

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

Reserved on : 28.04.2010
Pronounced on : 05.07.2010

+ CS(OS) 1124/2007 & IA Nos. 7005/2007, 12308-12309/2009,

MR. JANAK DATWANI Plaintiff

Through : Mr. S.K. Puri, Sr. Advocate with Mr. Vikas Aggarwal,
AdvocateS.

versus

MRS. JASKIRAT SUKHWANT SINGH DATWANI Defendant

Through : Mr. Neeraj Kishan Kaul, Sr. Advocate with Mr. Kamal
Budhiraja, Mr. Anil Airi, Mr. Siddharth Bawa and Ms. Simar. K.
Narula, Advocates.

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to Reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

MR. JUSTICE S. RAVINDRA BHAT

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1. This is a suit for declaration, partition and permanent injunction with respect to 38% share of the defendant in the property No. 6, Friends Colony (West), New Delhi – 110065 (hereinafter referred to as “the suit property”). The factual matrix which gives rise to the said dispute is discussed below.

2. The plaintiff and the defendant are both residents of Paris, France. In the year 1980, they had solemnized their marriage as per Hindu rites, at Amritsar. After marriage they took up residence in France. The marriage was dissolved after the defendant moved the Country Court, Paris in 2001 and the Court subsequently in 2005 granted divorce under the French Law. The plaintiff, in the suit, states that the

“parties had agreed voluntarily to change the law applicable to their matrimonial system and embraced the French laws”.

3. In accordance with the matrimonial property law in France, the Country Court, Paris also directed for the liquidation and the sharing of the property interests of the married couple, i.e. parties to this case. It, therefore, appointed the President of the Interdepartmental Chamber of Advocates of Paris, (with the faculty of delegation) to proceed with the liquidation of the respective rights of the parties.

4. In compliance with the Court’s decree, in October 2006, the parties mutually designated a Notary (liquidator) to conduct the liquidation operations. The suit property was included in the set of properties in which the property interest had to be shared. An appeal was filed against the decree by the plaintiff. The Court of Appeals confirmed the judgment of the Country Court except as regards the damages and compensatory allowances against the plaintiff.

5. Meanwhile, sometime in 2003, the defendant here had filed a suit, CS (OS) No. 698 of 2003 (hereinafter referred to as the 2003 suit), in this Court seeking partition of her share of 38% in the suit property. In that case, the plaintiff (in the present case) had been joined as a defendant. The former-husband (the defendant therein and plaintiff here) filed an application, I.A. No. 3083/2005, for removal of his name as a defendant, and deletion from array of parties. In his written statement he admitted that he, in his individual capacity, has no share in the property. His application was dismissed for not having been pressed. By its order dated 17.04.2007, this Court directed the decree of partition in the 2003 suit. On 31.05.2007, the plaintiff (the former-husband) filed the present suit praying for 50% share in the suit property based on the decree of the French Court under French laws. At the same time, in the 2003 suit he filed an application praying for stay of the decree dated 17.04.2007.

6. The plaintiff bases his claim on Articles 1401 and 1402 of the French Civil Code which provides that any property, movable or immovable acquired by either of the spouses after solemnization of their marriage is to be shared equally between them. The plaintiff submits that it is matter of record that the suit property was acquired by the plaintiff. The plaintiff submits that the decree passed by the French Court extends to the suit property and further that the defendant had accepted the said decree and taking benefit under the same has either become entitled to or obtained a 50% share in the immovable property of the plaintiff.

He therefore, lays claim for an equal share in the suit property, even though the same is situated in Delhi, outside the territorial jurisdiction of the French Court.

7. The defendant opposes the present suit on various grounds. The primary argument presented by the defendant is that unlike in France, there is no community of interests between the spouses. Therefore, the said French decree falls foul of Section 13 of the Civil Procedure Code (CPC).

8. It is submitted that France is not one of the countries which have been notified as a reciprocating territory for the purposes of Section 44A and therefore decree passed by French Court is not executable in India, therefore, the plaintiff cannot rely on it, as an instrument clothing him with any rights to claim a decree for partition. The defendant denies that the plaintiff has any right, title or entitlement in the suit property, or that it is matrimonial property of the kind for which he can claim partition.

