PETITIONER:
BABU LAL

Vs.

RESPONDENT:
HAZARI LAL KlSHORI LAL & ORS.

DATE OF JUDGMENT29/01/1982

BENCH:
MISRA, R.B. (J)
BENCH:
MISRA, R.B. (J)
SEN, A.P. (J)

CITATION:
1982 AIR 818 1982 SCR (3) 94
1982 SCC (1) 525 1982 SCALE (1)79

ACT:
Specific Relief Act, sections 22 and 28 read with section 55 of the Transfer of Property Act, scope of-Section 22 of the Specific Relief Act enacts a rule of pleading in order to avoid multiplicity of proceedings-When the court has decreed the suit for specific relief of execution of the agreement to sale of an immovable property without a separate prayer for possession in the plaint, the decree is still executable without recourse to another separate suit for possession-Powers of the High Court to grant the relief in execution application.

HEADNOTE:
Pursuant to an agreement for sale of certain plots for Rs. 15, 500 M/s. Hazari Lal Kishori Lal respondent No. 1 alongwith respondents 2 to 5 bad paid a sum of Rs. 1500/- as earnest money to respondents Nos. 6 to 9. The sale deed was to be executed within 15 days of the agreement. Respondents 6 to 9, how ever, executed a sale deed in favour of Babu Lal, the petitioner, in respect of the same property for Rs. 20,000 on 7th August, 1967. Under the circumstances, respondents 1 to 5 filed a suit (No. 10 of 1968) in the court of Civil Judge, Aligarh, for specific performance of the contract of sale. The petitioner resisted the claim on the ground that the sale in his favour was in pursuance of a prior agreement dated 8th July, 1967. During the pendency of the suit, the petitioner started raising construction on the disputed plot after demolishing the old one. Respondents 1 to 5 applied for injunction restraining, the petitioner from doing so. The petitioner, however, gave an undertaking on 25th March, 1968, before the Trial Court that he was making the construction at his own peril and would demolish the same and restore the land to its original position in case the suit of the plaintiffs was decreed. The trial court dismissed the suit but on appeal the additional District Judge decreed the suit and in second appeal the High Court confirmed the judgment and decree of the First Appellate Court and directed the petitioner and respondents 6 to 9 to execute the sale deed in favour of respondents Nos. 1 to 5.

The petitioner,, however, did not handover possession and remove the construction raised by him despite his undertaking dated 25th March, 1968. The decree-holders,

therefore, applied for execution of the decree. The judgment-debtor-petitioner filed an objection under section 47 of the Code of Civil Procedure taking all possible pleas to defeat the execution. His objections were three-fold: (i) The decree was inexecutable as the decree-holders did not claim a relief for possession in the suit itself and consequently there was no decree for
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possession with the result that the application for execution by delivery of possession was liable to be dismissed in view of section 22 (2) of the Specific Relief Act; (ii) the Urban Land Ceiling Act having come into force it was incumbent on the decree-holders to obtain the permission as required under sections 26 and 27 of the Ceiling Act and in the absence of any such permission the application for execution was not maintainable; and (iii) the vendors were not impleaded as parties originally and they were impleaded as parties only after the court had directed the vendors to execute the sale deed. As the vendors were not parties in the execution application it was not maintainable and it was not open to the execution court to implead a person who was not originally impleaded in the application. The execution court allowed the objection of the judgment debtor in part inasmuch as it directed the execution of the sale deed in pursuance of the decree. It, however, refused to grant the relief of possession with the observation that the remedy of the decree-holders for possession was by means of a separate suit and not by execution proceedings. Objections (ii) and (iii) were overruled. The order of the execution court was confirmed in appeal by they First Additional District Judge, Aligarh, dated 21st of February, 1977. The High Court allowed the appeal of the decree-holders and modified the order of the court below to the effect that the decree-holders shall be entitled to possession also. Hence the petition by special leave by judgment debtor-petitioner.

Dismissing the petition, the Court.

