



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-4085-2023 (O&M)
Reserved on: 07.07.2025
Pronounced on :23.07.2025

Jitender ...Petitioner
V/s
Kuldeep (since deceased) through LR's and others ...Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Argued by: Mr. Vikram Singh Punia, Advocate and
Mr. Amit Siwach, Advocate, for the petitioner.
Mr. Parveen Sharma, Advocate, for respondent No.1.
None for respondents No.2 and 3 despite service.

VIKRAM AGGARWAL, J

The instant revision petition, preferred under Article 227 of the Constitution of India, assails order dated 16.05.2023 (Annexure P-4) passed by the Court of Addl. Civil Judge (Sr. Divn.), Sonapat, vide which the execution petition preferred by the petitioner was dismissed.

2. The question which arises for consideration is as to whether in a suit for specific performance, wherein the relief of possession had not been prayed for, could the executing Court have granted possession or would the plaintiff have to seek amendment and thereafter seek possession or whether a decree for specific performance would include the relief of possession.

3. The facts, as emanating from the revision petition, are that the petitioner-Jitender (hereinafter referred to as the "petitioner-plaintiff-decree-holder") instituted a suit for specific performance of agreement to sell dated 09.09.2009, stated to have been executed by respondent-defendant No.1 (Kuldeep) in favour of petitioner-plaintiff-decree-holder for sale of a



residential house/plot measuring 250 sq. yds., comprised in Rectangle and *Killa* No.6/18/2 min situated in Village Garhi Brahman (known as Shastri Colony at the time of filing of the suit), Gali No.3, Sonapat, for a total sale consideration of Rs.30 lakhs. A sum of Rs.13 lakhs was paid as earnest money and the sale deed was to be registered on or before 08.09.2010. In July 2010, respondent-defendant No.1 executed a sale deed for 93.33 sq. yds. in favour of defendants-respondents No.2 and 3 (Prem Singh and Suresh Kumar) for a sum of Rs.3,73,500/-, which led to the filing of the suit in August, 2010. The respondents-defendants shall collectively be referred to as the respondents-defendants-judgment debtors.

3.1 The suit was decreed vide judgment and decree dated 19.01.2017 (Annexure P-5) passed by the Court of Addl. Civil Judge (Sr. Divn.), Sonapat. A decree for specific performance of agreement to sell was passed and respondent-defendant No.1 was directed to execute sale deed qua the suit property on receipt of balance consideration of Rs.17 lakhs. Further, sale deed dated 23.06.2010 executed by respondent-defendant No.1 in favour of respondents-defendants No.2 and 3 was declared to be null and void.

3.2 An appeal was preferred by respondent-defendant No.1 only, wherein respondents-defendants No.2 and 3 were impleaded as proforma respondents. The said appeal was dismissed by the Court of Addl. District Judge, Sonapat vide judgment and decree dated 20.08.2018. Notably, respondents-defendants No.2 and 3 did not contest and were proceeded against *ex parte*. Still further, respondents-defendants No.2 and 3 did not prefer any separate appeal.

3.3 The appeal having been dismissed, an execution application (Annexure P-1) was moved by the petitioner-plaintiff-decree-holder.



3.4 During the pendency of the execution petition, an objection petition was filed by respondent-defendant No.1 (Kuldeep). It was averred that Kuldeep Singh was not competent to execute any agreement to sell as his title was defective. It was also mentioned in the objection that sale deed dated 18.11.2022 had been executed in favour of the decree-holder pursuant to the suit having been decreed and appeal having been dismissed. It was further averred that in the alleged agreement to sell dated 09.09.2009, there were no terms and conditions as regards delivery of possession and, therefore, the question of delivery of possession in an execution petition did not arise. It was also averred that no relief of possession had been sought in the suit nor had any relief regarding possession been granted and only a decree for specific performance was passed. Under the circumstances, no warrants of possession could be issued. The last objection that was raised was that judgment debtors/objectors were not in exclusive possession of the suit property and, therefore, the question of delivery of exclusive possession did not arise.