9. The defendant denies that there was any agreement between the parties, before the French Court or any other authority or forum, permitting the treatment of the suit property as common pool of assets, or matrimonial property, capable of division. It is submitted, on the other hand, that the plaintiff is essentially relying on his claim before the French authorities to treat the suit property as a divisible asset, to which the defendant never, at any point in time, gave her consent.

10. An argument stressed upon by the defendant is that since the property in question is situated in India, it would be governed by the doctrine, of *lex situs* i.e. the law of the place where the immovable property is situated and not in accordance with any foreign law. It is also submitted that the commissioner, or liquidator appointed by the French Court does not have jurisdiction to deal with the suit property, which is subject to the exclusive jurisdiction of this Court. It is submitted that the determination of rights of parties in respect of the suit property, made by the French Court, is unenforceable, and without jurisdiction. The defendant also contends that she is the exclusive owner of the suit property, and that the plaintiff cannot claim any right or interest in it. The defendant finally avers that the suit is hit by *res judicata*, since the rights of the parties in respect of any interest in the suit property has been finally and conclusively adjudicated by this Court, in CS. 698/2003, in which the decree of 17.04.2007 has become final and binding.

11. On 3rd December, 2009, the Court recorded the statement of counsel for parties to the effect that the suit could, having regard to the limited nature of the controversy, be decided on the basis of the pleadings and the documents filed. Admission and denial of the documents was completed on 05.02.2010; the defendant admitted seven documents filed by the plaintiff, which were marked as Ex. P-1 to Ex. P-7; the plaintiff admitted 14 documents of the defendants, which were marked as Ex. D-1 to Ex. D-14. The suit was, thereafter heard.

12. On the basis of the materials and pleadings, the Court has to decide the following issues:

1. Whether the materials on record establish that the plaintiff is entitled to 50% share in the suit property;

2. Does the plaintiff prove that the decree and judgment of the French court are valid, enforceable and can form the basis of the present suit:

3. Is the plaintiff entitled to partition or any other relief

Issue No. 1

13. In support of the suit claim, the plaintiff relies on seven documents. Ex. P-1 is the copy of the previous suit, of 2003, whereby the defendant claimed partition in respect of her 38% share in the property, filed before this Court. Ex. P-2 is a copy of the Conveyance/Sale deed in respect of the suit property, dated 25th September, 1988. Ex. P-3 is a copy of the Agreement to Sell, executed in favour of the defendant. Ex. P-5 is a certified copy of the judgment and order of this Court, decreeing CS 698/2003 and holding that the defendant is entitled to 38% share in the suit property. Ex. P-6 is a certified copy, with translation of the French Court's judgment, dated 14.4.2005.

14. There was no dispute between the parties about the previous marriage of the parties, the acquisition of the 38% share in the suit property, by the defendant, filing of a suit for partition in respect of that property, confirmation of that share, by a decree of this Court, and the judgment of the French Court, decreeing dissolution of their marriage. The parties also relied on an appellate court's order, directing the plaintiff to pay € 5,000 to the defendant. There is further no dispute that the French Court directed liquidation of the parties assets, and ordered their division, for which purpose, an official was appointed.

15. The translation of the French Court's decree, with the direction to divide the properties, is part of the record as Ex. P-6. The portion relevant for the present purposes, is extracted below:

"Ex P-6

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On the compensatory allowance and other financial demands:

Mrs. Sukhwani Singh has requested as compensatory allowance a capital of Euros 5,000,000;

She worked as Designer in the Company NITYA where she resigned in May 2000. The certificates produced show that she played an important role there for making their collections. This recognized talent should allow her to take up again, successfully, an activity in this field;

Mr. Datwani is engaged in his activity in the field of international readymade garments. Reference shall be made to the decree given on 30 May 2002 by the Court of Appeal of Paris.