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HELD: 1. 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. [103 F-G]

Kartik Chandra Pal v. Dibakar Bhattacharjee, A.I.R. 1952 Cal. 362; Hakim Enayat Ullah v. Khalil Ullah Khan & Anr., A.I.R. 1938 All. 432; Ranjit Singh v. Kalidasi Devi, 37 Cal. 57; Madanmohan Singh v. Gaja Prasad Singh, 14 C.L.J. 159; Deonandan Prasad v. Janki Singh, 5 Pat. L.J. 314; Atal Behary v. Barada Prasad, A.l.R. 1931 Pat. 179; Balmukand v. Veer Chand, A.I.R. [1954] All. 643; Janardan Kishore v. Girdhari Lal, A.l.R. 1957 Pat. 70l; Subodh Kumar v. Hiramoni Dasi, A.I.R. 1955 Cal. 267; Mohammed Ali Abdul Chanimomin v. Bishemi Kom Abdulla Saheb Momin & Anr., A.I.R. 1973 Mysore 131, discussed.

2:1. Section 22 enacts a rule of pleading. The purpose of section 22 is to avoid multiplicity of suits and to enable the plaintiff to claim a decree for possession in a suit for specific performance without being hampered by procedural complications, even though strictly speaking, the right to possession accrues only when suit for specific performance is decreed, and empowers 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.

[104 E-F]

2:2. Though sub-section (2) of section 22 recognised in clear terms the well-established rule of procedure that the court should not entertain a claim of
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the plaintiff unless it has been specifically pleaded by the plaintiff and proved by him to be legally entitled to, by its proviso it provides that where the plaintiff has not specifically claimed appropriate reliefs like possession, partition or separate possession including the specific performance in his plaint, in the initial stages of the suit, the court shall permit the plaintiff at any stage of the proceedings, to include one or more of the said reliefs, by means of an amendment of the plaint on such terms as it may deem proper. [105 A-C]

Mahender Nath Gupta v. M/s. Moti Ram Rattan Chand & Anr., A.I.R. 1975 Delhi 155; M/s. Ex-Servicemen Enterprises (P) Ltd. v. Sumey Singh, A.I.R. 1976 Delhi 56; Rameshwar Nath v. U.P. Union Bank, A.I.R. 1956 All. 586, approved.

2:3. The expression "in an appropriate case' only indicates that it is not always incumbent on the plaintiff to claim possession or partition or separate possession in a suit for specific performance of a contract for the transfer of the immoveable property. That has to be done where the circumstances demanding the relief for specific performance of the contract of sale embraced within its ambit not only the execution of the sale deed but also possession over the property conveyed under the sale deed. It may not always be necessary for the plaintiff to specifically claim possession over the property, the relief of possession being inherent in the relief for specific performance of the contract of sale. Besides, the proviso to sub-section (2) of section 22 provides for amendment of the plaint on such terms as may be just for including a claim for such relief "at any stage of the proceedings". [106 G-H, 107 A-B]

2:4. The term "proceedings" 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. The word "proceeding" in section 22 includes execution proceedings also. 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. 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 rightly granted the relief of possession. [107 C-E, 109 B-C]

Rameswar Nath v. Uttar Pradesh Union Bank, A.I.R. 1956 All. 586; Mahender Nath Gupta v. M/s. Moti Ram Rattan Chand
JUDGMENT:
A.I.R. 1954 All. 643; M/s. Ex-servicemen Enterprises (P) Ltd. v. Sumey Singh, A.I.R. 1976 Delhi 56, approved.

