

CASE NO.:
Appeal (civil) 1566 of 1991

PETITIONER:
ADCON ELECTRONICS PVT. LTD.

....APPELLANT

Vs.

RESPONDENT:
DAULAT AND ANR.

....RESPONDENTS

DATE OF JUDGMENT: 12/09/2001

BENCH:
Syed Shah Mohammed Quadri & S.N. Phukan

JUDGMENT:

Syed Shah Mohammed Quadri, J.

This appeal, by special leave, raises an interesting question : whether a suit simpliciter for specific performance of contract for sale of immovable property is a suit for land within clause 12 of Letters Patent of the High Court of Judicature at Bombay?

The appellant is the defendant and the respondents are the plaintiffs in the suit out of which this appeal arises. In this judgment the parties will be referred to as they are arrayed in the trial court. The facts lie in a narrow campus and are not in dispute. By an agreement of July 12, 1986 land together building known as Vithal Bhavan, bearing No.6/5 (Block No.24), South Tukoganj, Indore, M.P., (for short, the suit property) was agreed to be sold by the defendant to the plaintiffs for a consideration of Rs.53,75,000/-. Subsequently the parties executed a memorandum also in regard to the suit property on August 1, 1987. Disputes arose between the parties with regard to the performance of the said agreement. The plaintiffs filed Suit No.1088 of 1989 in the High Court of judicature at Bombay (for short, the High Court) against the defendant praying, inter alia, for a declaration that agreement dated July 12, 1986 and memorandum dated August 1, 1987 are subsisting and binding on the defendant and for a decree of specific performance of the said agreement and memorandum. The suit was filed with the leave of the court under clause 12 of the Letters Patent of the High Court of Judicature of Presidency of Bombay (referred to in this judgment as the Letters Patent). A learned single Judge of the High Court granted leave on April 4, 1989. The defendant took out chamber summons No.862 of 1989 in the suit for revocation of the leave granted to the plaintiffs. The learned single Judge dismissed the chamber summons on January 22, 1990. That order was assailed by the defendant in L.P.A. No.697 of 1990. A Division Bench of the High Court dismissed the L.P.A. on July 30, 1990. It is that order of the Division Bench which is under challenge in this appeal.

Mr.A.K.Chitale, the learned senior counsel appearing for the defendant (appellant), has argued that in the agreement there is specific stipulation that the defendant will hand over possession of the suit property on the execution of the sale deed, therefore, the suit for specific performance of the agreement would be a suit for land within the meaning of clause 12 of the Letters Patent. In any event,

submitted the learned counsel, acquisition of title to any immovable property would also fall within the meaning of suit for land and, therefore, the High Court erred in not revoking the leave.

Ms.Manik Karanjawala, the learned counsel who was appearing for the plaintiffs (respondents), sought permission to withdraw from the case for the reason that her clients asked her not to appear in the appeal. We permitted her to withdraw from the case.

Inasmuch as the plaintiffs remained unrepresented we requested Mr.A.S.Bhasme, Advocate, to assist the court as amicus curiae. The learned counsel readily accepted the responsibility and very ably argued the appeal for the plaintiffs. His contention is that as sub-section (2) of Section 22 of the Specific Relief Act, 1963 directs that relief of possession in addition to specific performance of the agreement should not be granted by court unless it has been specifically claimed therefore a suit for specific performance simpliciter in the absence of a explicit prayer for delivery of possession of the suit property, can not be treated as a suit for land. It will be appropriate to refer to clause 12 of Letters Patent which reads thus :

12. Original Jurisdiction as to suits.

And We do further ordain that the said High Court of Judicature at Bombay, in the exercise of its ordinary original civil jurisdiction, shall be empowered to receive, try, and determine suits of every description, if, in the case of suits for land or other immovable property such land or property shall be situated, or in all other cases if the cause of action shall have arisen, either wholly, or in case the leave of the Court shall have been first obtained, in part, within the local limits of the ordinary original jurisdiction of the said High Court, or if the defendant at the time of the commencement of the suit shall dwell or carry on business, or personally work for gain, within such limits; except that the said High Court shall not have such original jurisdiction in cases falling within the jurisdiction of the Small Cause Court at Bombay, in which the debt or damage, or value of property sued for does not exceed one hundred rupees.

