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OSA No. 279 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

**RESERVED ON : 31-07-2026**

**PRONOUNCED ON : 19.08.2026**

CORAM

**THE HON'BLE MR JUSTICE P. VELMURUGAN**

**AND**

**THE HON'BLE MRS.JUSTICE K. GOVINDARAJAN THILAKAVADI**

**OSA No. 279 of 2021**

M.K.M.Aboobakar  
S/o.Late Mena Muna Kassim  
No.1/27, Arabia Street, Thirukkalacherry Post,  
Tharangambadi Taluk, Nagapattinam District.

..Appellant

Vs

Ajima Beevi  
W/o.Late.Abdul Razak  
No.1/231, Madina Street  
Thirukkalacherry Post, Tharangambadi Taluk,  
Nagapattinam District.

..Respondent

**Prayer:** Original Side Appeal filed under Order 36 Rule 2 of Original Side Rules read with Clause 15 of Letter Patent praying to set aside the order and decreetal order dated 15.12.2020 passed in Application No. 2746 of 2020 in Application No. 9848 of 2019 in C.S.No. 23 of 2020 and pass such further or other orders as this Honble Court may deem fit and proper.

For Appellant:

Mr.S.Sadasharam

For Respondent:

Mr. Nassir Hussain  
for Mr.N.A.Nissar Ahmed



### **Judgment**

**(Judgment of the Court was delivered by K.Govindarajan Thilakavadi J.)**

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The Original Side Appeal is directed against the order dated 15.12.2020 passed by the learned Single Judge in C.S. No.23 of 2020 and Application Nos. 2746, 287 of 2020 whereby the leave earlier granted under Clause 12 of Letter Patent was revoked and the plaint was directed to be returned for presentation before the competent court at Nagapattinam.

### **2. Facts:**

2.1. The appellant instituted the suit for recovery of a sum of Rs.1,20,00,000/- together with interest at the rate of 12% per annum on Rs.1,20,00,000/- from the date of plaint till realisation for the services rendered by the plaintiff in his capacity as Power of Attorney Agent of the suit property at Chennai.

2.2. The plaint proceeds on the footing that the respondent had executed a power of attorney in favour of the appellant in respect of an immovable property situate within the jurisdiction of this Court; that the appellant acted as power of attorney agent and that he rendered services and maintained the property situated at Chennai.



2.3. At the time of institution of the suit, leave under Clause 12 of Letter patent was granted.

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2.4. The respondent, thereafter, sought revocation of the leave principally on the ground that both parties were residing at Nagapattinam and that the suit was essentially a suit for recovery of money. It was contended that mere execution and registration of power of attorney at Chennai and the property is situated at Chennai would not confer jurisdiction upon this Court.

2.5. The learned Single judge accepted the said contention and held that the suit was substantially a money recovery suit and that merely because the Power of Attorney was executed at Chennai and the property was situated at Chennai, the same would not constitute a sufficient part of the cause of action. The learned Judge also relied upon the convenience of the parties particularly taking note of the fact that both parties were senior citizens residing at Nagapattinam.

2.6. The leave was accordingly revoked and the plaint was directed to be returned.

3. Aggrieved by this, the plaintiff has preferred the present appeal.



4. Mr. Mr.S.Sadasharam, the learned counsel for the appellant submitted that the learned Single judge erred in treating the place of residence of the parties as the determinative factor. It was contended that the plaintiff specifically pleaded that the appellant rendered services in respect of the immovable property situated within Chennai and that the entire claim for remuneration arose out of those services. It was therefore, argued that the plaintiff itself disclosed a material and integral part of the cause of action within the jurisdiction of this Court. Reliance was placed upon *Indian Mineral and Chemicals Co. and others vs. Deutsche Bank, 2004 (12) SCC 376*, wherein the Hon'ble Supreme Court considered an application for revocation of leave under Clause 12 and held that, while considering such an application, the assertions in the plaintiff have to be assumed to be true and disputed questions of fact cannot ordinarily be determined at the demurrer stage.

4.1. Reliance was also placed upon *M/s. Kusum Ingots and Allies Ltd., vs. Union of India, (2004) 6 SCC 245*, particularly the principle that the material facts which are necessary for obtaining the relief constitute the cause of action.

5. On the other hand, Mr. Nassir Hussain the learned counsel for the respondent supported the order of the learned Single Judge and relied upon *Parameswari Veluchamy and two others vs. T.R. Jayaraman and 7 others,*



**2002-1 CTC 134**, contending that convenience of parties is a relevant consideration while exercising jurisdiction under Clause 12.