3:1. If once the legal position is accepted that neither a contract for sale nor a decree passed on that basis for specific performance of the contract gives any right or title to the decree-holder and the right and the title passes to him only on the execution of the deed of sale either by the judgment-debtor himself or
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by the court itself in case he fails to execute the sale deed, no valuable right can be said to have accrued to the petitioner judgment-debtor by lapse of time, merely because a decree has been passed for the specific performance of the contract. The limitation would start against the decree-holders only after they had obtained a sale in respect of the disputed property. Section 22 has been enacted . Only for the purpose of avoiding multiplicity of proceedings which the law courts always abhor. [109 D-F]

3:2. The only amendment to be made in the plaint was to add a relief for possession necessitated because of the provisions of section 22, which is only an enabling provision. In the instant case, the objection of the petitioner requiring the decree-holders to file a separate suit for possession is hyper-technical. The execution court has every jurisdiction to allow the amendment. The mere omission of the High Court to allow an amendment in the plaint is not so fatal as to deprive the decree-holders of the benefits of the decree when section 55 of the Transfer of Property Act authorises the transferee to get possession in pursuance of a sale deed. It was open to the Court to allow an amendment, on the basis of section 22 indeed, it has allowed delivery of possession in pursuance of the decree passed in the case. [109 F-G, H, 110 A-B, E]

3:3. Further, sub-section (3) of section 28 clearly contemplates that if the purchaser or lessee pays the purchase money or other sum which he is ordered to pay under the decree, the Court may on application made in the same suit, award the purchaser or lessee such further relief as he may be entitled to. Sub-clause (b) of sub-section (3) of section 28 contemplates the delivery of possession or partition and separate possession of the property on the execution of such conveyance or lease. Sub-section (4) of section 28 bars the filing of a separate suit for any relief which may be claimed under section 28. [112 A-C]

3:4. The High Court had amended the decree passed by the first appellate court and passed a decree for possession not only against the transferors but also against their transferee, that is, the petitioner. A court which passes a decree for specific performance retains control over the decree even after the decree has been passed. Procedure is meant to advance the cause of justice and not to retard it. [112 G-H, 113 A]

Hungerford Investment Trust Ltd. v. Haridas Mundhra, & Ors., A.I.R. 1972 S.C. 1826, reiterated.

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CIVIL APPELLATE JURISDICTION : Petition for Special Leave to Appeal (Civil) No. 7771 of 1981.

From the Judgment and order dated the 2nd September, 1981 of the Allahabad High Court in Execution second Appeal Nos. 1001 & 1720 of 1977 and Civil Revision No. 1447 of 1978.

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R.R. Jain for the Petitioner.

Mrs. S. Bhandare for the Respondent.

The Judgment of the Court was delivered by

MISRA J. This is a petition for special leave to appeal against the judgment and order dated 2nd of September, 1981 passed by the High Court of Judicature at Allahabad disposing of Execution Second Appeal No. 1001 and 1720 of 1977 and Civil Revision No. 1447 of 1978. The petition was heard on 7th of December, 1981 at some length and after

hearing the counsel for the parties we dismissed the same for reasons to be recorded later. We Dow proceed to give the reasons.

The present petition is a typical example of the desperate effort of the judgment debtor to ward off the execution of the decree till the bailiff knocks at the door. Respondents Nos. 6 to 9 entered into an agreement with respondents Nos. 1 to 5 on 30th of July, 1967 for sale of certain plots situate behind their shop for Rs. 15,500. Respondents Nos. 1 to 5 had paid a sum of Rs. 1,500 as earnest money pursuant to the agreement. The sale deed was agreed to be executed within fifteen days of the agreement. Respondents Nos. 6 to 9, however, executed a sale deed in favour of the petitioner Babu Lal in respect of the same property for Rs. 20,000 on 7th of August, 1967 in defiance of the earlier agreement dated 30th of July, 1967. Under the circumstances respondents Nos. 1 to 5 were obliged to file a suit which was later on numbered as suit No. 10 of 1968 in the Court of Civil Judge, Aligarh for specific performance of the contract of sale. The petitioner resisted the claim on the ground that the sale in his favour was in pursuance of a prior agreement dated 8th of July, 1967. It appears that during the pendency of the suit the petitioner started construction on the disputed plot after demolishing the old construction. The plaintiffs, therefore, filed an application for an injunction restraining the petitioner from making any construction. The petitioner, however, gave an undertaking on 25th of March, 1968 that he was making the construction at his own peril and would demolish the construction and restore the land to its original position in case the suit of the plaintiffs was decreed. It appears that on the undertaking given by the petitioner the application for injunction was dismissed. The trial court dismissed the suit but on

