

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**APPEAL (L) NO.466 OF 2016
IN
CHAMBER SUMMONS NO.547 OF 2014
IN
SUIT NO.163 OF 2014
WITH
NOTICE OF MOTION (L) NO.3423 OF 2016
IN
APPEAL (L) NO.466 OF 2016
IN
CHAMBER SUMMONS NO.547 OF 2014
IN
SUIT NO.163 OF 2014**

Goswami Kalyanraji Maharaj

.... Appellant/
Applicant

versus

Smt.Lalitprabha Bhatt & Ors.

... Respondents

.....

- Mr.Pradeep Sancheti, Senior Advocate i/b. Dharam & Co., Advocate for the Appellant/Applicant.
- Mr.Sagar Ghogre a/w. Subhash Bhalwal i/b. Vyas Bhalwal, Advocate for Respondents Nos.1 to 5.
- Mr.Nirmal Chopda i/b. Law Chamber of Siddharth Murarka, Advocate for the Respondent Nos.7 to 9.

**CORAM : R. M. SAVANT &
SARANG V. KOTWAL, JJ.
DATE : 21st NOVEMBER, 2017.**

P.C. :

1. The above Appeal takes exception to the order dated 16/11/2016 passed by a learned Single Judge of this Court (G.S.

Patel, J.), by which order the Chamber Summons filed by the Appellants i.e. the Petitioner Nos.1, 2, 4 and 5 for revocation of the leave granted under clause 12 of the Letters Patent, which was granted on 10/01/2014 to the Plaintiffs, came to be rejected.

2. The suit in question i.e. the suit No.163/14 has been filed by the Respondent Nos.1 to 5 herein seeking distribution of the jewellery deposited in the Locker No.412 bearing registration No.697 with the Defendant Nos.9 and 10 to the suit. The Plaintiffs are seeking the said relief of distribution of the jewellery on the ground that the said property is the property of the one Smt.Goswami Chandrababha Babuji Maharaj, deceased, of whom the Plaintiffs are the heirs. The second relief sought is a declaration that the first Defendant in connivance with one Goswami Devkinandanji Maharaj (since deceased) had defrauded the Plaintiffs.

3. The revocation of the leave granted under clause (12) was sought on the ground that there is no immovable property

involved and the suit is only in respect of the movables in a bank locker in Mumbai. The second ground is that the Defendants reside outside Mumbai and therefore the mere location of certain movables i.e. the Jewellery in Mumbai, does not create any cause of action sufficient to warrant grant of leave under clause 12 of the Letters Patent.

4. The said Chamber Summons was considered by the learned Single Judge and by the impugned order dated 16/11/2016 has rejected the same. The learned Single Judge has referred to the judgment of a Division Bench of this Court in ***Shiv Bhagwan Moti Ram Saraoji Vs. Onkarmal Ishar Dass & Ors. reported in AIR 1952 Bombay 365***, wherein the requirements so as to satisfy leave being granted under clause 12 have been stated. The learned Single Judge adverted to the fact that in terms of the said judgment of the Division Bench of this Court, the existence of property at a particular place is not a part of the cause of action and that the existence of the property at all is indeed a part of the cause of action. It is on the aforesaid

basis that the learned Single Judge deemed it appropriate to accept the contention that was urged on behalf of the Plaintiffs by the learned counsel that the existence of the jewellery being admitted and the existence of the locker being admitted. The said fact constitutes the cause of action and all the aforesaid facts therefore having arisen in Mumbai, where the locker was opened; hence a substantial part of the cause of action has arisen within Mumbai. The learned Single Judge has thereafter referred to the averments made in paragraph Nos.9 to 28 and especially paragraph No.15, wherein it has been averred that “sale of such high value jewellery could have taken place only in Mumbai, as at that time it was thought that an interested buyer for such jewellery could have been found only in Mumbai”.

5. The learned Single Judge has thereafter referred succeeding paragraphs i.e. paragraph Nos.27 to 32 and having regard to the averments in the said paragraphs, the learned Single Judge opined that the cause of action therefore is that a Bank locker was fraudulently and illicitly opened in defeasance

of the Plaintiffs right and that the jewellery was deposited in this locker and that this locker, the jewellery and the deposit of the jewellery in the locker, as a part of the alleged fraud has taken place in Mumbai and therefore concluded that the Plaintiffs have been sufficiently able to demonstrate that a part of the cause of action has arisen in Mumbai and therefore rejected the Chamber Summons.

