

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON: 17.12.2017

ORDER PRONOUNCED ON: 21.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

A.No.6870 of 2017
in
C.S No.402 of 2014

P.Baskar, Partner
M/s.Vasavi Builders Medavakkam
now known as Sri Aishwaryam Homes

...Applicant / 3rd defendant

Vs.

M/s.Aditya Real Estates
rep. by Mr.Manish Agarwal,
19/20, General Muthiah Mudali Street,
Chennai - 600 079.

... Respondent / Plaintiff

PRAYER: Application is filed under Clause 12 of the Letters Patent read with Order XIV Rule 8 of the Original Side Rules, praying to revoke the leave granted in Appln.No.2767 of 2014 dated 23.04.2014.

For Applicant : Mr.K.V.Babu

For Respondent : Mr.V.Balasubramanian.

ORDER

This Application has been filed by the 3rd defendant in the above said suit seeking revocation of leave to sue granted in the Application in A.No.2767 of 2014 on 23.04.2014.

2. The suit is one for specific performance of agreements of sale and construction agreements entered into on 18.10.2011.

3. According to the plaintiff, he is carrying on real estate business at Chennai for the past several years. He claims that the first defendant, who is builder and also the owner of the property described in the Schedule 'A' as item 2. He also holds the power of attorney for the 18th defendant, who is the owner of the property described in Schedule 'A' as item 3. The defendants 5 to 17 are represented by their power agent P.B.Krishna Prasad, who happens to be the brother of the second defendant. The plaintiff had booked 20 flats in the project named 'MAJESTICA', developed by the 1st defendant. The defendants as land owners entered, into 20 agreements of sale, agreeing to convey the undivided shares of land and on the same day construction agreements were also entered into between the first defendant as builder and the plaintiff.

4. According to the plaintiff, a period of 18 months was fixed for construction with grace period of 6 months. The plaintiff would claim that, despite having received the entire sale consideration, for the undivided share in the land, the 1st defendant was evading performance of the contract. In view of such non-compliance, the plaintiff is forced to approach this Court, seeking specific performance of all the 20 contracts of sale entered into with the 1st defendant on 18.10.2011 and the construction agreements on even date.

5. In the plaint, the plaintiff would claim that even though, the said properties were situate out side the original jurisdiction of this Court, since the suit is one for specific performance simpliciter or for alternative relief for refund of advance. The entire cause of action, according to the plaintiff having arisen within the jurisdiction of this Court, the plaintiff had filed the suit in this Court after obtaining leave under Clause 12 of Letters Patent in A.No.2767 of 2014.

6. Upon service of summons, it appears that the 3rd defendant filed an Application seeking rejection of plaint, in A.No.4418 of 2017. The said application was dismissed on the ground that the plaintiff had at the time of filing the suit, obtained leave to institute the suit in this Court in A.No.2767 of 2014, therefore, the proper remedy of the Applicant was to seek revocation of

the leave and not rejection of the plaint. Consequent upon such dismissal, the 3rd defendant has come forward with the present application for revocation of leave.

7. In the affidavit filed in support of the application, it is averred that the suit being one for specific performance and for injunction restraining the defendants in any manner alienating or encumbering the suit Schedule 'B' mentioned property. The suit is one to gain control over land, therefore, it is in essence a suit on land. If it is a suit on land, then the suit had to be instituted in the Court within whose jurisdiction, the land is situate. It cannot be filed in this Court, particularly, when the land is situate out side the original jurisdiction of this Court.

8. It is further claimed that in the eye of law, a suit for enforcement of contract which includes handing over possession is only a suit for land. Therefore, according to the Applicant, the leave granted in A.No.2767 of 2014 is to be revoked.

9. A counter affidavit has been filed by the respondent, wherein, it is stated that the suit being one for specific performance, which is a relief for enforcement of contract alone, the same cannot be construed as a suit on land. Therefore, the suit as filed is maintainable.

10. Inasmuch as the parties to the suit are resident and persons having office at Chennai, within the jurisdiction of this Court. It is only in view of the fact that the suit property is situate outside the jurisdiction of this Court, leave to sue is sought for and obtained in A.No.2767 of 2014. Therefore, according to the plaintiff/ respondent, the leave granted is in order and the same cannot be revoked.

11. I have heard Mr.K.V.Babu, learned counsel for the Applicant and Mr.V.Balasubramanian, learned counsel for the respondent/ plaintiff.