3.5 The objection petition was opposed by way of reply (Annexure P-3). It was averred that sale deed had already been executed in favour of the petitioner-plaintiff-decree-holder on the direction of the Court. Other averments were denied.

4. By way of the impugned order, the execution petition was disposed of holding that possession could not be given and that the petitioner-plaintiff-decree-holder should file a suit for possession or a suit for partition, leading to the filing of the present revision petition.

5. Learned counsel for the parties were heard.

6. Mr. Vikram Singh Punia, learned counsel representing the petitioner-plaintiff-decree-holder argued first on the issue of maintainability



of the present revision petition. Learned counsel submitted that since the objections were not third party objections, the impugned order would not be appealable and, therefore, the instant revision petition would be maintainable.

6.1 On merits, learned counsel strenuously urged that the impugned order is not sustainable. He submitted that pursuant to the judgment and decree dated 19.01.2017 having been passed, sale deed had already been executed on 18.11.2022. It was submitted that the executing Court erred in not ordering the relief of possession. He submitted that the executing Court wrongly placed reliance upon the judgment of a coordinate Bench in the case of ***Jeet Singh V/s Gursewak Singh and others, 2016(1) CCC 560 (P&H)*** and the judgment of the Hon'ble Supreme Court of India in the case of ***Adcon Electronics Pvt. Ltd. V/s Daulat (2001)7 SCC 698***. He submitted that even the judgment of the Hon'ble Supreme Court of India in the case of ***Manickam @ Thandapani and another V/s Vasantha, 2022 (3) CCC 103 SC*** was erroneously relied upon and misinterpreted. Learned counsel submitted that now the issues stand resolved in view of the judgments of the Supreme Court of India in the case of ***Birma Devi and others V/s Subhash and another (SLP(Civil)-29397-2024, decided on 06.12.2024)*** and in ***Rohit Kochhar V/s Vipul Infrastructue Developers Ltd. and others (SLP (Civil)-10169-10171-2008, decided on 26.11.2024)***.

6.2 It was submitted by learned counsel that in view of the authoritative pronouncements of the Supreme Court of India in the aforesaid judgments, there would be no requirement of filing a fresh suit for possession and that the executing Court should have granted the said relief.



7. *Per contra*, Mr. Parveen Sharma, learned counsel representing respondent-defendant No.1 submitted that there is no illegality in the impugned order.

7.1 Arguing first on the issue of maintainability, learned counsel submitted that since the execution petition had finally been decided, an appeal would be maintainable and that the instant revision petition would not be maintainable.

7.2 On merits, it was submitted that since the land is joint and not exclusively owned by the respondents-defendants-judgment debtors, the relief of possession could not have been granted and the only remedy was to file a suit for possession or a suit for partition. Learned counsel submitted that under the circumstances, the objections had rightly been dismissed. In support of his contentions, he placed reliance upon the judgments in the case of ***Kanwar Pal V/s Mansa Ram and others, 2017(3) RCR (Civil) 418, Jaspal Singh V/s Punjab Wakf Board Ambala, 2013(1) RCR (Civil) 585, Jeet singh V/s Gursewak Singh and others, 2015 (3) RCR (Civil) 82, Adcon Electronics Pvt. Ltd. V/s Daulat, 2002 (1) RCR (Civil) 806, Kishan Singh and another V/s Kuldip Singh, 2019 (4) RCR (Civil) 616 and Birma Devi and others V/s Subhash and another, 2025 (2) RCR (Civil) 70.***

7.3 None appeared for respondents No.2 and 3 despite service.

8. I have considered the submissions made by learned counsel for the parties.

9. Coming first to the issue of maintainability, the objections were not filed by a third party as a result of which, the same would not be treated as objections under Order 21 Rule 97, 98 or 103 CPC but would be objections under Order 21 Rule 35 CPC and, therefore, the order would not be appealable and the present revision petition would duly be maintainable.



