



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Pronounced on: 22nd May, 2025*

+ **C.R.P. 218/2022, CM APPLs.56332/2022, 64195/2024, 5042/2025**

SHRUTI GOENKA

D/o Shri Arun Goenka
20, AnandLok,
New Deli-110049.

.....Petitioner

Through: Mr. Nikhil Palli and Mr. Syed
Kamran Ali, Advs.

versus

1. **DHIRENDRA PANDEY**

S/o Late Shri Ram Sagar Pandey
R/o 13-A, Beli Road, New Katra,
Allahabad, Uttar Pradesh

2. **AMRAPALI SAPPHIRE DEVELOPERS PVT. LTD.**

307, 3rd Floor, Nipun Tower
Karkardooma, Community Centre,
Delhi-110092.

Also at :

C-56/40, Sector-62, Noida, Uttar Pradesh.

Also at :

GH-01, Sector 45, Noida, Uttar Pradesh.

.....Respondents

Through: Mr. Amit Khemka and Ms. Himani
Singh, Advs.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA



J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Civil Revision Petition under Section 115 of the *Code of Civil Procedure, 1908* (hereinafter referred to as 'C.P.C.') has been filed on behalf of the Petitioner to challenge the Order dated 26.11.2022 *vide* which the learned ADJ has held that the Court has no territorial jurisdiction to entertain the Suit for Specific Performance and has consequently directed return of Plaint to be filed before the Court of appropriate jurisdiction.
2. The *facts in brief* are that Respondent No.1/Sh. Dhirender Pandey, sometime in June, 2012 approached the Petitioner for entering into an Agreement to Sell dated 23.06.2012 in respect of Flat no. 904, 9th floor, Plot No.GH-001, Sector 45, Noida, which had been allotted to her *vide* Allotment No. T/K/904 as per the Allotment letter dated 13.09.2009. For a total Sale consideration of Rs.42,39,000/- which had already been paid by Respondent No.1 to Respondent No. 2/Builder with an understanding that the remaining instalment shall be paid by the Petitioner.
3. The total sale consideration was therefore Rs.71,00,000/-, which was mutually agreed. Respondent no.1 received a sum of Rs.22,00,000/- out of the total sale consideration of Rs.71,00,000/- at the time of execution of the Agreement to Sell with an understanding that the balance sale consideration shall be paid at the time of registration of Sale Deed, subject to fulfilment of all the formalities with Respondent No. 2 in favour of the Petitioner.



4. The Petitioner asserted that in all he paid a total sum of Rs.51,50,000/- as the sale consideration which has been duly acknowledged by Respondent No.1. On 31.10.2012, when the Petitioner approached Respondent No.1 for execution of sale deed, Respondent No.1 represented that he has yet to make entire payment to Respondent No.2 and his interest waiver Application was still pending. He further stated that he was ready to execute the sale deed shortly after the waiver of interest/penalty. Thereafter, the Respondent No. 1 kept on avoiding execution of the Sale Deed on one pretext or the other.

5. The Petitioner asserted that she has always been ready and willing to pay the balance consideration of Rs.19,50,000/- in terms of Agreement to Sell dated 23.06.2012. She had approached Defendant No.1, who has failed to do the needful.

6. Hence, she filed a Suit for Specific Performance of Agreement to Sell and in the alternative sought recovery of Rs.51,50,000/- along with interest @ 18% per annum from the date of payment till the date of recovery along with *pendente lite* and further interest.

7. The Respondent No. 1 took a preliminary objection and has filed Written Statement that this Suit is liable to be dismissed *for want of territorial jurisdiction*. The Suit Property is situated in Gautam Budh Nagar, Uttar Pradesh and it is only the Court at Gautam Budh Nagar which has territorial jurisdiction to try the Suit.



8. It was further asserted that the Petitioner had miserably failed to do his part of Agreement on or before 31.10.2012, which demonstrate that she was not ready and willing to perform her part under the Agreement to Sell. She is a defaulter and is not entitled to the discretionary relief of Specific Performance. Petitioner has concealed two letters dated 04.10.2022 and 19.10.2022, which were written by Respondent No.1 to the Petitioner demanding the balance sale consideration on or before 31.10.2012.