12. Clause 12 of the Letters Patent reads as follows:

"12. Original jurisdiction as to suits - And we do further ordain that the said High Court of Judicature at Madras, in exercise of its ordinary original civil jurisdiction, shall be empowered to receive, try, and determine suits of every description if in the case of suits for land or other immovable property, such land or property shall be situated, or in all other cases, if the cause of action shall have arisen, either wholly, or, in case the leave of the Court shall have been first obtained, in part, within the local limits of the ordinary original jurisdiction of the said High Courts; or if the defendant at the time of the commencement of the suit

shall dwell or carry on business or personally work for gain, within such limits; except that the said High Court shall not have such original jurisdiction in cases falling within the jurisdiction of the Small Cause at madras, in which the debt or damage, or value of the property sued for does not exceed one hundred rupees.”

13. It can be seen that the ordinary original civil jurisdiction of this Court can be invoked in respect of suit for land or other immovable property only when such land or property is situate within the jurisdiction of this Court. In other cases, of course, this Court would have jurisdiction, if the cause of action had arisen wholly or in part within the jurisdiction of this Court. Therefore, the key question that arises is whether the suit for specific performance simpliciter without a prayer for possession or an injunction in respect of possession can be termed as a suit for land. If the answer is yes, then this Court will not have jurisdiction to entertain the present suit.

14. Mr.K.V.Babu, learned counsel appearing for the Applicant would contend that though there is no prayer for possession or for an injunction relating to possession of immovable property. The first prayer viz., the prayer for a direction to specifically perform the 20 agreements for sale dated 18.10.2011, as well as 20 construction agreements of even date by executing and registering the sale deeds, conveying 20 portions of undivided shares

mentioned in schedule 'B' to the plaint in favour of the plaintiff and construction of 20 flats to the schedule 'B' to the plaint would necessarily include the prayer for possession of the property.

15. He would invite my attention to various judgments of this Court, wherein the expression 'suit on land' came to be considered. In ***P.Ranganathan vs. Sai Jagannathan reported in 1995(2) CTC 181***, Hon'ble Justice C.V.Govardhan after considering the effect of the judgment of the Hon'ble Supreme Court in ***Moolji Jaitha & Co., Vs. Khandesh Spinning and Weaving Mills Company Ltd.***, reported in ***1950 SCJ 51***, had concluded that the suit for permanent injunction restraining the defendants from interfering with the plaintiff's possession and enjoyment of the suit property would be a suit for land within the meaning of Clause 12 of Letters Patent.

16. In ***A.Velliangiri Vs. Ram Bahadur Takur (P) Ltd.***, reported in ***1998(1) CTC 436***, a Division Bench of this Court had considered a suit for specific performance, the prayer in the suit which was subject matter of the decision of the Division Bench was for a judgment and decree for specific performance against the defendants 1 and 4 directing the 1st and 4th defendants to execute a sale deed in favour of the plaintiff, transferring and conveying the property, more fully described in the Schedule hereunder named as Travancore

Tea Estate Company Limited together with all buildings, factories, and other plants erected therein and in default to direct an officer of this Court to execute the Sale Deed in favour of the plaintiff. The prayer as extracted by the Division Bench included the relief of transfer of vacant possession of the property to the plaintiff. Under such circumstances, the Division Bench concluded that the suit being one for possession of the property, the suit would be one for land, therefore, the same cannot be filed and prosecuted in the High Court, admittedly, when the property was situate outside the territorial jurisdiction of this Court.

17. In the said judgment of the Division Bench, after referring to the judgment of the Hon'ble Supreme Court in ***Durga Prasad and another Vs. Deep Chand and others*** reported in [1954] 1 SCR 360, the Division Bench had in Paragraph 23 observed as follows:

“23. Applying the ratio of this Judgment, it follows that the fourth defendant in the case on hand has to convey title over the suit property to the plaintiff in the event the plaintiff succeeds. It means his title over the suit property would be affected. Added to this he has to deliver possession of the suit properties also. Under the circumstances, as rightly held by the learned single Judge, the present suit involves title to the property because fourth defendant has got title vested in him and that is

sought to be disturbed by the plaintiff on the basis of the earlier contract between him and the first defendant. Hence we hold that the present suit is for land, keeping in view the law laid down by the Federal Court aforementioned and various other decisions referred to by the learned single Judge. When admittedly the suit properties are situated outside the jurisdiction of the Court, the leave granted earlier was rightly revoked by the order under appeal made in Application No.1818 of 1987.”