9.1 Coming to the merits, the suit for specific performance was decreed on 19.01.2017. Notably, during the trial also, it was argued that a mere suit for specific performance was not maintainable as the relief of possession had not been sought. This was turned down by the trial Court and it was specifically held that where a decree for specific performance is passed, a decree-holder is entitled to be put in possession of property with respect to which the suit was decreed even when neither in the judgment nor in the decree, specific direction to put the decree-holder in possession had been given;

52. The learned counsel for the defendant no.1 has contended that the present suit for mere specific performance of contract is not maintainable because the plaintiff has not sought the relief of possession in the present suit. The learned counsel for defendant no.1 has relied upon the case law cited in Jeet Singh Vs. Gursewak Singh and others 2015(2) Civil Court Cases 463 (supra) in this regard. A perusal of the plaint shows that the plaintiff has filed the present suit seeking a decree for specific performance with consequential relief of permanent injunction. It is the settled law that relief of possession is incidental in a suit for specific performance. The Hon'ble Supreme Court of India in case law cited in Babu Lal Vs. M/s Hazari Lal Kishori Lal and others AIR 1982(SC) 818 has held that it may not always been necessary for the plaintiff to specifically claim possession over the property and the relief of possession being inherent in the relief for specific performance of the contract for sale. The Hon'ble High court of Punjab and Haryana in case law cited in Makhan Singh and others Vs. Tara Singh and others, 1988 PLR, 479 has held that where a decree for specific performance was passed, then the decree holder is entitled to be put in possession of property with respect to which suit was decreed, even when neither in judgment nor in decree, specific directions to put decree holder in possession is given. The Hon'ble Rajasthan High Court in case law cited in Lrs. of Bhinva Ram Vs Sohan Ram 2005(3) Civil Court Cases 686 has held that a suit for specific performance is maintainable without claiming relief for possession.

53. Hence, the plaintiff is entitled to a decree for specific performance of the agreement to sell dated 09.09.2009 qua the suit property measuring 250 square yards on payment of balance sale consideration of Rs. 17,00,000/- to defendant no.1 as he has already paid



Rs.13,00,000/- as earnest money to the defendant No.1 vide receipt dated 09.09.2009, Ex.P-2.

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58. In view of the findings given on issues no. 1 and 2, the present suit filed by the plaintiff succeeds and the same is hereby decreed with costs. A decree for specific performance of agreement to sell dated 09.09.2009 by directing the defendant no.1 to execute and get registered the sale deed qua the suit property measuring 250 square yards as detailed in said agreement in favour of the plaintiff on payment of balance sale consideration of Rs.17,00,000/- to the defendant no.1 and the sale deed bearing vashika no.2419 dated 23.06.2010 executed by the defendant no.1 in favour of the defendants no. 2 and 3 qua the land measuring 93.33 square yards out of suit property measuring 250 square yards is illegal, null and void and the same is not binding on the rights of the plaintiff with consequential relief of permanent injunction restraining the defendants from alienating and changing nature of the suit property is passed in favour of the plaintiff and against the defendants. The defendant no.1 is directed to execute and get registered the sale-deed qua the suit property measuring 250 square yards in favour of the plaintiff on receiving the balance sale consideration within a period of two months from passing of this judgment, failing which the plaintiff shall be at liberty to approach the executing Court for compliance. Decree-sheet be prepared accordingly and file be consigned to the record-room after due compliance.”

9.2 It is, therefore, clear that the trial Court directed respondent-defendant No.1 to execute registered sale deed qua the suit property in favour of the petitioner-plaintiff on receipt of balance consideration within a period of two months from the passing of the judgment. Of course, the trial Court did not mean that the sale deed be executed but possession be not delivered. In fact, as already noticed, the issue of possession was raked up before the trial Court also which was duly answered by the trial Court.

9.3 An appeal was preferred by respondent-defendant No.1 against the said judgment and decree but the same also came to be dismissed vide judgment dated 20.08.2018 passed by the Court of Addl. District Judge, Sonapat.



