IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.01.2017

Pronounced on : 02.02.2017

CORAM

THE HON`BLE MR.JUSTICE N.SATHISH KUMAR

A No.6865 of 2015 in CS No.458 of 2013

1. Putturaj
2. L.Sathya Prema Kumari
3. L.Lalitha
4. L.Yuvaraj .. Applicants

vs.

M.Egappan .. respondent

Prayer : Application filed under Order XIV Rule 8 of Original Side Rules 1956 read with Order IX Rule 7 CPC and Order III Rule of O.S. rule seeking to revoke the leave granted on 25.06.2013 in Application No.2572 of 2013 in C.S.No.458 of 2013.

For Applicants : T.V.Ramanujam
for K.Balu

For respondent : Mr.V.Raghavachari
for Mr.P.Vijendran

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O R D E R

This application is filed to revoke the leave granted by this court in the Application No.2572 of 2013 on 25.06.2013.

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2. The brief case of the applicants is as follows :

It is the contention of the applicants that the respondent has filed the suit for recovery of possession of the property which is situated at Surampattu Village, Madhavaram Taluk, Thiruvallur District. The suit is one for land and as such the suit is not maintainable before this Court. While filing the suit, the respondent has also filed an application in A.No.2572 of 2013 for granting leave to file the suit before this Court. The same has been ordered exparte on 25.06.2015 without ordering any notice to the applicants. The plaintiff has obtained leave in gross suppression of material facts. The property sought to be recovered situate outside the jurisdiction of this Court. Hence prayed to revoke the leave granted by this Court on 25.06.2013.

3. Brief contentions of the counter filed by the respondent is as follows:

It is the case of the respondent that his father Mr.Muthu Reddiar is owning the property at Thiruvallur District and the respondent became the absolute owner and constructed a residential building in a portion of the land and obtained electricity connection. In the year 1989, some third parties tried to trespass into the suit property and he has filed a suit for permanent injunction against them in O.S.No.550 of 1989 and a decree was passed in favour of the respondent during the year 2008.

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When he approached a national bank for loan and on the advice of the bank, when he approached the Village Administrative Officer for revenue records, he came to know that the suit property was already sold by the defendants. The first defendant trespassed into the property on 29.05.2012. Hence, he has filed a suit for recovery of possession. Since the defendants are residing within the jurisdiction of this Court, this Court has jurisdiction to entertain the suit.

4. The learned senior counsel for the applicants submitted that the relief sought in the suit itself shows that the suit is for land and the suit property situate outside the jurisdiction of this Court. Hence, the leave granted by this Court is liable to be revoked. In support of his arguments, the learned senior counsel relied on the judgments reported in **1995(2) The Madras Law Journal Reports 559 (P.Ranganathan and eight others Vs. Sai Jagannathan and nine others); 2000(1) 4 CTC 39 (Adcon Electronics Pvt Ltd. Vs. Daulate and Anr); 2006(1) CTC 270 (Thamiraparani Investments Pvt. Ltd. Rep. by its Director, V.Gopal Vs. Meta Films Pvt. Ltd.); 2009 (8) MLJ 357 (NEPC India Ltd., Chennai rep. by is Chairman Ravi Prakash Khemka Vs. Southern Wind Farms (P) Ltd.) and 2013 (4) CTC 175 (M.Banupriya Vs. M.Lakshmi and others).** Hence, prayed for revocation of the leave granted by this Court on 25.06.2013.

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5. The learned counsel for the respondent submitted that the defendants are residing in the jurisdiction of this Court. Hence, leave granted by this Court is maintainable in law.

6. On the basis of the above submissions, the point that arises for consideration is

Whether the leave granted by this Court to institute a suit before this Court in Application No.2572 of 2013 dated 25.06.2013 is proper and leave granted is liable to be revoked?

7. The suit itself instituted for recovery of the suit property situated in Soorapattu Village, Madhavaram Taluk which falls within the jurisdiction of Thiruvallur District. The entire pleading of the plaint clearly indicate that entire cause of action arose within the jurisdiction of Thiruvallur. Clause 12 of Letter Patent gives power to the High Court of Judicature Madras to entertain the suit for land if such property or land situate within the jurisdiction of this Court. Admittedly, in this case, the property in this suit is situated within the jurisdiction of Thiruvallur District Court and the suit itself filed for recovery of possession.