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appeal the Addl. District Judge decreed the suit. In Second Appeal the High Court confirmed the judgment and decree of the first appellate court with a slight modification inasmuch as the High Court directed the petitioner and respondent Nos. 6 to 9 to execute the sale deed in favour of the respondents Nos. 1 to 5, to bring it in line with the decision of the Supreme Court in Lala Durga Prasad & Anr. v. Lala Deep Chand & Ors. wherein it was held:

> "In a suit instituted by a purchaser against the vendor and a subsequent purchaser for specific performance of the contract of sale, if the plaintiff succeeds, the proper form of the decree to be passed is to direct specific performance of the contract between the vendor and the plaintiff and direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the plaintiff."

The petitioner, however, did not handover possession and remove construction raised by him despite his undertaking dated 25th of March, 1968. The decree holders, therefore, applied for execution of thee decree. The judgment-debtor-petitioner filed an objection under section 47 of the Code of Civil Procedure taking all possible pleas to defeat the execution. His objections were three-fold: (1) The decree was inexecutable as the decree-holders did not claim a relief for possession in the suit itself and consequently there was no decree for possession. The application for execution by delivery of possession was liable to be dismissed on this score alone in view of section 22(2) of the Specific Relief Act. (2) The Urban Land Ceiling Act having come into force it was incumbent on the

decree-holders to obtain the permission as required under sections 26 and 27 of that Act and in the absence of any such permission the application for execution was not maintainable (3) The vendors were not impleaded as parties originally and they were impleaded as parties only after the court had directed the vendors to execute the sale deed in Second Appeal. As the vendors were not parties in the execution application it was not maintainable and it was not open to the execution court to implead a person who was not originally impleaded in the application. The execution court allowed the objection

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of the judgment-debtor in part inasmuch as it directed the execution of the sale deed in pursuance of the decree. It, however, refused to grant the relief of possession with the observation that the remedy of the decree-holders for possession was by means of a separate suit and not the execution proceedings. The other two objection were, however, overruled. The order of the execution court was confirmed in appeal by the First Addl. District Judge, Aligarh dated 21st of February, 1977. This order gave rise to two appeals, one by the judgment-debtor, being appeal No. 1720 of 1977, and the other by the decree-holders, being execution second appeal No. 1001 of 1977 to the extent the order went against them. There was yet another revision filed by the judgment-debtor petitioner, being civil revision No. 1447 of 1978 against the order dated 15th of March, 1978 whereby the judgment-debtor was directed to execute a sale deed in favour of the decree holders without obtaining permission from the Urban Land Ceiling Authorities under sections 26 and 27 of the Act. The appeal as well as the revision filed by the judgment-debtor were dismissed while the appeal of the decree-holders was allowed and the order of the courts below was modified to the effect that the decree-holders shall be entitled to possession also. The judgment-debtor petitioner has now come to this Court to seek permission to file an appeal against the judgment of the High Court dated 2nd of September, 1981.

Only one contention has been raised on behalf of the petitioner by Mr. Shanti Bhushan, senior counsel, that the High Court could not grant relief in execution application in excess of and out side the framework of the prayer by the plaintiffs in the original main suit. As a second limb to this argument it was further contended that the High Court has acted in flagrant violation of the provisions of section 22 of the Specific Relief Act in granting the relief of possession. In substance, the main plank of the contention of the petitioner is based on section 22 of the Specific Relief Act. As it stands after amendment of 1963, it reads:

> "22(1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 (5 of 1908), any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for-

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> (a) possession, or partition and separate possession, of the property, in addition to such performance; or
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> (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.
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> (2) No relief under Cl. (a) or Cl. (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 Cl. (b) of sub-section (1) shall be without prejudice to its power to award compensation under Sec. 21."