9.4 Against the aforesaid decision, a regular second appeal is stated to be pending but concededly there is no stay. The problems of the petitioner-plaintiff-decree-holder started after the decisions were rendered in his favour. The unscrupulous respondents-defendants-JDs started filing objections raising the same points which had been answered by the Courts. The executing Court also did not examine the matter from the correct perspective and simply on the averments made in the objection petition, decided the same in favour of the objectors and disposed of the execution petition.

9.5 In fact, the matter now stands settled in view of the judgment of the Hon'ble Supreme Court of India in **Bimla Devi's** case (supra) and **Babu Lal V/s Hazari Lal Kishori Lal, (1982) 3 SCR 94.**

9.6 In **Birma Devi's** case (supra), a suit for specific performance of an agreement to sell was filed, which was decreed. The original defendant had sold the suit property to some other persons and it was the subsequent purchasers who were contesting the execution proceedings, the decree not having been challenged any further. The executing Court took a view that although there was a decree for specific performance, it did not say anything about putting the plaintiffs in possession and, therefore, declined to hand over possession. The said order was challenged before the High Court, which allowed the petition and set aside the order of the executing Court and the executing Court was directed to issue warrants of possession. The matter reached then reached the Hon'ble Supreme Court of India, wherein after examining the judgment of **Babu Lal** (supra) and **Rohit Kochhar** (supra), the Supreme Court upheld the order of the High Court;

“12 The short question that falls for our consideration is whether the relief of possession may be granted by the executing court in a case where the suit has been decreed for specific performance simpliciter and



no express relief for the transfer of possession of the suit property has been granted.

13. *The position of law on the issue has been settled by this Court in the case of Babu Lal v. Hazari Lal Kishori Lal reported in (1982) 1 SCC 525 wherein the Court while elaborating on Section 22 of the Specific Relief Act, 1963 laid down the law for the following two situations that may arise:*

a. First, in cases where the possession of the suit property is exclusively with the contracting party, then a decree for specific performance simpliciter, without specifically providing for delivery of possession, may give complete relief to the decree holder. This, the Court held, was in consonance with Section 55(1) of the Transfer of Property Act, 1882, which binds the seller, on being so required, to transfer to the buyer or such other person as he directs, such possession of the property as its nature admits.

b. Secondly, in cases where the relief of possession cannot be effectively granted to the decree-holder without specifically claiming relief for possession, for instance, in cases where the property agreed to be conveyed is jointly held by the defendant with other persons, or cases where after the contract the property has passed in possession of a third person, then the plaintiff, in order to obtain complete and effective relief, must claim the relief of transfer of possession over the property defendant along with the relief of partition, etc., if required.

14. *For the second category of cases, the Court observed that Section 22, which was introduced by the legislature to avoid multiplicity of proceedings, allows the plaintiff to amend the plaint to include a claim for the relief of possession, partition, etc. at any stage of the proceeding. The Court further held that the expression "any stage of the proceeding" includes the stage of execution of the decree by the executing court. The relevant paragraphs from the said decision are reproduced hereinbelow:*

"13. 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". As pointed out earlier, in view of Order 2 Rule 2 of the Code of Civil Procedure, some doubt was entertained whether the relief for specific performance and partition and possession could be combined in one suit; one view being that the cause of action for claiming relief for partition and possession could accrue to the plaintiff only after he acquired title to the



property on the execution of a sale deed in his favour and since the relief for specific performance of the contract for sale was not based on the same cause of action as the relief for partition and possession, the two reliefs could not be combined in one suit. Similarly, a case may be visualised where after the contract between the plaintiff and the defendant the property passed in possession of a third person. A mere relief for specific performance of the contract of sale may not entitle the plaintiff to obtain possession against the party in actual possession as of the property. As against him, a decree for possession must be specifically claimed or such a person is not bound by the contract sought to be enforced. In a case where exclusive possession is with the contracting party, a decree for specific performance of the contract of sale simpliciter, 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 provisions of Section 55(1) consonance with the of the Transfer of Property 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.