The community of composed of:

- *An apartment (ancient married couple's home situated at Paris, 20 avenue Rapp, evaluated at 3,000,000 Euros)*
- *A common account at Standard Chartered Bank from which the wife has received the balance, i.e. US \$ 199,425.27*
- *A portion of a house in New Delhi (38% according to the husband)*
- *The wife does not appear to be owner of her own assets."*

(emphasis supplied)

The plaintiff strongly relies on a document "Elements Sur Masses Actives et Passives, Propres et Communes" the translation of which has also been filed. The translation (Ex. P-7) of the document reads as "Data on the total separate and joint assets and liabilities". It is a list, and it is unclear as to who filed it, or whether it was filed jointly. The plaintiff relies on the following extract of the document, Ex. P-7:

"During the meeting of 27th September 2006 at which Mr. Datwani and Mrs. Sukhwani Singh were present as well as their lawyers in the office of the Associate Notary appointed by them, Mr. Datwani and Mrs. Sukhwani Singh agreed:

- *To leave these landed properties undivided till their sale,*
- *That the sale price would be shared between them in equal shares.*

Point No.5 ASSET in INDIA

Under the terms of a private agreement deed dated 1st September at New Delhi, Mrs. Sukhwani Singh acquired, on behalf of the community of acquisitions existing between the parties, from:

Mr. A.N. Wanchoo, residing at 21 Lodi Colony, New Delhi.

Mrs. Indu Kak, wife of H.N. Kak, residing at present at 21 Lodi Colony, New Delhi

Mrs. Prabha Tikku, wife of Mr. R.K. Tikku, residing at 21, Lodi Colony, New Delhi

38% of the landed property designated hereafter:

A property situated at 6, Friends Colony (West) New Delhi at Nathuram

Friends Colony, Mathura Road, New Delhi of an approximate area of 808 m2.

The title deed of this property has been sent to us partially translated into French. It is difficult to make out the price of its acquisition."

16. The last relevant document was filed by the plaintiff on 27th April, 2010. It is styled in the Index of documents as "Certified copy of document in French proceedings where the Defendant has admitted the suit property to be part of the community property of the couple. The said document reads as follows, in French:

"Dires de Madame Sukhwani Singh:

Les dires de Madame SUKHWANI SINGH, sous la forme d'un courrier de son conseil, Maitre LANOUAR, demeurent annexes aux presents (Annexe no.2)

A l'effet de completer ces derniers Madame SUKHWANI SINGH fait les dires suivants:

Madame Sukhwani Singh reverdique la totalite fav le coute ce la ..aute l'liquider, du bieu irrevoblier si a NEW DELHI 6 Friends Colony..."

Though the plaintiff has not filed a translation of this document, the defendant produced a translated version. The same was not disputed by the plaintiff. The same reads as follows:

" Mrs. SUKHWANI SINGH's testimony

Mrs. SUKHWANI SINGH's testimony in the form of a letter from her counsel Maitre LANOUAR is attached to the present document (refer Annexe no. 2).

In order to complete the latter, Mrs. SUKHWANI SINGH has given the following testimony:

On behalf of the community to be liquidated, Mrs. SUKHWANI SINGH claims the entire property located at 6 Friends Colony New Delhi (India)

JJ Datwani (signature)"

17. It is evident from the above discussion that the parties to the suit were married; they were living in France, when divorce proceedings were initiated. The record reveals that the French Court decreed divorce by its judgment dated 14th April, 2005. The Court directed arrangements to be made, for division of property. This much is not in dispute. What the

parties are at variance, is, however, whether the suit property (in the present case) was the subject matter of disposition by the French Court. The plaintiff asserts that the defendant had consented that the French Court could deal with the suit property, whereas the latter asserts that there was no such consent, and that the documents nowhere reflect that position.

18. The plaintiff is relying on Ex. P-6, Ex. P-7 and the statement by the defendant regarding community property, of the couple. The relevant part of the French Court judgment, dealing with the common assets, describing the suit property, reads as follows:

“A portion of a house in New Delhi (38% according to the husband)”

It is quite apparent that the assertion that the suit property constituted matrimonial asset, was made *solely* by the husband. The second document, Ex. P-7 no doubt suggests that the suit property was to be treated as community property, yet, the last part of the document keeps the whole matter vague. Moreover, it is unclear whether the document was a presentation by the plaintiff husband, or was also agreed and signed by the wife; it certainly does not bear her signature. A reading of the third document shows that the wife claimed the whole of the suit property as hers, and did not admit it to be community, or matrimonial property. There is one more important and crucial aspect of the matter. The plaintiff, who was arrayed as defendant in CS (OS) 698/2003 admitted that he was not owner of the property, therefore, the suit is liable to be dismissed.