Mr. Shanti Bhushan was laying emphasis on sub-section (2) of section 22 to contend that tho plaintiffs having not claimed any relief for possession in the suit they cannot claim the same relief at a subsequent stage. According to him, in face of the clear mandate of sub-section (2) it was not open to the High Court to have allowed the relief of possession at the execution stage, and in any case without an amendment of the plant.

The contention at the first flush appears to be alluring and plausible but on a closer scrutiny it cannot be accepted.

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 and Anr a Division Bench of the Allahabad High Court dealing with the question observed;

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"A decree for specific performance only declares the right of the decree-holder to have a transfer of the property covered by the decree executed in his favour. 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 0.21 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."

In Kartik Chandra Pal v. Dibakar Bhattacharjee a Division Bench of the Calcutta High Court, however, after reviewing a number of reported cases, viz., Ranjit Singh v. Kalidasi Devi. Madanmohan Singh v. Gaja Prasad Singh, Deonandan Prasad v. Janki Singh, and Atal Behary v. Barada Prasad, 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 sale 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 11, 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
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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 a 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,

In 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 be 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."

In Balmukand v. Veer Chand 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 SS of the Transfer of property Act. In Janardan Kishore v. Girdhari Lal the Patna High Court took the view that the relief of procession is inherent in a relief for specific performance of contract for lease,
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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 v. Hiramoni Dasi 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.

In Mohammed Ali Abdul Chanimomin v. Bishemi Kom Abdulla Saheb Momin Anr 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 of section 55 of the Transfer of property Act, according to which the liability to deliver possession arises immediately upon execution of sale deed unless by agreement the date for delivery of possession is postponed.

In this state of the law Legislature intervened and on

the basis of the report of the Law Commission enacted section 22 in 1963 as it stands.

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 suit for 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

The section enacts that a person in a suit for specific performance of a contract for the transfer of immovable property, may ask for appropriate reliefs, namely, he may ask for possession, or for partition, or for separate possession including the relief

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for specific performance. These reliefs he can claim, notwithstanding anything contained in the Code of Civil Procedure, 1908, to the contrary, Sub-section (2) of this section, however, specifically provides that these reliefs cannot be granted by the Court, unless they have been expressly claimed by the plaintiff in the suit. Sub-section (2) of the section recognised in clear terms the well-established rule of procedure that the court should not entertain a claim of the plaintiff unless it has been specifically pleaded by the plaintiff and proved by him to be legally entitled to. The proviso to this sub-section (2), however, says that where the plaintiff has not specifically claimed these reliefs in his plaint, in the initial stage of the suit, the court shall permit the plaintiff at any stage of the proceedings, to include one or more of the reliefs, mentioned above by means of an amendment of the plaint on such terms as it may deem proper. The only purpose of this newly enacted provision is to avoid multiplicity of suits and that the plaintiff may get appropriate relief without being hampered by procedural complications.

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, as a case may be visualized 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 obtain possession as against the party in actual possession 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
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only to execute the sale-deed but also to put the property in possession of the decree-holder. This is no consonance with the provision of section 55 (1) 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.

There may be circumstances in which are lief 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 t share of the defendant. It is in such cases that a relief for possession must be specifically pleaded.

In the instant case, it is pointed out on behalf of the petitioner that the possession was not with the respondents Nos. 6 to 9 but was with a third person namely, the petitioner, who was subsequent purchaser and, therefore. this was an appropriate case where the relief for possession should have been claimed by the plaintiff-respondents Nos. 1 to 5.