9. A Preliminary issue was framed *vide* Order dated 25.05.2016 as under:

(i) whether the present suit is liable to be dismissed under Section 16 CPC on account of territorial jurisdiction.

10. The learned ADJ in detailed Order dated 26.11.2022, held that the relief was essentially for Specific Performance of Agreement to Sell in respect of a property located in Gautam Budh Nagar, Uttar Pradesh. *Therefore, the Delhi Courts have no jurisdiction and thereby, decided the issue of territorial jurisdiction in favour of Respondent No.1 and directed the return of the **Plaint** to be presented in the Court of appropriate jurisdiction.*

11. Aggrieved by the said Order, present Revision Petition has been filed on behalf of the Petitioner. The **grounds of challenge** of the impugned Order are that it has not been appreciated that the entire cause of action had arisen in Delhi, the Agreement to Sell dated 23.06.2012 was also executed within the jurisdiction of Courts of Delhi. The payments were admittedly



made in Delhi and received by Respondent No.1 in Delhi. Therefore, there is no question to state that Delhi Courts have no jurisdiction.

12. Reliance is placed on Adcon Electronics Pvt. Ltd. v. Daulat, AIR 2001 SC 3712, wherein it was held that where the title of the suit property is not disputed and main purpose for the Suit is Specific Performance, in that eventuality, there can be no good ground for court in holding that the Suit is for determination of title.

13. Hence, the Petitioner has sought the setting aside of the impugned Order dated 26.11.2022 and for adjudication of the suit by Delhi court on merits.

14. **Respondent No.1 in its Reply took the preliminary objection** that the Revision Petition was nothing but a gross abuse and misuse of law and it should be dismissed with exemplary costs. It is asserted that by way of present petition, the petitioner is trying to mislead the Court as the relief sought is for transfer and for directing respondents to perform his part of Agreement to Sell dated 23.06.2012. It is settled law that even if specific prayer is not made for delivery of possession of suit property, relief of possession is inherent in the relief of Specific Performance in terms of Section 55(1) Transfer of Property Act, 1882. The Sale Deed would be required to be executed at Noida, U.P. for which this Court has no jurisdiction, as per *Proviso to Section 16 CPC*. The Agreement to Sell dated 23.06.2012 was entered into for its performance which implicitly mean handing over the physical possession of the suit property by respondent



no.1. *Thus, the learned Trial Court has rightly held that this Court has not territorial jurisdiction to entertain the present petition and plaint has been directed to be returned.*

15. Apart from the aforesaid ground, it is submitted that a contract for sale of immovable property requires compulsory registration in the State of Uttar Pradesh. Section 49 of the Registration Act, as applicable to Uttar Pradesh after its Amendment *vide* U.P. No.57/76, provides that no document required by Section 17 Registration Act or by any provision of TPA or any other law for the time being in force, to be registered shall affect any immovable property comprised therein or received as evidence of any transaction effecting such property or conferring such power or creating such right of relationship, unless it is registered. Therefore, the Agreement to Sell relied upon by the petitioner is an unregistered Agreement to Sell and is specifically barred under the provisions of Registration Act, as applicable to Uttar Pradesh. The petitioner was aware that the Suit would be rejected out rightly in Uttar Pradesh and has therefore, chosen to file the Suit in this Court.

16. It is further submitted that Petitioner has miserably failed to perform her part of the Agreement to Sell on or before the specified date, i.e. 31.10.2012, which clearly demonstrate that she was not ready and willing to perform her part of the contract. The Petitioner herself being a defaulter is not entitled to discretionary relief of specific performance. The Petitioner has also concealed that Respondent had written two letters dated 04.10.2012



and 19.10.2012 demanding the balance sale consideration on or before 31.10.2012 so that the property could be transferred, but the Petitioner failed to do so.

17. It is further submitted that *time is the essence of Agreement* as there was specific clause in the Agreement to pay the sale consideration on or before the specific date, which the petitioner failed to honour despite two Demand Letters. Therefore, she has committed breach of the Agreement to Sell and is not entitled to any relief.

18. **On merits**, all the averments made in regard to breach of contract or of this Court having territorial jurisdiction, have been denied. It is claimed that the Suit has been filed merely to grab the property and is liable to be dismissed.