19. From the above analysis, what emerges is that the defendant never consented that the suit property was to be part of jointly owned matrimonial assets, capable of division, at the time of dissolution of marriage, of the couple. There is no dispute that the defendant acquired that property, and her interest crystallized through a decree of this Court. For these reasons, it is held that the plaintiff has been unable to prove that he has any entitlement to the suit property, or that the defendant consented to its being shared with him. This issue is answered accordingly, against the plaintiff.

Issue Nos. 2 & 3

20. The defendant asserts that the orders and judgment of the French Court are not enforceable, as is urged by the plaintiff, and relies on the doctrine of *lex situs*. It is submitted that the substantive law as to dispute pertaining to property in India, is governed by Section 16 of the Code of Civil Procedure, which mandates that only the Court, within the local limits of whose jurisdiction, an immovable property is situate, can exercise power and jurisdiction, and a foreign Court cannot determine parties rights in relation to such subject matter. The

plaintiff, on the other hand, urges that the defendant had consented to be bound by the jurisdiction of the French Court, and is also beneficiary of its determinations, in respect of divorce, as well as orders pertaining to immovable properties situated in France, and for that reason, is estopped from questioning the efficacy of that Court's orders, pertaining to the suit property.

21. For applying the doctrine of *lex situs* to the present matter, reliance is placed on *R. Vishwanathan & Ors. v. Rukn-ul-Mulk Syed Abdul Wajid since deceased & Ors.*, AIR 1963 SC 1; *Parakutty Ama Parvathi Amma & Ors. v. Sankara Kurup Rama Kurup & Ors.*, AIR 1944 Kerala 4; *Maria Luiza Valentina Pereira and Anr. v. Jose Paulo Coutinho and Ors.*, 2009 (1) Bom CR 370; *Indian Overseas Bank v. SM Mohd. Mushaba*, AIR 1977 Mad 199; *Nautam Prakash DGSVC, Vadtal & Ors. v. K.K. Thakkar & Ors.*, (2006) 5 SCC 330; *Estate of late Sri VR. RMS Chockalingam Chettiar v. C.I.T.*, (1960) 2 MLJ 577 and *Sumkin Bussan International (Hong Kong) Ltd. v. King Shing Enterprises Ltd. & Anr.*, 2005 (6) Bom Cr 240. Moreover, it is contended that even if the defendant participated in the proceedings between the parties which were held in the Courts in France, the judgment/decreed to the extent it includes within its ambit the immovable property situated in India is contrary to the laws of India and therefore ineffectual and unenforceable. Section 16 CPC, which provides the *lex situs* rule with respect to jurisdiction, is pressed home for this point.

22. The defendant submits that for determination of any interest in the suit property a suit must have been instituted in the Court within the local limits of whose jurisdiction the property is situated. However, since this is not the case and such determination has been allegedly done by the French decree passed by the French Court, therefore, the enforcement of the said decree, that is sought by the plaintiff by virtue of the present suit, is in contravention of this rule as laid down in Section 16, CPC.

23. The defendant also contends that the present suit is hit by Section 34 of the Specific Relief Act as the present suit is for declaration of his share in the suit property. However, a declaration can only be of a pre-existing right. Further, such right not accruing to the plaintiff, the declaration sought is not valid under law. As he is not entitled to such declaration, it is contended, he cannot therefore seek partition of such a share in the suit property. Furthermore, the defendant contends that plaintiff's claim of share in the suit property is violative of the Foreign Exchange Management (Acquisition and Transfer of Immovable property in India) (Amendment) Regulations, 2002. This is so because the plaintiff, it is submitted, is a British national and French resident and thus can acquire property only in

terms of the said Regulation, which it is submitted, does not permit it to do so in the instant case. It is argued that as the plaintiff's case does not fall under Regulation 4, therefore he is not permitted to acquire a share in the suit property. It is also contended that his claim is hit by Regulation 8 as well.

24. The defendant's final contention is that the suit ought to fail as the plaintiff has admitted that he does not hold share in the suit property. For this purpose, they rely on his assertion in the written statements in the 2003 suit and in an application therein, wherein the plaintiff (one of the defendants therein) had stated that he does not hold any share in the property. Defendant submits that this admission was made after the divorce decree had been given by the French Court. The said admissions being made on oath, the plaintiff is estopped from asserting a claim contrary to them. Reliance is placed on *Nagindas Ramdas v. Dalpatram Ichharam alias Brijram & Ors.*, (1974) 1 SCC 241.