Leaving the words which are not relevant for our purpose the said clause will read as follows : And We further ordain that the said High Court of Judicature at Bombay, in the exercise of its ordinary original civil jurisdiction, shall be empowered to receive, try, and determine suits of every description, if, in the case of suits for land or other immovable property such land or property shall be situated, or in all other cases if the cause of action shall have arisen, either wholly, or in case the leave of the Court shall have been first obtained, in part, within the local limits of the ordinary original jurisdiction of the said High Court, or if the defendant at the time of the commencement of the suit shall dwell or carry on business, or personally work for gain within such limits.....

Thus, it is clear that under clause 12 of the Letters Patent, the High Court in exercise of its ordinary original jurisdiction will have power to receive, try and determine : (1) suits for land or other immovable property if such property is situated within the local limits of original jurisdiction of the High Court; or (2) all other cases (a) if the cause of action has arisen wholly within the local limits of the ordinary original jurisdiction of the High Court; (b) if prior leave of the Court has been obtained and the cause of action has arisen in part within the local limits of the ordinary original jurisdiction of the High Court; or (c) if the defendant dwells or carries on business or personally works for gain within such limits.

The learned single Judge while dismissing the chamber summons took the view that so far as the High Court of Bombay was concerned the law was well settled that suits for specific performance, even though they might relate to the land, were not suits for land. On appeal the order of the learned single Judge was confirmed by the Division Bench opining that the suit for specific performance of an agreement for sale was not a suit for land.

The question then arises as to what is meant by suit for land. This expression has been interpreted by different High Courts as well as the Federal Court.

In His Highness Shrimant Maharaj Yashvantrav Holkar of Indore Vs. Dada Bhai Cursetji Ashburner [1890 (14) I.L.R. Bombay 353] a Division Bench of the Bombay High Court held that a suit for specific performance would not fall within the meaning of that expression. There the suit was filed for specific performance of an agreement to mortgage certain immovable property. The agreement was made in Bombay between the parties on January 8, 1883. The Divisional Court held, it had jurisdiction and granted decree. On appeal a Division Bench referred to an earlier judgment of that court in Yenkoba Balset Kasar Vs. Rambhaji (9 Bombay H.C.Rep.13) which laid down that suit for land was a suit which asked for delivery of land to the plaintiff. The High Court also referred to the view of the Calcutta High Court in The Delhi and London Bank Vs. Wordie [I.L.R., 1 Calcutta 249 at p.263] construing that expression to mean, substantially for land -- that is for the purpose of acquiring title to, or control over, land. It also noticed the view of a learned single Judge of the Calcutta High Court in Sreenath Roy Vs. Cally Doss Ghose [I.L.R. (5) Calcutta 82] holding that the court had no jurisdiction to make a decree in a suit for specific performance. The Division Bench of the Bombay High Court held that the suit was within the jurisdiction whether regarded as a suit for specific performance or to enforce equitable mortgage by deposit of title deeds as a court of equity in England could entertain it.

In M/s.Moolji Jaitha and Co. Vs. The Khandesh Spinning and Weaving Mills Co. Ltd. [A.I.R. (37) 1950 Federal Court 83], there is divergence of opinion among the learned Judges of five-Judge Bench of the Federal Court in regard to the import of the expression suit for land. Chief Justice Kania opined, Taking the suit as a whole, one has to consider 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. Justice Fazl Ali observed, If I had really felt that I was called upon to decide it, I would have agreed with the line of cases in which it has been held that, broadly speaking, the expression suit for land covers the following three classes of suits : (1) suits for the determination of title to land; (2) suits for possession of land; and (3) other suits in which the reliefs claimed, if granted, would directly affect title to or possession of land. Justice Patanjali Sastri took the view, The words in question, besides obviously covering claims for recovery of possession or control of land, are apt to connote also suit which primarily and substantially seek an adjudication upon title to immovable property or a determination of any right or interest therein. Justice Mahajan observed, If an attempt is made to find a comprehensive definition of the phrase, it will eventually be discovered that it has created further complications. I therefore content myself by saying that where the nature of the suit is such that in substance it involves a controversy about land or immovable property and the Court is called upon to decide conflicting claims to such property and a decree or order is prayed for which will bring about a change in the title to it, that suit can be said to be in respect of land or immovable property; but where incidentally in a