19. **Submissions heard and record perused.**

20. The Petitioner had filed a Suit against the Respondent for Mandatory Injunction for directing the Respondent to complete all the formalities necessary for transfer of Agreement to Sell dated 23.06.2012 in respect of Flat no. 904, 9th floor, Plot No.GH-001, Sector 45, Noida, Uttar Pradesh, in Specific Performance of the Agreement to Sell. Learned ADJ further noted that Clause 2 of Agreement to Sell dated 23.06.2012 stipulated that actual physical possession shall be delivered by the first party to the second party at the time of registration of Sale Deed after receiving of full balance sale consideration.



21. The basic question the Suit for Specific Performance of Agreement to Sell dated 23.06.2012 has been filed by the Petitioner claiming that the Agreement to Sell had been executed in Delhi and part payments were also made to Respondent no.2/Builder in Delhi. It was therefore, asserted that this Court has territorial jurisdiction to entertain the present suit.

22. The facts in the case again raise the vexed question of law as to where would the Suit be maintainable in case the Agreement to Sell pertains to a property located in a different jurisdiction, from where the Agreement to Sell was executed.

23. This question has been considered by the Courts since 1900s and the determination of the territorial jurisdiction has rested on *whether it was a Suit for title in land or it involved only a relief which could be obtained by specific performance of a contract for the sale of land.*

24. The earliest decisions to which a reference may be made are Land Mortgage Bank vs. Sudurudeen Ahmed, ILR 19 Cal.358; Nagendra Nath vs. Eraligool Co. Ltd. ILR 49 Cal. 670 and All India Sugar Mills Co. Ltd. vs. Sunder Singh, ILR 52 Mad. 809, wherein while considering the true nature of a Suit for Specific Performance, it was consistently observed that such a Suit was *not a Suit for land* within the meaning of Clause 12 of Letters Patent (*which was similar to S.16 CPC*) and a Decree or Order directing a person to execute a document is in exercise of its jurisdiction upon the individual and the Court in so doing *acts in personam.*



25. The **determining factor** should be the **primary object of the Suit** as was laid down in *Maharaja Probirendra Mohan Tagore vs. State of Bihar.*

26. This aspect was discussed threadbare in the case of *Moolji Jaitha and Co. vs. Khandesh Spinning and Weaving Co. Ltd.*, AIR 1950 FC 83. **Kania C.J.** observed that the test for **determining whether the Suit for land within Clause 12 of Letters Patent** is whether taking Suit as a whole, it is for purpose of obtaining a direction for possession or a decision on title to land or the object of the Suit is something different and involves a consideration of the question of title of land indirectly. **It was held that where the Plaintiff is entitled to ask the Court to act in personam and direct the Defendant to execute a conveyance in his favour, would be the factor to be considered while adjudicating on jurisdiction.** Further, the addition of a prayer for *Declaration of Title* did not alter the nature of Specific Performance or the jurisdiction of the Court to act *in personam*.

27. **Patanjali Shastri, J.** in the same Bench conquered with this view. A reference was made to the Full Bench of seven Judges of the Bombay High Court in *Hatimbhai vs. Framroz,* AIR 1927 Bom. 278 and to the Full Bench Judgment of five Judges of the Madras High Court in *Villippa Chettiar vs. Govinda Dass,* ILR 52 Mad. 809 to hold that the main and substantial relief sought in such case was the execution of a *Deed of Transfer* and not the prayer for *Declaration of Title* which was not only necessary but a relief which could not also strictly be granted until the Title was conveyed and, the



suit was therefore, not a suit filed for land within Clause 12 of the Letters Patent.

28. *The majority judgment in Moolji Jaitha and Co., (supra) thus, made it abundantly clear that a Suit for Specific Performance is equity jurisdiction where the only relief sought is the execution of a document on transfer and is not a Suit for Land and therefore, even if the property was outside the jurisdiction of the Court, it would not debar it on entertaining it on the ground of jurisdiction.*