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**6. Points for consideration:**

*Whether, on the averments contained in the plaint, a material part of the cause of action arose within the jurisdiction of this Court and, if so, whether the learned Single Judge was justified in revoking the leave merely because both parties are aged residing at Nagapattinam and the suit is one for recovery of money?*

6.1. Clause 12 of the Letter Patent confers ordinary original civil jurisdiction upon this Court where, in suits other than suits for land, the cause of action has arisen wholly within the jurisdiction or, where leave has been obtained, in part within the jurisdiction. The expression “cause of action” means the bundle of material facts which the plaintiff must establish in order to obtain the relief claimed. The Hon’ble Supreme Court *M/s. Kusum Ingots and Allies Ltd., vs. Union of India, (2004) 6 SCC 245*, while explaining the expression “cause of action” observed that the entire bundle of facts pleaded need not constitute the cause of action and that what is material are the facts necessary to be proved before the plaintiff can obtain the relief.



6.2. The principle is equally relevant while considering territorial jurisdiction under Clause 12. Therefore, the question is not merely where the parties reside. The real question is whether the plaintiff has pleaded facts which, if established, would entitle him to the decree and whether any such material fact occurred within the jurisdiction of this Court.

6.3. The learned Single Judge was correct to the limited extent that the suit is a suit for recovery of money. However, the conclusion that, merely because the suit is for recovery of money, the situs of the services giving rise to the claim becomes irrelevant cannot be accepted. The character of the relief and the facts constituting the cause of action are two different questions. The plaintiff does not merely say that the power of attorney was executed at Chennai. His specific case is that he was appointed as power of attorney agent in respect of the Chennai property and that he rendered services and maintained the said property pursuant to the authority conferred upon him. If the plaintiff proves that the services forming the foundation of his monetary claim were actually rendered in Chennai, such services cannot be characterised as a mere incidental fact. They constitute the very foundation of his claim for remuneration.



6.4. The plaintiff's case, therefore, is not that jurisdiction is attracted merely because the power of attorney happened to be signed and registered in Chennai. His case is that the transaction under which the monetary liability is said to have arisen was performed, at least in substantial part, within Chennai. The decision of the Hon'ble Supreme Court in ***Indian Mineral and Chemicals Co. and others vs. Deutsche Bank (cited supra)*** directly bears upon the manner in which an application for revocation of leave under Clause 12 has to be approached. In that case also, leave had been granted under Clause 12. The Division Bench subsequently revoked the leave on the ground that no part of the cause of action arose within the jurisdiction. The Hon'ble Supreme Court reversed the order of the Division Bench. The Hon'ble Court emphasised that the jurisdictional question had to be considered on the basis of the pleadings and that, where the assertions contained in the pleadings disclosed facts which constituted a part of the cause of action, those assertions could not be rejected by relying upon disputed documents or by deciding mixed questions of fact and law at the stage of revocation of leave. The Hon'ble Supreme Court ultimately held that the learned Single Judge was justified in refusing to revoke the leave and that the Division Bench ought not to have interfered with that decision. This principle assumes importance in the present case.



6.5. In the present case, it was specifically averred in the plaint, about the existence of power of attorney and that the property in respect of which the power of attorney was granted is situated in Chennai and that the appellant acted pursuant to the power of attorney, rendered services in relation to the said property and the amount claimed is remuneration for those services. If these averments are assumed to be correct, as they must ordinarily be at the stage of considering revocation of leave on demurrer, a material part of the transaction giving rise to the monetary claim occurred within Chennai. Whether the plaintiff actually rendered the services claimed, whether those services were authorised by the power of attorney, whether defendant agreed to pay the amount claimed and what amount is ultimately payable are matters for trial. They cannot be conclusively determined in an application for revocation of leave.

6.6. We have carefully considered the case in *Parameswari Veluchamy vs. T.R. Jayaraman (cited supra)*. The said decision does recognise that convenience of parties is a relevant consideration in an application under Clause 12. The Division Bench in that case declined to sustain the leave where only three properties out of the large number of properties involved in a partition dispute were situated in /Chennai. The Court held that the mere inclusion of those three properties could not form the foundation for trying the entire dispute



relating to properties situated outside Chennai. The factual and legal context of that case is materially different. In that case, the Court was concerned with a comprehensive partition dispute involving properties predominantly outside the jurisdiction. The Chennai properties represented only a small and incidental portion of the dispute.

6.7. The present case stands on a different footing. Here, the claim of money itself is founded upon services allegedly rendered in respect of the Chennai property. Thus, the Chennai transaction is not an incidental appendage to a larger dispute situated elsewhere. It is the very foundation of the monetary claim.