25. The plaintiff submits that a foreign decree that does not attract the provision in Section 44A can be enforced by filing a suit. As regards the objection relating to Section 13 and Section 16 CPC, the rule of *lex situs* and the non-existence of community property law under Indian law, the plaintiff essentially asserts that the parties had wilfully submitted to the jurisdiction of the French Court and have accepted the French Court's decree. Furthermore, it is stated that as the defendant has already taken steps for implementation of the same and has become entitled to half share in the properties of the plaintiff, she cannot now object and deny similar benefit to the plaintiff, which is a right accruing to him by virtue of the French Court's decree. It is submitted that the present suit has been filed based on the above decree which entitles the plaintiff to half share in the suit property. Thus, the title to the suit property is to be adjudicated here. Even if it were to be held that the French Court did not possess jurisdiction over the suit property, the agreement of the parties to share their property interests, which has been recorded by the French Court would still be binding between the parties.

26. To counter the argument relating to alleged violation of FEMA, the plaintiff submits that its case does not fall under Regulation 4. However he relies on the proviso to Regulation 8 to contend that cases which do not fall within the specified conditions may be permitted after obtaining permission of the RBI on a case to case basis. Lastly, with respect to the argument on admission the plaintiff contends that the said admissions that were made in the 2003 suit when the decree passed by the Country Court, Paris was yet to attain finality as the

plaintiff himself had preferred an appeal. However, after confirmation of the said decree by the Court of Appeals, the plaintiff filed the present suit and also filed an application in the 2003 suit for setting aside the decree of partition. The plaintiff submits that the said admissions are to be judged in the light that he could not have taken the present stand earlier because of the appeal that had been filed by him in the Court of Appeal.

27. The doctrine of *lex situs* has been adopted by Indian Courts and has become part of India's rules of private international law. It would be useful here to notice the following passage relied on by the High Court of Bombay in *Sumkin Bussan International (Hong Kong) Ltd.* (supra):

"6. In Dicey's Conflict of Laws, 10th Edition, page 701 the rule is summarised as follows :

"As a general rule, all questions that arise concerning rights over immovable (land) are governed by the law of the place where the immovable is situated (Lex situs). The general principle is beyond dispute and applies to rights of every description. It is based upon obvious considerations of convenience and expediency. Any other rule would be ineffective because in the last resort land can only be dealt with in a manner which the lex situs allows."

7. Learned Single Judge of Punjab High Court in (Lakhpat Rai Sharma v. Atma Singh) A.I.R. 1962 Pun. 228, following the decision in Privy Council in Anantapadmanabhaswami v. Official Receiver of Secunderabad held that where in an insolvency proceedings started in a foreign country an adjudication order is passed against the insolvent by the Court of the country, it has no effect on the immovable property of the insolvent in India and consequently the property of insolvent situated in India can be proceeded against by the decree holder who has obtained a decree against the insolvent. Similar is the view taken by Calcutta High Court in (Re: Summermulla Surana): AIR1932Cal124 . In view of the facts of the case before us we do not find it necessary to express any opinion on the wider proposition laid down in those cases.

8. In the instant case the attachment was levied on 12-1-2004, i.e. much prior to the order of the High Court of Singapore adjudicating the respondent No. 2 as a bankrupt. The order of adjudication by Singapore High Court cannot affect the right of the attaching creditor of the insolvent. Consequently the Chamber Summons taken out by the respondent No. 2 is clearly not maintainable. The order of the learned Single Judge granting stay to the execution is therefore vacated. The execution proceedings to proceed in accordance with law. We make it clear that our order will not prejudicial the rights of the parties in Chamber Summons No. 550 of 2005 and Chamber Summons No. 318 of 2005 and the learned Single Judge shall decide the same on their own merits"

28. The Supreme Court in *R. Vishwanathan* (supra) after discussing the same proposition elaborately reached the same conclusion in the following terms:

“8... It is also well settled that a court of a foreign country has no jurisdiction to deliver a judgment capable of enforcement or recognition in another country in any proceeding the subject matter of which is title to immovable property outside that country.

.....

