

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 28TH DAY OF NOVEMBER 2017

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

A. No.5089 of 2017
in
C.S. No.573 of 2016

Dr.T.G.Palanivelu,
Annai Velankanni Street,
Kamarajar Nagar,
Pondicherry-11.

... Plaintiff

-Versus-

M/s.Ponmalligai Hospital,
rep. by its Director,
Mrs.Usha Maruthu,
W/o.Maruthupandian,
No.1, First Main Road,
Kakkan Nagar, Adambakkam,
Chennai-600 088.

... Defendant

A. No.5089 of 2017:-

M/s.Ponmalligai Hospital,
rep. by its Director,
Mrs.Usha Maruthu,
W/o.Maruthupandian,
No.1, First Main Road,
Kakkan Nagar, Adambakkam,
Chennai-600 088.

... Applicant/Defendant

-Versus-

Dr.T.G.Palanivelu,
No.16, Annai Velankanni Street,
Kamarajar Nagar,
Pondicherry-11.

... Respondent/Plaintiff

Application praying that this Hon'ble Court be pleased to revoke the leave granted by this Hon'ble Court on 11.08.2016 to sue the defendant in this Hon'ble Court as the same is obtained by misrepresentation of fact before this Hon'ble Court.

This application coming on this day before this court for hearing the court made the following order:

This application has been filed by the Defendant in CS.No.573 of 2016, to revoke the leave granted by this court on 11.8.2016, to sue the Applicant/ Defendant in this court.

2. CS.No.573 of 2016, has been filed under Order 37 Rule 1 of CPC by Dr.T.G.Palanivelu, against M/s.Ponmalligai Hospital, represented by its Director, Usha Maruthu.

3. In the plaint, it has been stated that that the Defendant was a tenant in respect of the premises at Plot No.35, II Street, Telephone Colony, Adambakkam, Chennai-88, consisting of ground floor, first floor and second floor, for running a hospital at the ground floor and using the first floor for residential purposes. A lease deed had been entered into on 16.3.2005 for a period of five years and an advance of Rs.1,00,000/- was paid. The rent at the time of inception of tenancy was Rs.12,000/- per month with an agreement to enhance the same by 10% every year. It has been stated that the Defendant had put up the second floor without the knowledge and consent of the Plaintiff. The Defendant had also put up structures in the first floor.

4. It has been further stated that a hospital under the name of Ponmalligai Hospital was running in the suit premises. The Plaintiff had filed RCOP.No.2072 of 2008 before the 15th Assistant Judge, Small Causes Court, Chennai, seeking eviction on the ground of wilful default,

different user, acts of nuisance, acts of waste and owners occupation. Eviction was passed by judgement dated 29.6.2012 on the ground of different user. Separately, another RCOP.No.558 of 2010 was filed before the Small Causes Court, seeking fair rent and by judgement 29.6.2012, fair rent was fixed at Rs.1,00,000/- per month. Appeal in RCA.No.349 of 2012 filed against the judgement in RCOP.No.2072 of 2008 was dismissed. The Defendant vacated the suit premises only on 18.12.2013. The Plaintiff had filed a suit in OS.No.6056 of 2010, which is pending on the file of the V Assistant City Civil Court, Chennai, claiming damages of Rs.3 lakhs

5. Claiming that the Defendants had not paid the arrears of fair rent from 31.3.2010 till the date of vacating the premises and seeking interest on the arrears, the suit had been filed for recovery of a sum of Rs.51,40,768/-. The Plaintiff had filed an application A.No.3942 of 2016, seeking leave to institute the suit within the jurisdiction of this court. In the affidavit filed in support of the said application, the Plaintiff had stated as follows in paragraph 5:-

"5. The Plaintiff submits that a part of the cause of action arises within the jurisdiction of Madras as its ordinary any civil jurisdiction, since the defendant is carrying on business at her branch office of Ponnalligai Hospital, functioning at Kilpauk at No.119/15, New Avadi Road, Kilpauk, Chennai-10 even though the main branch is situate at Kakkan 1st Cross Street, Chennai-88 within the Greater Chennai of Corporation Division No.177, Madras and an hospital is being run there. Now leave to sue

is just and necessary since part of cause of action is within the local limits of the ordinary civil original jurisdiction of the High Court, Madras. Hence, leave to sue is just and necessary."

6. Considering the said averments, this court had passed the following order on 11.08.2016:-

"Seeking leave to sue the Respondent/ Defendant, the Applicant/ Plaintiff has come up with this application.

2. The Applicant is the Plaintiff in the suit filed for recovery of arrears of rent. Learned counsel for the Applicant submits that the property is situated within the territorial jurisdiction of this court and the Respondent is running the hospital within the territorial jurisdiction of this Court.