suit, the main purpose of which or the primary object of which is quite different, some relief has to be given about land, the title to it not being in dispute in the real sense of the term, then such a suit cannot fall within the four corners of this expression. He added, In my opinion, if the suit is for specific performance and a decree for possession of the land sold is claimed, such a suit would certainly be a suit for land; but if the suit is simpliciter for specific performance, i.e., for the enforcement of the contract of sale and for execution of a conveyance, in that event there can be no good ground for holding that such a suit is a suit for determination of title to land or that the decree in it would operate on the land. In that view he expressed his agreement with the decision of the Full Bench of the Madras High Court in Velliappa Chettiar Vs. Govinda Doss [AIR (16) 1929 Madras 721 F.B.]. Justice Mukherjea perceived, It seems to me fairly clear that the expression suit for land occurring in clause 12, Letters Patent, means a suit which is instituted with the object of establishing claims regarding title to the property or possession of it. Whether or not possession is claimed, if title to any immovable property is to be directly affected by the result of the decision, the suit would be a suit for land.

In Debendra Nath Chowdhury Vs. Southern Bank Ltd. [AIR 1960 Calcutta 626] a Division Bench of the Calcutta High Court took the view that the suit for specific performance of the contract to execute and register a lease with alternative claims for damages is not a suit for land within the meaning of clause 12 of the Letters Patent. From the above discussion it follows that a suit for land is a suit in which the relief claimed relates to title to or delivery of possession of land or immovable property. Whether a suit is a suit for land or not has to be determined on the averments in the plaint with reference to the reliefs claimed therein; where the relief relates to adjudication of title to land or immovable property or delivery of possession of the land or immovable property, it will be a suit for land. We are in respectful agreement with the view expressed by Mahajan.J. in M/s.Moolji Jaithas case (supra).

In a suit for specific performance of contract for sale of immovable property containing stipulation that on execution of the sale deed the possession of the immovable property will be handed over to the purchaser, it is implied that delivery of possession of the immovable property is part of the decree of specific performance of contract. But in this connection it is necessary to refer to Section 22 of the Specific Relief Act, 1963 which runs :

22. Power to grant relief for possession, partition, refund of earnest money, etc. --

(1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 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.

It may be seen that sub-section (1) is an enabling provision. A plaintiff in a suit of specific performance may ask for further reliefs mentioned in clauses (a) and (b) thereof. Clause (a) contains reliefs of possession and partition and separate possession of the property, in addition to specific performance. The mandate of sub-section (2) of Section 22 is that no relief under clauses (a) and (b) of sub-section (1) shall be granted by the Court unless it has been specifically claimed. Thus it follows that no court can grant the relief of possession of land or other immovable property, subject-matter of the agreement for sale in regard to which specific performance is claimed, unless the possession of the immovable property is specifically prayed for. In the instant case the suit is for specific performance of agreement for sale of the suit property wherein relief of delivery of the suit property has not been specifically claimed as such it cannot be treated as a suit for land.

We cannot also accept the contention of Mr.Chitale that the suit is for acquisition of title to the land and is a suit for land. In its true sense a suit simpliciter for specific performance of contract for sale of land is a suit for enforcement of terms of contract. The title to the land as such is not the subject-matter of the suit. In this view of the matter, we do not find any illegality in the order of the Division Bench of the Bombay High Court under challenge. The appeal is dismissed but in the circumstances of the case without costs.

Before parting with the case we record our appreciation for the assistance rendered by Mr.A.S.Bhasme, the learned amicus curiae.

.....J.
(Syed Shah Mohammed Quadri)

.....J.
(S. N. Phukan)

September 12, 2001.