It may be pointed out that the Additional Civil Judge had decreed the suit for specific performance of the contract. The High Court modified decree to the extent that the sale deed was to be executed by respondents Nos. 6 to 9 together with the petitioner. In short, the decree was passed by the High Court not only against respondents Nos. 6 to 9 but also against the subsequent purchaser i.e., the petitioner and thus the petitioner was himself the judgment debtor and it cannot be said that he was a third person in possession and, therefore, relief for possession must be claimed The contention on behalf of the petitioner is that the relief for possession must be claimed in a suit for specific performance of a contract in all cases'. This argument ignores the significance of the words 'in an appropriate case'. The expression only indicates that it is not always incumbent on the plaintiff to claim possession or partition or separate possession in a suit for specific performance of a contract for the transfer of the immovable property. That has to be done where the circumstances demanding the relief for specific performance of the contract of sale embraced within its ambit not only the execution of the sale deed but also possession over the property
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conveyed under the sale deed. It may not always be necessary for the plaintiff to specifically claim possession over the property, the relief of possession being inherent in the relief for specific performance of the contract of sale. Besides, the proviso to sub-section (2) of section 22 provides for amendment of the plaint on such terms as may be just for including a claim for such relief 'at any stage of the proceedings'.

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". 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. The word 'proceeding' in section 22 includes execution proceedings also. In Rameshwar Nath v. Uttar Pradesh Union Bank 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 makes 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.

In Mahender Nath Gupta v. M/s. Moti Ram Rattan Chand and Anr the Delhi High Court endorsed the view taken in Balmukand v. Veer Chand (supra) that where in a suit for specific performance of the contract for sale relief for possession is not claimed and consequently the decree passed in the suit contains no relief for 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. The court however, observed that on March 1, 1964 Specific Relief Act of 1963 came into force and this Act altered the law by enacting section 22. It made it necessary for the plaintiff to ask specifically the relief of possession in suits for specific performance. The Court, however, held that section 22 of the Specific Relief Act of 1963 had no appli-

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cation to that case as the decree was passed when the old Act was in force.

The same High Court, however. in M/s. Ex-Servicemen Enterprises (P) Ltd. v. Sumey Singh considered the effect of section 22 (2) with its proviso. In that case the decree did not give the plaintiff the relief of possession. The question arose. Was the Court powerless to put him in possession of the property though he had a decree for specific performance in his favour ? The Delhi High Court observed:

> "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.
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> 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.
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> 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.

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The word "proceeding" in Section 22 in my opinion includes execution proceedings also."

The High Court had relied upon Rameshwar Nath v. UP Union Bank (Supra) for its decision in this case. We are in complete agreement with the view taken by the Delhi High Court on this case.

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.

If once we accept the legal position that neither a contract for sale nor a decree passed on that basis for specific performance of the contract gives any right or title to the decree-holder and the right and the title passes to him only on the execution of the deed of sale either by the judgment-debtor himself or by the Court itself in case he fails to execute the sale deed, it is idle to contend that a valuable right had accrued to the petitioner merely because a decree has been passed for the specific performance of the contract. The limitation would start against the decree-holders only after they had obtained a sale in respect of the disputed property. It is, therefore, difficult to accept that a valuable right had accrued to the judgment debtor by lapse of time. Section 22 has been enacted only for the purpose of avoiding multiplicity of proceedings which the law courts always abhor. F

The only amendment to be made in the plaint was to add a relief for possession necessitated because of the provisions of section 22, which is only an enabling provision.

There has been a protracted litigation and it has dragged on practically for about 13 years and it will be really a travesty of justice to ask the decree-holders to file a separate suit for possession The objection of the petitioner is hyper-technical. The execution court has every jurisdiction to allow the amendment. The only difficulty is that instead of granting a relief of possession the High Court should have allowed an amendment in the Plaint. The mere

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omission of the High Court to allow an amendment in the plaint is not so fatal as to deprive the decree-holders of the benefits of the decree when section 55 of the Transfer of property Act authorises the transferee to get possession in pursuance of a sale deed.

