

DELHI HIGH COURT

Ex-Servicemen Enterprises

Vs.

Sumey Singh, (Delhi)

Suit No. 37 of 1971.

(Avadh Behari Rohatgi, J.)

23.5.1975

ORDER

Avadh Behari Rohatgi, J.

1. The facts of this case need not be recounted in detail. They are fully set out in my order dated September 30, 1974, made on I. A. 1706 of 1974. They are also set out in the order of the appellate Bench dated October 17, 1974, which heard the appeal against my order.
2. On January 18, 1971, the plaintiff brought a suit for specific performance against the defendant. Specific performance was sought in respect of agricultural land measuring 48 bighas and 10 biswas owned by the defendant in village Khampur Sub-Tehsil Mehrauli. The defendant had agreed to sell the land to the plaintiff. As he did not convey the property the plaintiff brought the suit.
3. On November 1, 1973, before I.P.S. Chowla, J. the parties reached a compromise. The terms were reduced to writing. The suit was decreed in terms of the compromise.
4. The term of the compromise was that the plaintiff will pay Rupees 50,000 over the original agreed price of Rs. 66,100 which he had already paid to the defendant. The total consideration for the property was, therefore, now agreed at Rs. 1,16,100.
5. In terms of the compromise the plaintiff has deposited Rs. 50,000 in the Reserve Bank of India. But the defendant not delivers possession of the land

agreed to be sold. His principal objection is that there was no claim for possession in the plaint and there is no decree for possession against him. He cannot be asked to deliver possession, it is said.

6. In the original plaint the plaintiff claimed that:

"a decree directing the sale of the land in his favor be passed against the defendant... "

Chawla, J. recorded the statements of the parties. Both of them agreed that a decree may be passed in favor of the plaintiff against the defendant. The only essential term of the compromise was, as I have said, that the consideration was Rs. 1,16,100 instead of Rs. 66,100. Chawla, J. decreed the suit on November 1, 1973, in terms of the compromise.

7. The plaintiff has now moved an application for the amendment of the original plaint. The following paragraph is sought to be added:

"The plaintiff be also granted a decree for possession of the suit land and the possession of the same be delivered to him."

Since the relief of possession was not included in the original plaint this is now sought to be added by way of amendment.

8. The defendant opposes this application. His objection mainly is this. An application for the amendment of the plaint after the passing of the decree is not maintainable. The court after the passing of the decree has become functus officio. At the stage of the execution proceedings the plaint cannot be amended. Secondly, since consent decree by way of compromise was passed in the suit the court cannot allow the relief of possession now to the plaintiff as there is no term in the compromise under which the plaintiff can claim the relief of possession,

9. The court certainly is faced with an extraordinary situation. A decree for specific performance has been passed in terms of the prayer in the plaint. There is no decree for possession. The plaintiff seeks possession of the land agreed to be purchased. He cannot have it as the decree is silent on the matter of possession. After the passing of the decree the amendment of the plaint is sought. Has the court power to allow the amendment? That is the sole question.

10. Section 22 of the Specific Relief 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 plain 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."

11. 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 the 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.

12. On March 1, 1964, the Specific Relief Act, 1963 (47 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

13. Prior to the Act of 1963 the Act in force was the Specific Relief Act of 1887 (Act No. 1 of 1887). Under the old Act it was not necessary for a plaintiff to ask for the relief of possession separately and specifically. It was enough for him to claim only a decree for specific Performance. Relief of possession was comprehended in the decree for specific performance. Under the old Act the

High Courts had held that the claim to possession was included in the claim to specific performance. Decided cases laid down 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 incidental to that of execution of a deed of conveyance: See *Arjun Singh v. Sahu Maharaj Narain*,¹ and *Kartik Chendra v. Dibakar Bhattacharjee*,²

14. *Pt. Balmukand v. Veer Chand*³ may be taken as fairly representative of the view which prevailed before the enactment of the new Act in 1963. There a Division Bench held that where in a suit for specific performance of a contract for sale no relief for possession is 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.

15. 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.

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 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) 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."

The 'plaintiff, therefore, when he filed the suit on January 18, 1971, was under the impression that the relief of possession was implicit in a claim for specific performance. This has led to all the difficulty. The plaintiff thought so. The defendant too must have thought likewise. The court too was under that impression, it seems. Nobody realized at the time of the passing of the decree that a separate prayer for possession has to be made in the plaint and a decree for possession is also to be passed. Without it the plaintiff will not be able to recover possession.

16. Section 22 is a new section in the Act of 1963. There was no corresponding or analogous provision in the old Act. Since the decree did not give the plaintiff the relief of possession, is the court now powerless to put him in possession of the property though he has a decree for specific performance in his favor? If possession is not delivered to the plaintiff the decree becomes valueless for him to all intents and purposes though he has paid Rs. 1,16,100 to the defendant.

17. 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.

18. In my opinion the proviso gives ample power to a court to allow the amendment of the plaint even at this stage. The proviso says that the amendment of the plaint can be allowed "at any stage of the proceedings" on

such terms as may be just for including a claim for possession where the plaintiff has not claimed such relief in his original plaint.

19. What then is the meaning of the expression "at any stage of the proceedings"? Admittedly a decree has been passed. Will these words cover cases where amendment is sought after the passing of the decree? This is the question to be answered.