25. Title to immovable property may therefore be determined directly or indirectly only by the law of the State, and by the courts of the State in which it is situate. A decision of a foreign Court directly relating to title to immovable property within its jurisdiction will of course be regarded between the same parties as conclusive by the Courts in India: but that decision is ineffectual in the adjudication of claims to immovables without the jurisdiction of that foreign Court, even if the foundation of title in both the jurisdictions is alleged to be identical. A foreign Court being incompetent to try a suit relating to immovable property not situate within its jurisdiction, the grounds on which its decision relating to title to immovable property within its jurisdiction is founded will not debar investigation into title to other property within the jurisdiction of the municipal courts, even if the latter properties are alleged to be held on the same title. Every issue and every component of the issue relating to title to immovable property must be decided by the Court within whose jurisdiction it is situate: to recognise the authority of a foreign court to adjudicate upon even a component of that issue would be to recognise the authority of that Court to decide all the components thereof.

.....

28...That title must be adjudicated upon in the case of immovables by the Courts of the country in which such immovables are situate and on evidence led in that court.”

29. The following observations of the Bombay High Court, from its in *Maria Luiza Valentina Pereira and Anr.* are also relevant:

*“12...Say he, if a Portuguese citizen (in our case a Goan) dies, leaving behind immovable properties in France, his succession will be regulated, in Portugal, by Portuguese law, which is personal law, in France by French law, which is a *lex rei sitae*. Therefore it follows that the properties of the inventoried located in Goa will be governed by the Code and those in Mumbai by Section 5 of the Indian Succession Act, 1925. “*

30. It is also relevant to extract Section 16, at this stage; it reads as follows:

“16. SUITS TO BE INSTITUTED WHERE SUBJECT-MATTER SITUATE.

Subject to the pecuniary or other limitations prescribed by any law, suits -

(a) for the recovery of immovable property with or without rent or profits,

(b) for the partition of immovable property,

(c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property,

(d) for the determination of any other right to or interest in immovable property,

(e) for compensation for wrong to immovable property,

(f) for the recovery of immovable property actually under distraint or attachment,

shall be instituted in the Court within the local limits of whose jurisdiction the property is situate :

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

Explanation : *In this section "property" means property situate in India."*

31. The above provision reveals, facially, that court within whose jurisdiction immovable property is located, can exercise exclusive jurisdiction over them. The explanation clarifies that property which is referred to is property situate in India.

32. In this case, it is apparent from the facts that according to Indian law, this Court alone has jurisdiction over the suit property. On an application of the law declared by the Supreme Court, in the decisions cited above, it is also equally clear that the French Court's decree, based on French law is binding between on the parties only to the extent it is situate in France. However, all rights and entitlements with respect to the immovable property that is situated in India will have to be adjudicated in accordance with the Indian law. The French Court's determination (which is unclear, contrary to the plaintiff's assertions) cannot therefore, be conclusive. This would be the position even if both the parties had submitted to the jurisdiction of the French Court applying the French law and subsequently had accepted the decree granted by it. The reason for such conclusion is that no one can confer jurisdiction on court, by consent. This position was articulated by the Supreme Court, in *P. Dasa Muni Reddy v. P. Appa Rao*, 1974 (2) SCC 725:

"16. The appellant proved that the appellant made a mistake of fact in regard to the building being outside the mischief of the Act. The appellant instituted the suit before the Rent Controller in mistake about the underlying and fundamental fact that the

building was outside the ambit of the Act. The Civil Court has jurisdiction in the subsequent suit which is the subject of this appeal. The appellant is not disentitled to any relief on the grounds of res judicata or estoppel or waiver. As one cannot confer jurisdiction by consent similarly one cannot by agreement waive exclusive jurisdiction of courts. The Civil Court and not the Rent Control Court possesses jurisdiction over the building in question.”

Thus, it becomes clear that it is only Indian law which can be made applicable for determination of the title over the suit property.

33. On the point of applicable law, it must be noted that the French decree ordering for sharing of interests in the properties was based on the community property law that is in force in France. However, as has been held already, the applicable law for the suit property has to be Indian law. The parties herein had solemnized their marriage according to Hindu rites. It was therefore, performed under the Hindu Marriage Act. Under the said Act, the only relief, consequent to a decree of divorce, that may be granted by a Court is a decree for permanent alimony or maintenance in terms of Section 25 and/or custody of children in terms of Section 26 of the Act.