18. The Division Bench had also referred to the judgment of another Division Bench of this Court in ***N.Dhanalakshmi and two others Vs. S.Eknathan, Proprietor, Eknath Real Estates*** reported in (1198) 1 MLJ 132, wherein, this Court had held that a suit for specific performance simpliciter without a prayer for possession or injunction regarding possession is not a suit on land. However, the Division Bench distinguished the said judgment on the basis of the prayer for possession, which was available in the case before the Division Bench.

19. In ***D.Hari Krishnan Vs. M.G.R.Memorial Charitable Trust*** reported in 2000 (4) CTC 479, another Division Bench of this Court had followed the decision in ***A.Velliangiri Vs. Ram Bahadur Takur (P) Ltd.***, cited supra. It is seen from the report, the suit, that was subject matter of consideration before the said Division Bench was the suit for recovery of possession. Therefore, the

Division Bench followed the judgment in *A.Velliangiri Vs. Ram Bahadur Takur (P) Ltd.*, 's case and concluded that the suit is one for land.

20. In *Thamiraparani Investments Pvt. Ltd., rep. by its Director V.Gopal Vs. Meta Films Pvt. Ltd.*, reported in (2006) 1 MLJ 357, another Division Bench of this Court had considered the expression suit for land. The Division Bench after referring to the judgment of the Hon'ble Supreme Court in *Adcon Electronics Pvt. Ltd., Vs. Daulat and Another* reported in 2001 (4) CTC 39 had concluded that a suit for bare injunction with reference to possession would be a suit on land. It was pointed out by the Hon'ble Supreme Court that a suit for the purpose of acquiring possession of or safeguarding possession of or establishing title to or a right in a land viz., the suit schedule property will be a suit for land.

21. The Division Bench had observed as follows:

"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. The present suit being one for control of land lying outside the jurisdiction of this Court, this Court has no jurisdiction to entertain the suit, the learned Single Judge has rightly revoked the leave. "

22. In *Jethmull Chordia Vs. C.Venkatasubba Reddy* reported in **2013 (1) LW 728**, yet another Division Bench of this Court had considered the expression suit for land. The said suit was one for a permanent injunction restraining the defendant from in any manner disturbing the peaceful possession and enjoyment of the Suit 'A' and 'B' schedule properties by the plaintiff. The suit 'B' schedule properties were situated at Nellore, Andhra Pradesh, outside the jurisdiction of this Court. Therefore, the Division Bench concluded that since the suit is one for permanent injunction with reference to possession of properties situated out side the jurisdiction of this Court, the suit being one for land, the order of the Single Judge revoked, the leave granted in respect of 'B' Schedule property was upheld.

23. In *M.Banupriay Vs. M/s.Nuziveedu Seeds Limited* reported in **2013 (4) CTC 175**, the Hon'ble Mr. Justice R.Subbiah, after referring to most of the decisions on the question had concluded that if the suit could be termed as a suit for land immaterial of the cause of action, the suit will have to be filed only in the Court in whose jurisdiction, the land is situated. The fact that part of the cause of action or entirety of the cause of action arose within the jurisdiction of this Court will not be of any relevance, once the suit is found to be a suit on land.

24. In **B.Rathansingh Vs. P.G.Sekar** reported in **2014 (4) CTC 735**, Hon'ble Mr. Justice R.S.Ramanathan has considered the expressions "suit on land" and "suit on agreement". The learned Judge after considering the entire case law on this aspect, including the judgment of the Hon'ble Supreme Court in **Adcon Electronics Pvt. Ltd., Vs. Daulat and another** reported in **2001 (4) CTC 39**, had observed as follows:

"39. According to me, having regard to the law laid down by the Hon'ble supreme Court in **Moolji Jaitha & Co. v. K.S.&W.Mills Co.**, AIR 1950 FC 83, wherein it was held that a 'Suit for land' would mean a Suit in which the reliefs claimed, if granted, would directly affect title to or possession of the land and also the object of the suit was something different, but involves the consideration of the question of title to land indirectly and the Suits for land would cover the claim for recovery of possession or control of land, which was also approved by the Hon'ble Supreme Court in **Adcon Electronics Pvt. Ltd. v. Daulat and another**, 2001 (4) CTC 39 (SC) : 2001 (7) SCC 698 : AIR 2001 SC 3712, that any Suit or suits wherein determination of any right or interest in land is claimed, the same can be considered as a Suit for land, even though possession is not specifically sought for a possession is inherent in a suit for Specific Performance."