14. There may be circumstances in which a relief for possession cannot be effectively granted to the decree-holder without specifically claiming relief for possession viz. where the property agreed to be conveyed is jointly held by the defendant with other persons. In such a case the plaintiff in order to obtain complete and effective relief must claim partition of the property and possession over the share of the defendant. It is in such cases that a relief for possession must be specifically pleaded.

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17. 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". "proceeding is a very comprehensive The term term and generally speaking means a prescribed course of action for enforcing a legal right. It is not a technical with expression definite a 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 conducted. business is The word 'proceeding' in Section 22 includes execution proceedings also. In Rameshwar Nath v. U.P. Union



Bank Ltd. (AIR 1956 All 586: 1956 All LJ 470: 1956 All WR HC 450] such a view was taken. 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. 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. One of them is execution.

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20. It is thus clear that the legislature has given ample power to the court to allow amendment of the plaint at any stage, including the execution proceedings. In the instant case the High Court granted the relief of possession and the objection raised on behalf of the petitioner is that this was not possible at the execution stage and in any case the court should have allowed first an amendment in the plaint and then an opportunity should have been afforded to the petitioner to file an objection."

15. The aforesaid position of law has been recently reiterated by us in a recent order passed in the case of Rohit Kochhar v. Vipul Infrastructure Developers Ltd. & Ors. reported in 2024 INSC 920 wherein we have observed thus:

"23. This Court in Babu Lal (supra), upon a combined reading of Sections 22 and 28 (3) of the Specific Relief Act respectively and Section 55 of the Transfer of Property Act, observed that the it was only "in an appropriate case" that the plaintiff was required to separately the seek relief of possession, partition, or separate possession, as the case may be, along with the relief of specific performance. The Court observed that in other cases, say for example a case where the possession of the suit property exclusive with is the contracting party, a decree for specific performance of the contract of sale simpliciter, without specifically providing for delivery of possession, may give complete relief to the decree-holder. This, the Court observed, was the mandate flowing from Section 55 of the Transfer of Property Act."

9.7 In **Rohit Kochhar's** case (supra), the judgment of the Supreme Court of India in the case of **Adcon's** case (supra) was also considered and thereafter, the view was taken which was upheld in **Birma Devi's** case (supra);



“28. What appears from a close reading of the decision in Adcon Electronics (supra) is that the decision of this Court in Babu Lal (supra) was not considered and reliance was placed on the decision of the Federal Court in Moolji Jaitha (supra) which was rendered in the context of the old Specific Relief Act. The Federal Court had no occasion to consider the amended regime brought into being by virtue of the Specific Relief Act enacted in 1963. The decision in Babu Lal (supra) took note of the divergent views occupying the field prior to the enactment of the Specific Relief Act in 1963. The relevant paragraphs from Babu Lal (supra) wherein the conflict in position of law was noted are extracted hereinbelow:

"6. It would be appropriate to refer to the state of law as it existed prior to the amendment of the Specific Relief Act in 1963. One view was that the decree-holder does not acquire title or right to recover possession unless a sale deed is executed, in execution of the decree for specific performance. In Hakim Enayat Ullah v. Khalil Ullah Khan [AIR 1938 All 432: ILR 1938 All 677: 1938 All LJ 569: 176 IC 436] a Division Bench of the Allahabad High Court dealing with the question observed:

"A decree for specific performance only declares the right of the decree-holder to have a transfer executed in his favour of the property covered by the decree. The decree by itself does not transfer title. That this is so is apparent from the fact that in order to get title to the property the decree-holder has to proceed in execution in accordance with the provisions of Order 21 of the Code. So long as the sale deed is not executed in favour of the decree-holder, either by the defendant in the suit or by the court, the title to the property remains vested in the defendant and till the execution of the sale deed the decree-holder has no right to the possession of the property. It is only the execution of the sale deed that transfers title to the property."

