

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2016

CORAM

THE HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE MR. JUSTICE R.MAHADEVAN

O.S.A.No.174 of 2012

K.A.Manshoor .. Appellant/Respondent/Plaintiff

vs

N.Subramanian .. Respondent/Applicant/Defendant

Original Side Appeal filed under Order XXXVI, Rule 9 of Original Side Rules read with Clause 15 of Letters Patent against the order dated 23.1.2012 made in A.No.5475 of 2011 in C.S.No.682 of 2011.

For Appellant .. Mr.S.Thanka Sivan

For Respondent .. No Appearance

* * * * *

JUDGMENT

(Judgment of the Court was delivered by The Hon'ble Chief Justice)

We have heard the learned counsel for the appellant. In terms of the agreement dated 16.08.2010, of which specific performance is sought qua the immovable property, Clause 10 is as under:-

"10. Similarly the VENDOR herein agree and undertake to handover the vacant possession of the Schedule property to the PURCHASER at the time of paying the balance sale consideration to the VENDOR."

2. In a suit for specific performance, where no possession is claimed, the observation of the Hon'ble Supreme Court in Adcon Electronics Pvt. Ltd. v. Daulat and another, reported in 2002-1-L.W. 368 is as under:-

"15. From the above discussion it follows that a "suit for land" is a suit in which the relief claimed relates to title to or delivery of possession of land or immovable property.

Whether a suit is a "suit for land" or not has to be determined on the averments in the plaint with reference to the reliefs claimed therein; where the relief relates to adjudication of title to land or immovable property or delivery of possession of the land or immovable property, it will be a "suit for land". We are in respectful agreement with the view expressed by Mahajan J. in M/s.Moolji Jaitha's case (supra).

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

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

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

(a)possession, or partition and separate possession of the property, in addition to such performance; or

(b)any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or made by him in case his claim for specific performance is refused.

(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed.

Provided that where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief."

16. It may be seen that sub-section (1) is an enabling provision. A plaintiff

in a suit for specific performance may ask for further reliefs mentioned in clauses (a) and (b) thereof. Clause (a) contains reliefs of possession and partition and separate possession of the property, in addition to specific performance. The mandate of sub-section (2) of Section 22 is that no relief under clauses (a) and (b) of sub-section (1) shall be granted by the Court unless it has been specifically claimed. Thus it follows that no court can grant the relief of possession of land or other immovable property, subject-matter of the agreement for sale in regard to which specific performance is claimed, unless the possession of the immovable property is specifically prayed for."

3. The Division Bench judgment of this Court in S.Kunasekaran and others v. S.Theivendran and others, reported in (2012) 1 MLJ 193, also explains the legal position as under:-

13. In the present case, since all the items of immovable properties 'A' to 'E' Schedule are situated outside the jurisdiction of the High Court, the above decision is not applicable to the case on hand.

14. In M/S.Moolji Jitha and Company v. Khandesh Spinning & Weaving Mills Company Limited, AIR 1950 FC 83, while considering the Clause 12 of the Letters Patent of Bombay High Court, which is identical to the Clause 12 of Letters patent of this Court, it was held that in order to consider whether a suit is covered by the expression 'suit for land' in Clause 12 of the Letters Patent, one has to consider whether it is for the purpose of obtaining a decree for possession, or a decision in title to land, or is something different, but involves the consideration of the question of title to the land indirectly. The expression "suit for land" covers three classes of suits (i) suits for determination of title to land; (ii) suits for possession of land; and (iii) other suits in which the reliefs claimed if granted would directly affect title to, or possession of, the land.

15. Considering the question, whether the suit for injunction is suit for land, in Tamiraparani Investments Private Limited v. Metfilms Pvt. Ltd., (2006) 1 MLJ 357, the First Bench of this Court has held that the suit for bare injunction is a suit for land and is a suit

for the purpose of acquiring possession or safeguarding possession of or establishing title to or a right in land viz., the suit schedule property. It was further held that "..... It is well settled that the expression 'suit for land' should not be confined and limited to suits for recovery of possession of land or to obtain a declaration of title to land only." In the said case, suit, being one for control for land lying outside the jurisdiction of this Court, it was held that High Court has no jurisdiction to entertain the suit".

16. Referring to Moolji Jitha and Company v. Khandesh Spinning & Weaving Mills Company Limited (supra) case and considering the expression "suit for land", in Tamiraparani Investments Private Limited v. Metfilms Pvt. Ltd. (supra), the Division Bench has held as under:

"8. The words 'suits for land or other immovable property' in Clause 12, besides obviously covering claims for recovery of possession or control of land, or apt to connote also suits, which are primarily and substantially seeking an adjudication upon title to immovable property or a determination of any right or interest therein. The words "suit and land" means establishing title to land or any interest in the same, or for possession or control thereof, and the decree sought for must be intended proprio vigore to be enforceable against and binding on the land itself.

In the said judgment, it is also stated that the nature of the suit and its purpose have to be determined by reading the plaint as a whole. The inclusion or absence of a prayer is not decisive of the nature of the suit, nor is the order in which the prayers are arrayed in the plaint. The substance or object of the suit has to be gathered from the averments made in the plaint on which the reliefs sought for in the prayers are based. In the case on hand, undoubtedly, looking to the averments made in the plaint as a whole, and the relevant relief sought for, the suit is clearly, substantially, and mainly for

land. (underlining added)

17. Applying the ratio of the above decisions to the case on hand, the suit is for partition and separate possession of suit properties and to allot 1/5th share to the plaintiffs. The suit, being for partition and for separate possession, the present suit, being one for partition of the lands lying outside the jurisdiction of the Court, the learned single Judge rightly held that this Court has no jurisdiction to entertain the Suit and consequently, the learned Judge rightly revoked the leave."

4. The learned counsel for the appellant, faced with the aforesaid legal position, seeks to withdraw the appeal and requests for some time to file the plaint before the appropriate Court, for which initially six weeks' time had been granted under the impugned order dated 23.1.2012. We grant four weeks' time from today to the appellant for the said purpose.

5. The appeal is dismissed as withdrawn in terms aforesaid. No costs.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

To

The Sub Assistant Registrar,
Original Side, High Court, Madras.

+1 cc to Mr.S.Thankasivan,advocate,sr.54576.

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krd 30/9

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