29. In Debendra Nath Chowdhury vs. Southern Bank Ltd., AIR 1960 Calcutta 626, the Calcutta High Court referred to all the aforesaid judgments to concur that a Suit for Specific Performance only entails performance in *personam*. It was concluded thus “*the foundation for holding that the Suit for Specific Performance where the only relief claimed in the Decree for execution of a document of transfer and nothing else, is not a Suit for Land*”. The reasons given were: *firstly*, because it is a Suit for enforcing a Contract, where the Court is required to act *only in personam*; *secondly*, the cause of action for such Specific Performance is not for recovery of land or recovery of possession, though it may be a consequence thereof which is immaterial for the purpose; *thirdly*, Clause 12 of Letters Patent (which is akin to Section 16 CPC) provided three basic tests for determination of territorial jurisdiction; namely (i) *the land*, (ii) *Cause of Action* and (iii) *place of business or residence of defendant*, which clearly indicated that where the intended act is *in personam*, it is the second and third criteria



which is to be applied. The fact that a Decree for Specific Performance will relate to ultimate possession being given or obtained, does not convert it into a Suit for Land. In such like cases, the test for determining the jurisdiction is the place where the cause of action has arisen or where the Defendant resides or work or his place of business.

30. In Debendra Nath Chowdhury, (supra), it was also observed that confusion seems to have emerged on the notion of *consequential relief of possession* which originated in view of the Order 2 Rule 2 CPC.

31. This question was considered by *Sankaran Nair J., High Court of Madras* in Krishnammal vs. Sundararaja Aiyar, ILR 38 Mad 698, wherein the Plaintiff got a Decree of Specific Performance and got a Sale Deed executed in his favour by way of the execution of Decree. Thereafter, he instituted the second Suit for Recovery of Possession from the Defendants. It was held that the bar of *Order 2 Rule 2 CPC* would not be attracted for the simple reason that though the Plaintiff could have sought the relief of Possession in the first Suit for Specific Performance as well, but he was not bound to do so. At the time of institution of Suit, no cause of action to seek possession vested in him. He acquired this right to possession only after the Conveyance Deed got executed in his favour. Possession is not merely an incident or subsidiary to a Sale Deed. While in a Suit for Specific Performance, the parties to the Contract alone need to be the parties, in a Suit for Possession all person who are found to be in possession would be the proper parties.



32. In the same judgment of Krishnammal, (*supra*), Tyabji J. concurred and observed that there may be covenant in the Agreement to Sell about transfer of ownership by a registered Instrument and there may also be an independent covenant permitting the vendee to take possession of the property, but in strict form, right to sue for possession would not arise till the Conveyance Deed is executed in his favour and it is only when the vendor refuses to give possession, cause of action would have arisen to seek possession.

33. The Apex Court in Adcon Electronics Pvt. Ltd. vs. Daulat and Anr. 2001 (7) SCC 698 referred to all the aforesaid judgments to conclude that in the Suit for Specific Performance of Agreement to Sell, wherein relief of Delivering of Possession of Suit Property has not been specifically claimed, it cannot be considered as a *Suit for Land*.

34. From the aforesaid discussion, the proposition of law is clearly defined. A Suit for Specific Performance of Agreement to Sell only seeks personal performance of a Defendant to execute the transfer documents pursuant to the Decree. It being a *relief in personam* against the Defendant, Suit can be filed where part cause of action has arisen or where the Defendant resides or works for gain, in terms of Section 16 CPC the Suit.

35. In the present case as well, as per the Petitioner, the Agreement to Sell was executed in Delhi and part payment were also made in Delhi. Significantly, Respondent No.2/Builder is also located in Kakardooma, Delhi. Since, it is a Specific Performance of an Agreement to Sell and not



for title in the Suit Property, in the light of the observations made by the Hon'ble Apex Court in Adcon Electronics Pvt. Ltd. (supra), it cannot be said that this Court has no territorial jurisdiction to entertain the present Petition.

36. Furthermore, there is an alternate relief for Recovery of Rs.60,77,000/- along with *pendente lite* interest @ 18% per annum has been sought. This aspect has not been considered by the learned ADJ that the alternative relief claimed by the petitioner, is within the territorial jurisdiction of this Court.

37. In light of aforesaid discussion, it is hereby held that the Court in Delhi have territorial jurisdiction to entertain the present suit. The impugned Order dated 26.11.2022 is hereby, set aside.

38. The parties are directed to appear before the learned District Judge on 01.07.2025 and the learned Trial Court is directed proceed with the trial in accordance with law.

39. The Petition along with pending Application(s) is disposed of accordingly.

**(NEENA BANSAL KRISHNA)
JUDGE**

MAY 22, 2025/R/va