7. In Kartik Chandra Pal v. Dibakar Bhattacharjee [AIR 1952 Cal 362: ILR (1950) 1 Cal 350] a Division Bench of the Calcutta High Court, however, after reviewing a number of reported cases viz. Ranjit Singh v. Kalidasi Debi [ILR (1910) 37 Cal 57: 14 Cal WN 527: 5 IC 205], Madanmohan Singh v. Gaja Prasad Singh [(1911) 14 CLJ 159: 11 IC 228], Deonandan Prasad v. Janki Singh [(1920) 5 Pat LJ 314: 1 Pat LT 325: 56 IC 322] and Atal Behary Acharya v. Barada Prasad Banerji [AIR 1931 Pat 179: 12 Pat LT 636: 131 IC 529], observed:



"...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....

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. Chapter II, Specific Relief Act, deals with the various circumstances under which a contract may be enforced specifically and where it cannot be 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 presupposes 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.

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."

8. *In Balmukand v. Veer Chand [AIR 1954 All 643; 1954 All LJ 255 : 1954 All WR (HC) 424] the decree for specific performance of a contract of sale was silent as to the relief of*



delivery of possession even though such relief was claimed in the suit. It was held by the Allahabad High Court that the executing court was still competent to deliver the possession. It was further held that it was not necessary in a suit for specific performance either to separately claim possession nor was it necessary for the court to pass a decree for possession. A decree for specific performance of a 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 governed by Section 55 of the Transfer of Property Act. In Janardan Kishore v. Girdhari Lal [AIR 1957 Pat 701: 1957 BLJR 368] the Patna High Court took the view that the relief of possession is inherent in a relief for specific performance of contract for lease, and the court executing a decree for specific performance of such a contract can grant possession of the property to the decree-holder even though the decree did not provide for delivery of possession. In Subodh Kumar Banerjee v. Hiramoni Dasi [AIR 1955 Cal 267] the Calcutta High Court took a similar view that the right to recover possession springs out of the contract which was being specifically enforced and not as a result of the execution and completion of the conveyance, and as such the judgment-debtor was bound to deliver possession to the decree-holder.

9. *In Mohammed Ali Abdul Chanimomin v. Bisahemi Kom Abdulla Saheb Momin [AIR 1973 Mys 131: (1973) 1 Mys LJ 130] the Mysore High Court observed that the liability to deliver possession for specific performance was necessarily implied in a decree for specific performance directing the defendant to execute a sale deed on the principle of clause (f) of sub-section (1) of Section 55 of the Transfer of Property Act, according to which the liability to deliver possession arises immediately upon execution of a sale deed unless by agreement the date for delivery of possession is postponed.*

10. *In this state of the law the legislature intervened and on the basis of the report of the Law Commission enacted Section 22 in 1963 as it stands." (Emphasis supplied)*

29. *Thus, while the decision in Adcon Electronics (supra) proceeds on the understanding that a suit for specific performance of an agreement to sell is an action in personam, the decision in Babu Lal (supra) takes into account the change brought about by the introduction of Sections 22 and 28 to the Specific Relief Act, 1963 respectively which has changed the nature of the relief available under Section 22 by*



allowing the plaintiff to seek the relief of possession, partition, etc. simultaneously along with the prayer for specific performance.

