaught Fur Trimmings Ltd. v. Cramas Properties Ltd.*, 35. I now turn to the other two appeals. In execution second appeals 1 of 1973 and 3 of 1973 the appellants similarly brought suits for specific performance. The respondents raised the same objection. The respondents are same in all the three cases. Moti Ram Rattan Chand had agreed to sell three separate plots of land to these three appellants. The respondents' application under Section 47 was substantially the same in other cases as in execution case No. 4 of 1973. In these two cases also the respondents succeeded in the two courts. Now the appellants succeed. This judgment will govern all the three execution second appeals.

36. In the result the appeals are allowed. The orders of the courts below are set aside. Since there is no representation on behalf of the respondents in this court there will be no order as to costs.

Appeals allowed.

Cases Referred.

1. AIR 1950 Allahabad 415
2. AIR 1952 Calcutta 362.
3. AIR 1954 Allahabad 643

4. AIR 1957 Allahabad 475 (FB)
5. AIR 1955 Supreme Court 84.
6. AIR 1967 Supreme Court 1541.
7. 1936 Ch 237, 1960 AC 965
8. AIR 1970 Supreme Court 1636 (1639).
9. (1965) 1 WLR 892 (899)).