25. In *Excel Dealcomm Private Limited Vs. Asset Reconstruction Company (India) Limited and others* reported in (2015) 8 SCC 219, the Hon'ble Supreme Court had an occasion to consider the effect of the suit for specific performance without a prayer for possession. The Hon'ble Supreme Court after referring to *Adcon Electronics Pvt. Ltd., Vs. Daulat and another* had concluded that since the suit that was subject matter of the decision in *Excel Dealcomm Private Limited Vs. Asset Reconstruction Company (India) Limited and others* contained a prayer for possession, the decision of the Hon'ble Supreme Court in *Adcon Electronics Pvt. Ltd., Vs. Daulat and another's* may not be applicable for the case on hand. But, however, while dealing with the earlier judgment of the Hon'ble Supreme Court in *Adcon Electronics Pvt. Ltd., Vs. Daulat and another*, the Hon'ble Supreme Court had observed as follows:

“39. On the question of suit for specific performance of an agreement to sell being a suit for land, this Court has laid down a clear principle in *Adcon Electronics Pvt. Ltd. vs. Daulat Ram and another*, that a suit for specific performance simpliciter without a prayer for delivery of possession is not a suit for land as Section 22 of the Specific Relief Act, 1963 categorically bars any Court to grant such relief of possession in a suit for specific performance unless specifically sought.”

26. In *Ponmari Enterprises Private Ltd., Vs. C.Siva Sbramanian and others* reported in *MANU/TN/0056/2016*, this Court had held that a suit for specific performance which included the relief of handing over possession by the defendants will be a suit on land and therefore, the same has to be filed only in the Court within whose jurisdiction the land is situated. Revoking the leave granted this Court had directed the Registry to return the plaint in those cases.

27. Mr.V.Balasubramanian, learned counsel appearing for the respondent would however rely upon the judgment of the Division Bench of this Court in *N.Dhanalakshmi and two others Vs. S.Eknathan, Proprietor, Eknath Real Estates* reported in *(1198) 1 MLJ 132*, the Division Bench in the said decision after referring to the judgment of the Federal Court in *Moolji Jaitha & Co., Vs. Khandesh Spinning and Weaving Mills Company Ltd.*, reported in *1950 SCJ 51*, had held as follows:

“Looking to the relief sought for in the plaint, it is plain that principally the suit is for Specific Performance of the agreement, and alternatively for the relief of refund of money. Even the ancillary relief of permanent injunction is also for restraining the defendants from alienating or dealing with the suit property in any way. In order words the suit is not one for title or possession. The ancillary reliefs of injunction sought did not affect the title or possession. The reliefs sought for are against

the defendants in personem. In this view, it is not possible to hold that the suit filed by the plaintiff is for land, so as to ambit of Letters Patent, Clause 12, (Madras)."

28. Pointing out that the relief sought for in the present suit is almost identical to the relief sought for the suit that were subject matter of the decision of Division Bench in **N.Dhanalakshmi and two others Vs. S.Eknathan, Proprietor, Eknath Real Estates** reported in (1998) 1 MLJ 132, Mr.V.Balasubramanian, learned counsel would submit that the question whether the particular suit is the suit for land would depend on the plaint allegation and the prayer sought for in the plaint. He would also invite my attention to the judgment of the Hon'ble Supreme Court in **Adcon Electronics Pvt. Ltd.**, wherein, the Hon'ble Supreme Court had held that Whether a suit is a "suit for land", in which the relief claimed relates to title to or delivery of possession of land has to be decided on the allegations in the plaint with reference to the relief claimed therein. When the relief relates to adjudication of title to the land or immovable property or delivery of possession of the land or immovable property, it will be a "suit for land".

29. The Hon'ble Supreme Court had after referring the Section 22 of the Specific Relief Act had concluded that a suit for specific performance of an

agreement of sale wherein the relief of delivery of possession of the suit property having been specifically claimed, as such, cannot be treated as a suit for land.