8. In this regard, in **2001(4) CTC 39**, the Honourable Apex Court has held as follows :

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"Letter Patent Act, Clause 12 : Suit for land – Meaning of - "Suit for land" is suit in which relief claimed relates to title or delivery of possession of land or immovable property – Suit has to be decided on basis of averment in plaint with reference to relief claimed there in – Relief relates to adjudication of title to land or immovable property or delivery of possession it is suit for land – Delivery of possession of immovable property is part of decree of specific performance of contract for sale of immovable property containing stipulation for delivery of possession on execution of sale deed – Suit for such relief would be suit for land – Judgment in Molji Jaiha and Co v. The Khandesh Spinning and Weaving Mills Co Ltd., AIR 1950 F.C.83 followed."

9. In the judgment of this court reported in **1995 (2) Madras Law Journal Reports 559** it has been held as follows :

"Letters Patent (Madras), Clause 12 – Words 'suit of land' – Meaning of – Suit for bare injunction restraining defendants from interfering with the applicant's possession of land – Held to be suit for land – Land lying outside jurisdiction of High Court – High Court, held, will have no jurisdiction to entertain suit."

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10. In **2006(1) CTC 270** the Honourable Division Bench of this Court has held as follows :

Letters Patent, Clause 12 – Suit for Land Meaning of – Suit property situate outside jurisdiction of Madras High Court – Suit filed seeking permanent injunction restraining the defendant from in any manner entering into suit property and disturbing possession of plaintiff and for mandatory injunction directing defendant to restrict their activities to property adjoining to suit property – Such suit is for purpose of acquiring possession of or safeguarding possession of or establishing title to or right in suit property – Expression suit for land should not be confined and limited to suits for recovery of possession of land or to obtain declaration of title – Suit for control of land would also fall within ambit of expression suit for land – Leave granted to file suit in High Court when suit property is situate outside jurisdiction of High Court is liable to be revoked – Order revoking leave upheld."

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11. In **2009(8) MLJ 357** the Honourable Division Bench of this Court as held as follows :

"Letters Patent, Clause 12 – Application seeking leave to file the suit – Suit for permanent injunction and mandatory injunction – It is in respect of immovable properties, situate outside the jurisdiction of the High

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Court – Plaintiff has claimed right over the Wind Energy Division – Entire case of the plaintiff and the reliefs sought for rest upon the agreement entered into between the parties – Agreement contains an arbitration clause – Arbitral proceedings also initiated at the instance of the plaintiff – Plaintiff is not entitled to leave, since all the issues raised are pending before the Arbitral Tribunal – OSA dismissed."

12. In **2013(4) CTC 175** the Honourable Division Bench of this Court as held as follows :

Letters Patent, 1865, Clause 12 – Leave to Sue – Revocation of Leave – Original Side jurisdiction of High Court – Clause 12 refers only to two classes, namely (a) Suit relating to land or other immovable properties, (b) secondly cases other than those relating to immovable property – If Suit is not for land and even if part of cause of action arises within jurisdiction of High Court, Suit cannot be entertained in Original Side – Though Defendants 1 to 5 are residing within High Court's jurisdiction and part of cause of action has arisen within High Court, some properties are situated outside jurisdiction of High Court, Suit on Original Side not maintainable..."

13. From the above judgments, it is very clear that a suit which relates to the title to the property or

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delivery of possession of the land of an immovable property has to be instituted before the Court within whose jurisdiction the property situate. Admittedly, in this case, the suit property is situated within the jurisdiction of Thiruvallur District which comes under the jurisdiction of the Principal District Court, Thiruvallur. Further, the entire pleading of the plaint clearly indicate that the cause of action for filing such suit arose outside the jurisdiction of this Court. Since the suit itself filed for recovery of possession of the immovable property, it ought to have been laid before the concerned jurisdictional Court and not before this Court. Therefore, the leave granted by this Court, as rightly contended by the learned counsel for the applicants, is not poper in law.

14. Having regard to the settled possession of law and the relief claimed for recovery of possession of the property, which is situated outside the jurisdiction of this Court and no cause of action whatsoever has arisen in the jurisdiction of this Court, the present suit is not maintainable before this Court. Hence, the leave granted by this Court is liable to be revoked and the plaint is directed to be returned to the plaintiff and the plaintiff is at liberty to represent the suit before the Thiruvallur District Court by paying necessary court fees as required by law, within two months from this day.

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On such representation, the plaintiff shall give notice to the defendant or his counsel about the representation. The plaintiff was prosecuting this suit before this Court on the basis of the leave granted by this Court in the year 2013. The same can be taken note of by the Court in computing the limitation aspects.

15. With the above observations, this application is allowed and the leave granted by this Court in Application No.2572 of 2013 on 25.06.2013 is hereby revoked.

sd/.N.S.K.J

02.02.2017

//Certified to be a true copy//

Dated this the day of 2017

R.s/11.04.2017 COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.

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