30. *Even otherwise, we are of the view that the decision in Adcon Electronics (supra), is of no avail to the plaintiff. It was expressly held by this Court therein that to determine whether a suit is a "suit for land" or not has to be determined on the basis of the averments made in the plaint with reference to the reliefs claimed therein. In yet another decision Excel Dealcomm (P) Ltd. v. Asset Reconstruction Co. (India) Ltd. reported in (2015) 8 SCC 219 dealing with the meaning of the expression "suit for land" appearing in Clause 12 of the Letters Patent of the High Court of Judicature at Calcutta, this Court observed thus:*

"13. A suit for land is a suit in which the relief claimed relates to the title or delivery of possession of land or immovable property [see Adcon Electronics (P) Ltd. v. Daulat [Adcon Electronics (P) Ltd. v. Daulat]). Further, it is an established rule that to determine whether it is a suit for land, the court will look into barely the plaint and no other evidence (Indian Mineral & Chemicals Co. v. Deutsche Bank [(2004) 12 SCC 376]). If by the averments in the plaint and prayers therein, it appears that the suit is one for land, it shall be so held and if it does not so appear, then the suit shall continue under leave granted under Clause 12.

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16. *It may be noted that the sale certificate sought under the prayer requires the delivery of possession of the suit property. Thus, we find that the prayer for delivery of possession was an implicit one in the present case. The prayer as sought in the plaint could not have been granted without the delivery of possession of the suit property as the sale certificate itself contemplates the delivery of the immovable property. Thus, in view of this we find that Adcon Electronics [Adcon Electronics (P) Ltd. v. Daulat] would not apply as there was a prayer for delivery of possession in the present case. Therefore, we hold that the present suit was indeed a suit for land." (Emphasis supplied)*

31. *Similarly, in Moolji Jaitha (supra), His Lordship Kania, C.J. held that a Suit as a whole should be taken into consideration to find out whether it is for the purpose of obtaining a direction for possession or a decision on title to land, or the object of the Suit is something different but involves the consideration of the question of title to land indirectly. His Lordship further held that the nature of the Suit and its purpose have to be determined by reading the Plaint as a whole and it is not proper to dissect the prayers and consider whether the Court has jurisdiction on the limited points. It was further held that the inclusion*



or absence of a prayer is not decisive of the true nature of the Suit, nor is the order in which the prayers are arrayed in the Plaint. The substance or object of the Suit has to be gathered from the averments made in the Plaint and on which the reliefs asked in the prayers were based.”

9.8 It emerges from the aforesaid binding precedents that when a suit for specific performance of an agreement to sell is filed, the relief of possession is intrinsic in the same and there would be no logic to institute a suit for specific performance of an agreement to sell without seeking possession. In the present case, the trial Court directed the execution of a sale deed. It cannot, by any stretch of imagination, be held that the direction to execute the sale deed was to be without possession.

9.9 The stand taken by the objectors that the title was defective or that the land was joint is devoid of merit, for, no such stand was taken during the course of the trial. As observed previously, the suit was decreed and the appeal was dismissed and to raise question of title subsequently and that the land was joint would not be permitted. Even otherwise, it was a plot situated in Shastri Colony and, therefore, there is no question of the same being joint.

10. The executing Court took a totally erroneous view of the matter and disposed of execution petition. The impugned order, in view of the aforesaid discussion is not sustainable and deserves to be set aside.

11. I have gone through the judgments relied upon by learned counsel for respondent but in view of the judgments of the Hon'ble Supreme Court of India in the case of **Birma Devi's** case (supra) and in **Rohit Kochhar's** case (supra), the said judgments would not be applicable.

12. While sifting through the record which was duly summoned, this Court observed that every possible effort was made by the JD to delay the execution by initially not appearing and getting proceeded *ex parte* and subsequently moving applications to set aside those orders, filing objections



and then delaying the hearing in the objections so forth and so on. It is a matter of great concern that the decree which was passed on 19.01.2017 remains unexecuted till today.

13. In view of the afore stated facts and circumstances, the present petition is allowed. The order dated 16.05.2023 (Annexure P-4) passed by the Court of Addl. Civil Judge (Sr. Divn.), Sonapat is set aside. The execution petition is allowed and respondents-defendants-judgment debtors are directed to hand over the possession of the suit property to the petitioner-plaintiff-decree-holder within a period of one month from today.

Pending application(s), if any, shall also stand disposed of.

(VIKRAM AGGARWAL)
JUDGE

Pronounced on: 23.07.2025

vcgarg

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No