6.8. Consequently, *Parameshwari Veluchamy vs.. T.R. Jayaraman* case cannot be understood as laying down an absolute proposition that residents of the parties outside Chennai will invariably require revocation of leave notwithstanding that a substantial part of the cause of action has arisen within Chennai.

6.9. It is true that convenience is a relevant consideration while dealing with leave under Clause 12. However, convenience cannot be elevated into a rule of jurisdiction. Where jurisdiction is otherwise established under Clause 12 by reason of a part of the cause of action having arisen within Chennai, the



plaintiff has a statutory entitlement to invoke the jurisdiction of this Court, subject to the Court's discretion under Clause 12.

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6.10. The Hon'ble Supreme Court in *M/s. Kusum Ingots and Allies Ltd., vs. Union of India (cited supra)* case did observe that even where a small part of the cause of action arises within the jurisdiction, the Court may, in an appropriate case, decline to exercise its discretionary jurisdiction by invoking forum convenience. But, that principle cannot be mechanically applied. The doctrine of forum convenience is a discretionary doctrine. It cannot be used to hold that a Court lacks jurisdiction when the requirements of Clause 12 are otherwise satisfied. The Court must balance the connection of the dispute with the forum, the nature of the claim, the place where the material facts occurred and the actual inconvenience demonstrated by the parties.

6.11. The fact that both parties reside at Nagapattinam is undoubtedly relevant. However, the defendant has not demonstrated that the Chennai forum would cause inconvenience as would justify depriving the plaintiff of a forum otherwise available under Clause 12. The property which forms the subject matter of the power of attorney is situated in Chennai. The services alleged to have been rendered by the plaintiff relate to that property. The documents and other evidence concerning the property may also be situated in Chennai. Therefore, it cannot be said that Chennai has no connection with the dispute. In



deed, the Chennai connection is not merely formal. It arises from the very transaction upon which the monetary claim is founded.

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6.12. We make it clear that we do not accept a broad proposition that the mere execution or registration of a power of attorney in Chennai would invariably constitute a part of the cause of action. If the plaintiff's claim were based solely upon an agreement executed at Nagapattinam and the only Chennai connection was that a power of attorney happened to have been registered here, such circumstances by itself might not be sufficient. The present case is different because the plaintiff claims remuneration for services allegedly performed in relation to the Chennai property. The place where the contractual or authorised services were actually performed is a material fact in determining the cause of action. The Court must identify the material facts which give rise to the right claimed. The principle error in the impugned order is that the learned Single Judge appears to have proceeded on the premise that, since the suit is for recovery of money, the Chennai property and the services rendered in relation to it are insufficient to constitute a part of the cause of action.

6.13. In our considered view, that approach is too narrow. A money suit does not have a geographical independent cause of action. The Court must ascertain the facts which created the liability to pay the money. In the present case, the liability is alleged to have arisen from the services rendered by the



appellant pursuant to the power of attorney in relation to the Chennai property.

If that allegation is ultimately proved, it would constitute a material part of the cause of action. Therefore, the plaint cannot be said to disclose a case where Chennai jurisdiction is wholly absent. The plaint contains sufficient averments which, if proved, would constitute a part of the cause of action within Chennai. Consequently, the case does not follow within the category of a “clearest case” in which leave ought to be revoked at the threshold.

6.14. On a careful consideration of the pleadings and the legal principles governing clause 12, we are unable to sustain the conclusion of the learned Single Judge that the Chennai connection is merely incidental. The fact that both parties reside at Nagapattinam is a circumstance relevant to convenience, but it cannot by itself defeat the jurisdiction attracted under Clause 12.

7. Accordingly, the Original Side Appeal is allowed. The order dated 15.12.2020 passed by the learned Single Judge in C.S. No.23/2020 and the connected Applications, revoking the leave granted under Clause 12 of the Letters Patent, is set aside. The leave earlier granted to the appellant to institute the suit on the Original Side of this Court is restored. The suit in C.S.No.23/2020 shall proceed on merits in accordance with law. It is made clear that nothing contained in this judgment shall be construed as an expression of opinion on the merits of the plaintiff’s monetary claim. The defendant shall



be entitled to raise all available defences in the suit, including the defence as to the alleged services, their extent, the alleged liability and the quantum claimed.

There shall be no order as to costs.

**(P.V.,J.) (K.G.T.,J.)**  
**19.08.2026**

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

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**P.VELMURUGAN J.  
AND  
K.GOVINDARAJAN THILAKAVADI J.**

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**Pre delivery judgment in  
OSA No. 279 of 2021**

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