6. As indicated above it is the said order dated 16/11/2016 which is taken exception by way of above Petition. The learned Senior Counsel appearing on behalf of the Appellants Mr.Sancheti would contend that the suit filed for distribution of jewellery, which the Plaintiffs claimed to be ancestral, is in fact a suit for partition of the ancestral property and since the property as well as the Defendants are situated outside the jurisdiction of this Court, the leave under clause 12 could not have been granted. It was the submission of the learned Senior counsel that the Plaintiffs having not included all the ancestral properties in the suit, which has been essentially

filed for partition, and hence the said suit is not maintainable. It was the submission of the learned Counsel that the Plaintiffs are entitled to leave clause 12 of the Letters Patent, only if the material part of the cause of action has arisen in Mumbai. In support of the said contention, the learned Senior counsel sought to place reliance on judgment of a learned Single Judge of this Court in *Chandrakant P. Sanghvi, Vs. Chandrakant P. Sanghvi, reported in 2016 (3) Bom. C.R. 595* and the judgment of Division Bench of this Court in *Anilkumar Phoolchand Sanghvi Vs. Chandrakant P. Sanghvi, reported in 2016 (2) Bom CR 780*, which confirms the judgment of the learned Single Judge. The learned Senior counsel on the basis of the aforesaid judgment would contend that it is not just the cause of action, but the material part of the cause of action that has to arise within the jurisdiction of this Court. In so far as the non-inclusion of the property is concerned, the learned counsel placed reliance on the judgment of the Apex Court in *R. Mahalakshmi Vs. A.V. Anantharaman and Ors., reported in (2009) 9 Supreme Court Cases 52*.

7. Per contra, the learned counsel appearing for the Respondent Nos.1 to 5 the original plaintiffs would support the impugned order and would contend that no interference is called for with the same. The learned counsel for the Respondent Nos.1 to 4 would seek to draw this Court's attention to the averments made in the plaint and especially the averments relating to the fraudulent manner, in which the locker was obtained from the Defendant Nos.9 and 10 and the jewellery kept therein. It was the submission of learned counsel that the judgment cited by the learned Senior Counsel for the Appellants, were rendered in the Petitions, which were filed under the Arbitration Act and would therefore had no application as the consideration would be different in so far as leave under clause 12 is concerned. The learned counsel for the Respondents sought to draw our attention to the judgment of the Division Bench of this Court, *Anilkumar Phoolchand Sanghvi Vs. Chandrakant P. Sanghvi*, (supra), which has been referred to by the learned Single Judge in the impugned order.

8. Having heard the learned Counsel for the parties, we have considered the rival contentions. The question which arise whether the application for revocation of the leave granted under clause 12 are required to be dismissed by the learned Single Judge of this Court. As indicated above, the suit is founded on the cause of action, which has been set out by the averments in the plaint and more especially the averments made in paragraph No.15 and thereafter paragraph No.28 to 32 of the plaint, which have been referred to by the learned Single Judge. There can be no dispute about the fact that the subject matter of the suit is the distribution sought by the Plaintiffs of the jewellery, which is in the locker in the branch of the Defendant Nos.9 and 10, in Khar, Mumbai.

9. In our view, therefore, the learned Single Judge was right in holding that the existence of the property being admitted, the cause of action was therefore arisen within the jurisdiction of this Court and therefore leave under clause 12

was rightly granted. In so far as the submission of learned counsel Mr.Sancheti that all the property have not been included in the suit and therefore there cannot be a partial partition, to only the jewellery, which is part of the ancestral property in our view, the said aspect would if at all would impinge upon the entitlement of the Plaintiffs for reliefs sought in the suit, but would have no bearing in so far as the suit filed in this Court and the leave granted by this Court under clause 12 of the Letters Patent. In so far as the contention that the material part of the cause of action is concerned, having regard to the fact that the locker and the jewellery both are situated in Mumbai, it cannot be said that the material part of the cause of action has not arisen in Mumbai, in so far as the present suit is concerned. In our view the judgment of the learned Single Judge in *Chandrakant P. Sanghvi, Vs. Chandrakant P. Sanghvi*, (supra) and the judgment of the Division Bench in *Anilkumar Phoolchand Sanghvi Vs. Chandrakant P. Sanghvi*, (supra), are clearly distinguishable on facts. In the said case only two properties were situated in Mumbai, out of the properties which

were mentioned in the statement of claim filed before the Arbitrator. It is in the said context that it was held by the learned Single Judge that the material cause of action has not arisen in Mumbai, which finding was confirmed by the Division Bench. In our view, the said judgments would have no application in so far as the instant suit is concerned as the locker wherein the jewellery which is the subject of the suit is kept is in Mumbai. In that view of the matter no interference is called for with the impugned order passed by the learned Single Judge by this Court. The Appeal is accordingly dismissed.

10. In view of the dismissal of the Appeal, the Notice of Motion (L) No.3423/16 does not survive and to stand disposed of.

(SARANG V. KOTWAL, J.)

(R. M. SAVANT, J.)