34. Another aspect on which the French decree is contrary to Indian law is on ground of the French Court not possessing the requisite jurisdiction with respect to the suit property. The French decree therefore, falls within the ambit of the exceptions laid down under Section 13 CPC in that it sustains a claim founded on the breach of Indian law, in terms as already stated. It would be useful here to notice the judgment of the Supreme Court, reported as *Y. Narsimha Rao v. Y. Venkata Laxmi*, 1991 (3) SCC 451, where it was held that:

“7. Under the provisions of the Hindu Marriage Act, 1955 (hereinafter referred to as the "Act") only the District Court within the local limits of whose original civil jurisdiction - (i) the marriage was solemnized, or (ii) the respondent, at the time of the presentation of the petition resides, or (iii) the parties to the marriage last resided together, or (iv) the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is, at the time, residing outside the territories to which the Act extends, or has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of him if he were alive, has jurisdiction to entertain the petition. The Circuit Court of St. Louis County, Missouri had, therefore, no jurisdiction to entertain the petition according to the Act under which admittedly the parties were married. Secondly, irretrievable breakdown of marriage is not one of the grounds recognised by the Act for dissolution of marriage. Hence, the decree of divorce passed by the foreign court was on a ground unavailable under the Act.

8. Under Section 13 of the Code of Civil Procedure, 1908 (hereinafter referred to as the "Code"), a foreign judgment is not conclusive as to any matter thereby directly

adjudicated upon between the parties if (a) it has not been pronounced by a court of competent jurisdiction; (b) it has not been given on the merits of the case; (c) it is founded on an incorrect view of international law or a refusal to recognize the law of India in cases in which such law is applicable; (d) the proceedings are opposed to natural justice; (e) it is obtained by fraud; (f) it sustains a claim founded on a breach of any law in force in India.

9. As pointed out above, the present decree dissolving the marriage passed by the foreign court is without jurisdiction according to the Act as neither the marriage was celebrated nor the parties last resided together nor the respondent resided within the jurisdiction of that court. The decree is also passed on a ground which is not available under the Act which is applicable to the marriage. What is further, the decree has been obtained by appellant 1 by stating that he was the resident of the Missouri State when the record shows that he was only a bird of passage there and was ordinarily a resident of the State of Louisiana. He had, if at all, only technically satisfied the requirement of residence of 90 days with the only purpose of obtaining the divorce. He was neither domiciled in that State nor had he an intention to make it his home. He had also no substantial connection with the forum. Appellant 1 has further brought no rules on record under which the St. Louis Court could assume jurisdiction over the matter. On the contrary, as pointed out earlier, he has in his petition made a false averment respondent 1 had refused to continue to stay with him in the State of Missouri where she had never been. In the absence of the rules of jurisdiction of that court, we are not aware whether the residence of respondent 1 within the State of Missouri was necessary to confer jurisdiction on that court, and if not, of the reasons for making the said averment."

In this case, the French Court clearly lacked jurisdiction to deal with the suit property. As held earlier, there is no indication that the plaintiff's rights in respect of the property were admitted, or even adjudicated in his favour. Hence, the order of the French Court, to the extent it deals with property that is subject to jurisdiction of this Court is not enforceable in India.

35. The plaintiff's contention that the defendant having taken the benefit of the decree herself by claiming share in the immovable properties belonging to the plaintiff, she cannot object when similar relief is sought by the plaintiff also must fail. This is because of the simple reason that the suit property is located outside the territorial extent to which the French decree extends. The principle of *lex situs* prevails over the argument of the plaintiff. Thus, the French decree is invalid and unenforceable to the extent that it extends over immovable property in India irrespective of the fact that the parties had submitted to the jurisdiction of the French Court and had subjected themselves to French law. It is pointed out that the reasons discussed above even when independently considered are enough to warrant dismissal of the suit.

36. In view of the findings and conclusions rendered by the Court on the above issues, the suit must fail. It is therefore, dismissed with costs. Accordingly all the pending applications are also dismissed. The defendant is also entitled to counsel's fee of Rs. 55,000/- which shall be paid by the plaintiff within four weeks.

July 05, 2010

(S.RAVINDRA BHAT)

JUDGE