3. Considering the submissions made by the learned counsel for the Applicant and the averments made in the plaint, leave is granted."

7. The Defendant had entered appearance and also filed A.No.1594 of 2017, seeking unconditional leave to defend the suit since it has been instituted under Order 37 Rule 1 of CPC. In the affidavit filed in support of the said application, the Defendant in the suit has stated that the matter had been amicably settled and pursuant to such settlement, the Defendant also vacated the premises. It has been stated that institution of the suit claiming arrears of rent was mala fide. Subsequently, the Defendant also filed A.No.4102 of 2017 in A.No.1594 of 2017, seeking permission to file an additional affidavit. In the additional affidavit, pointing out the cause of action for instituting the suit, the Defendant has stated that the

suit property is situated at Adambakkam, Chennai-88 and does not come within the territorial jurisdiction of this court. This aspect was raised in the additional affidavit.

8. Both applications are pending before the Master since the Master has to decide the issues in the suit instituted under Order 37 Rule 1 of CPC. In the meanwhile, raising the very same point, the Defendant has filed the present application in A.No.5089 of 2017.

9. This court heard the learned counsel for the Applicant/ Defendant and the Respondents/ Plaintiffs.

10. The only ground urged by the learned counsel for the Applicant in the present application is that this court noted the submissions of the learned counsel for the Respondent/ Plaintiff that the property was situated within the jurisdiction of this court and had, therefore, granted leave to institute the suit.

11. A perusal of the records reveal that all proceedings between the parties have been instituted within Chennai. RCOP.No.2072 of 2008, seeking eviction had been filed before the Small Causes Court, Chennai and the Applicant/ Defendant had filed RCA.No.349 of 2012 again before the Small Causes Court, Chennai. Similarly, RCOP.NO.559 of 2008, seeking fair rent for the premises had also been filed in the Small Causes Court, Chennai. There is yet another suit pending between the parties, namely, OS.No.6056 of 2010, which is also pending in the City Civil Court, Chennai.

12. The present suit is only for recovery of money and not for control over property. Granting of leave to institute the suit depends on the nature of relief sought and the cause of action for such relief. It has been mentioned very clearly in the affidavit filed in support of A.No.3942 of 2016 that the Defendant is carrying on business at Kilpauk, which is within the jurisdiction of this court. It has been stated that a part of cause of action had arisen within the local limits of this court. This court has to go only with the pleadings of the case.

13. Pleadings indicate that the suit is for recovery of money. Naturally, it has to be instituted in the court having competent jurisdiction and one of the courts having competent jurisdiction is the court where the Defendant resides or carries on business. Very specifically, it has been stated that the Defendant carries on business at Kilpauk. As noted above, earlier proceedings were also initiated within the courts in Chennai. The suit, to repeat, is not for control of land, but for recovery of money. I find no infirmity in the leave having been granted.

14. It is a fact that this court had noted the representation of the counsel that the property was situated within the jurisdiction of this court. In a suit for recovery of money, incidentally, the applications are also filed under Order 38 Rule 5 of CPC. To that extent, the property must be available within the jurisdiction of

this court. The tenanted property is owned by the Plaintiff herein. The suit is not instituted for control of the said property. Ancillary reliefs can only be sought over the property which is under control of the Defendant and according to the plaint, such property is within the jurisdiction of this court at Kilpauk, Chennai, where the Defendant carried on business. I hold that the present application has been filed only to protract the proceedings and there are no merits in this application.

15. The learned counsel for the Applicant / Defendant has relied on **1970 2 MLJ 328 (D. Muthukumaraswamy alias Rajakumar by power of attorney agent M.S. Dakshinamoorthy, In re.)** That was also a case with respect to property situated out side the jurisdiction of this court. In this case, the facts are entirely different. The suit is not for control over the Plaintiff's property. The suit is only for recovery of money and the Defendant has been described as carrying on business at Kilpauk, Chennai within the jurisdiction of this court.

C.V.KARTHIKEYAN, J.

Srcm

16. The learned counsel for the Applicant/ Defendant also relied an unreported judgement made in OSA.No.78 to 80 of 1976 (Harold Charles Pinto vs. Hilda Menezes), dated 24.11.1976 of this court. That case

relates to Administration Suits and registration of trade mark. To repeat, the present suit is for recovery of money. Consequently, I hold that the judgements relied by the learned counsel for the Applicant/ Defendants cannot have direct application on the facts of this case. In view of the above, this application deserves dismissal.

17. In the result, this application is dismissed. No costs. Post before the Master on 5.12.2017 for consideration of the A.Nos.1594 of 2017 and A.No.4102 of 2017.

sd/.C.V.K.J

28.11.2017

//Certified to be a true copy//

Dated this the day of 2017.

COURT OFFICER

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