20. The word "proceeding" is not defined in the Act. Shorter Oxford Dictionary defines it as "carrying on of an action at law; a legal action or process, any act done by authority of a court of law; any step taken in a cause by either party.

21. The term "proceeding" is a very comprehensive term and generally speaking means a prescribed course of action for enforcing a legal right. It is not a technical expression with a definite meaning attached to it, but one the ambit of whose meaning will be governed by the statute. It indicates a prescribed mode in which judicial business is conducted.

22. The word "proceeding" in Section 22 in my opinion includes execution proceedings also. Such a wide interpretation has been placed on this word by the courts in decided cases: See Companies Act 1913, Section 171 and *Rameshwar Nath v. U. P. Union Bank*,⁴ The expression "at any stage" in its literal and actual meaning means without limitation either in frequency or duration or length of time. It is not a restrictive expression. The general purpose and scope of a statute where this expression is used may show that the expression has not a limited or controlled meaning. It is a term giving the widest freedom to a court of law so that it may do justice to the parties in the case.

23. "At, any stage" will include execution. Execution is a stage in the legal proceedings. It is a step in the judicial process. It marks a stage in litigation. It is a step in the ladder. In the journey of litigation there are various stages. Execution is one of them. It registers a degree of advance towards the goal which the litigant has set out for himself.

24. Amendment for including the relief of possession can be allowed "on such terms as may be just". These words also point in the same direction. Justice was the dominant idea in the mind of the legislature at the time it was enacting the proviso. It knew, one would presume, of the difficulties which a litigant might face by omitting a relief to which he may be entitled and which the section says

he must ask for. The proviso says the court "shall" allow the amendment. The words are emphatic and imperative.

25. In the Duke of Buccleuch (1892) P 201, Fry L. J. rejected such an argument as has now been raised before me. He said:

"I base my decision upon the words 'at any stage of the proceedings'. It has been argued that the rules do not apply after final judgment. They apply, in my opinion, as long as anything remains to be done in the case."

I would myself adopt these words. I will say that the argument that a Judge cannot allow amendment after the passing of the decree is an argument against the very words of the section which says "at any stage". The proceedings are not yet over. So long as anything remains to be done in the case the power resides in the court. The court has granted a decree for specific performance. The plaintiff has done his part. He has paid Rs. 1,16,100. Now in execution he wants the possessions of the land. Courts are not powerless to give him the relief of possession. If plaintiff has to be amended so as to include the relief of possession this court I think has the power to allow amendment.

26. Counsel for the defendant says that the court has become *functus officio* after the judgment was signed by the Judge under Rule 3 of Order 20 of the Civil Procedure Code. I do not agree. The legislature has given to the court wide freedom by using the words "at any stage." Then it is said that it is a decree of compromise and, therefore, no amendment of the plaint should be allowed. I cannot accept this submission. This will mean injustice. The plaintiff will get nothing. Delivery of possession is a necessary ingredient and part of transfer of ownership. In fact this is what specific performance means. In the Act of 1877, Section 5 provided:

"Specific relief is given-

(a) by taking possession of certain property and delivering it to a claimant.

....."

27. The defendant himself knew that decree for specific performance will mean that he will have to hand over the possession of the land for the money he has received. Now he cannot take advantage of a technical flaw. Equity looks on that as done which ought to be done. The defendant himself stated before the

court in execution proceedings that he was prepared to hand over possession. As he did not deliver possession I appointed a receiver who has taken the possession of the land from him. That order was upheld in appeal. Now all that remains is the amendment of the plaint so that the provisions of Section 22 are fulfilled.

28. The counsel for the defendant has referred me to *The Tabernacle Permanent Building Society v. Johan Knight*⁵ and *In re Palmer and Co. and Hosken and Co.*, (1898) 1 QB 131, I do not think these authorities help him. In *Re Palmer and Co.* case it was held that where the proceedings are complete, for example when the award has been made in arbitration the power of the Judge is gone. With regard to these rulings it will be enough to say that the meaning of the expression such as "at any stage of the proceedings" is determined by the context in which it is used. Words cannot be read in isolation; their color and content are derived from their context.

29. It is said that rules of construction do not permit such a wide interpretation. Of rules of construction Lord Reid has said :

"They are not rules in the ordinary sense of having some binding force. They are our servants not our masters. They are aids to construction, presumptions or pointers. Not infrequently one 'rule' points in one direction, another in a different direction. In each case we must look at all relevant circumstances and decide as a matter of judgment what weight to attach to any particular rule." (*Maunsell v. Olins.*)⁶

30. On a consideration of all relevant circumstances my conclusion is this. The power of the Judge is not gone. It remains in him as an indwelling spirit. So long as anything remains to be done in the case he can exercise that power for the sake of justice. When the Judge finds that a verbal interpretation of the law might lead to injustice he recalls to mind as a, comforting thought the words of Paul of Tarsus: "the letter killeth, but the spirit gives life."

31. For these reasons I grant the application. I allow the amendment of the plaint on payment of Rs. 300 as costs.

Application allowed.

Cases Referred.

1. AIR 1950 Allahabad 415
2. AIR 1952 Calcutta 362.
3. AIR 1954 Allahabad 643
4. AIR 1956 Allahabad 586 (588).
5. 1892 AC 298
6. (1975) 1 All England Reporter 16