As pointed out in the earlier part of the judgment, the petitioner had started construction and, therefore, the decree-holders sought to injunct him from making construction on the disputed land but they were lulled by undertaking given by the petitioner that he would demolish the construction and restore the land to its original position in case the suit for specific performance was decreed. The undertaking given no doubt is a clever undertaking, but that might have given an impression to the plaintiff decree holders that in the event of success of the suit the construction would be demolished and they would get

back possession. Now the judgment-debtor petitioner seeks to lake advantage of the expression used in the undertaking to contend that he had undertaken only to demolish the construction and restore the land to its original position. The contention now raised is that the petitioner never gave an undertaking to restore back-possession of the disputed property to the decree-holders. Indeed, Mr. Shanti Bhushan stated before the Court that he was prepared to get the construction demolished but then stops short and says that possession could not be delivered to the decree holders unless there was an amendment in the plaint. We are not prepared to take such a narrow view of section 22. It was open to the Court to allow an amendment and the Court on the basis of that section has allowed delivery of possession in pursuance of the decree passed in the case.

Before closing discussion on this point we cannot lose sight of section 28 of the Specific Relief Act, 1963, which reads:

"28. (1) Where in any suit a decree for specific performance of a contract for the sale or lease of immovable property has been made and the purchaser or lease does not, within the period allowed by the decree or such further period as The Court may allow, pay the purchase-money or other sum which the Court has ordered him to pay, the vendor or lessor may apply in the same suit in which the . decree is made, to have the contract rescinded and on such application the Court may, by order, rescind the contract

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either so far as regards the party in default or altogether, as the justice of the case may require.

(2) Where a contract is rescinded under sub-section (1) the Court-

(a) shall direct the purchaser or the lessee, if he has obtained possession of the property under the contract, to restore such possession to the vendor lessor. and

(b) may direct payment to the vendor or lessor of all the rents and profits which have accrued in respect of the property from the date on which the possession was so obtained by the purchaser or lessee until restoration of possession to the vendor or lessor, and; if the justice of the cases so requires, the refund of any sum paid by the vendee or lessee as earnest money or deposit in connection with the contract.

(3) If the purchaser or lessee pays the purchase money or other sum which he is ordered to pay under the decree within the period referred to in sub-section (1), the Court may, on application made in the same suit, award the purchaser or lessee such further relief as he may be entitled to, including in appropriate cases all or any of the following reliefs, namely:

(a) the execution of a proper conveyance or lease by the vendor or lessor;

(b) the delivery of possession, or partition, and separate possession, of the property on the execution of such conveyance or lease.

(4) No separate suit in respect of any relief which may be claimed under this section shall lie at the instance

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of a vendor, purchaser, lessor or lessee, as the case may be "

Sub-section (3) of section 28 clearly contemplates that if the purchaser or lessee pays the purchase money or other sum which he is ordered to pay under the decree, the Court may on application made in the same suit, award the purchaser or lessee such further relief as he may. be entitled to. Sub-clause (b) of sub-section (3) of section 28 contemplates the delivery of possession or partition and separate possession of the property on the execution of such conveyance or lease. Sub-section (4) of section 28 bars the filing of a separate suit for any relief which may be claimed under this section.

In Hungerford Investment Trust Ltd. v. Haridas Mundhra and ors. dealing with section 28 (1) of the Specific Relief Act, 1963 this Court observed:

> "The Specific Relief Act, 1963, is not an exhaustive enactment and under the law relating to specific relief a Court which passes a decree for specific performance retains control over the decree even after the decree had been passed. Therefore, the Court, in the present case, retained control over the matter despite the decree and it was open to the Court, when it was alleged that the party moved against had positively refused to complete the contract, to entertain the application and order rescission of the decree if the allegation was proved."

The reasoning given by this Court with regard to the applicability of sub-section (1) of section 28 will equally apply to the applicapability of sub-section (3) of section 28.

This is an additional reason why this Court should not interfere with the eminently just order of the High Court. The High Court had amended the decree passed by the first appellate court and passed a decree for possession not only against the transferors but also against their transferee, that is, the petitioner.

Procedure is meant to advance the cause of justice and not to retard it. The difficulty of the decree-holder starts in getting
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possession in pursuance of the decree obtained by him. The judgment-debtor tries to thwart the execution by all possible objections. In the circumstances narrated above, we do not find any fault with the order passed by the High Court.

For the reasons given above the petition for special leave to appeal must fail and it was accordingly dismissed.

S.R. Petition dismissed.
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