30. Yet another Division Bench of this Court in **S.K.J. Dhanasekar vs S.V.S. Jawaharlal** reported in **2002 (4) CTC 653**, had an occasion to consider the scope and meaning of the term suit for land. In the said judgment it was held that in view of the decision of the Hon'ble Supreme Court in **Adcon Electronics Pvt. Ltd., Vs. Daulat and Another** reported in **2001 (4) CTC 39**, the decision of this Court in **Bank of Madurai Ltd, Vs. Balaramadass Brothers and others** reported in **AIR 1985 Madras 1**, stood impliedly over ruled.

31. An analysis of the decisions cited at the bar referred to supra would show that this Court as well as the Hon'ble Supreme Court had uniformly held that a suit for specific performance in which the reliefs of possession or injunction relating to possession are not sought for would not be a suit on land within the meaning of Clause 12 of the Letters Patent.

32. As rightly pointed out by Mr.K.V.Babu, learned counsel for the applicant Hon'ble Mr.Justice R.S.Ramanathan in the judgment of **B.Rathansingh Vs. P.G.Sekar** reported in **2014 (4) CTC 735**, would conclude that even though

possession is not specifically sought for, still the suit for specific performance would be a suit on land inasmuch as possession is inherent in a suit for specific performance.

33. Mr.K.V.Babu, learned counsel appearing for the applicant would lay considerable stress on para 39 of the judgment reported in **2014 (4) CTC 735** and contend that the present suit cannot be held to be a suit on agreement and not a suit on land.

34. In **Adcon Electronics Pvt. Ltd., Vs. Daulate and Another** reported in **2001 (4) CTC 39**, the Hon'ble Supreme Court had specifically pointed out that if a suit for specific performance does not include a relief of possession, the same cannot be held to be a suit for land. In fact the Hon'ble Supreme Court had referred to Section 22 of Specific Relief Act which enacts a bar restricting power of the Court to grant the relief of possession if it had not been asked for. The Court further went on to hold that a suit for specific performance without relief of possession cannot be held to be a suit on land.

35. It will be useful at this juncture to refer to the Hon'ble Supreme Court's judgment in **Excel Dealcomm Private Limited Vs. Asset Reconstruction Company (India) Limited and others** reported in **(2015) 8 SCC**

219, in the said judgment the Hon'ble Supreme Court after referring to the judgment in *Adcon Electronics Pvt. Ltd.*, cited supra concluded that a suit for specific performance simpliciter without a prayer for delivery of possession is not a suit for land as Section 22 of the Specific Relief Act, 1963 categorically bars any Court to grant such relief of possession in a suit for specific performance unless specifically sought.

36. The Court further examined the prayer in the suit which was for specific performance and the prayer sought for was for issuance of the sale certificate under the SARFESI Act. After extracting the sale certificate the Hon'ble Supreme Court observed as follows:

"It may be noted that the sale certificate sought under the prayer requires the delivery of possession of the suit property. Thus, we find that the prayer for delivery of possession was an implicit one in the present case. The prayer as sought in the plaint could not have been granted without the delivery of possession of the suit property as the sale certificate itself contemplates the delivery of the immovable property. Thus, in view of this we find that Adcon Electronics would not apply as there was a prayer for delivery of possession in the present case. Therefore, we hold that the present suit was indeed a suit for land. "

37. Therefore, the entire issue boils down to the question as to whether there is an express or implied prayer for possession of the property in the suit in question. The first prayer in the suit reads as follows:

“The plaintiff therefore prays for Judgment and Decree:-

a) Directing the defendants to specifically perform the twenty Agreements for Sale dated 18.10.2011 for undivided share in land and twenty Construction Agreements dated 18.10.2011 for construction of flat, relating to the suit Schedule B properties by executing and registering Sale Deed/s conveying twenty portions of undivided shares mentioned in Schedule B to the plaintiff in favor of the plaintiff and construct the twenty flats mentioned in Schedule B to the plaintiff.”

38. There is an alternative prayer for refund of advance as well as grant of permanent injunction restraining the defendants or any persons claiming through or under them from in any manner alienating or encumbering the suit properties.

39. From the allegations in the plaint, it is seen that the sale agreements are for sale of undivided share and the construction agreements are for construction of flats of a certain area in proportion to the undivided share. In para 5 of the plaint the plaintiff would allege as follows:

“The plaintiff further submits that despite having paid

the entire sale consideration and cost of construction to the defendants, and inspite of expiry of the stipulated period, the defendants failed and neglected to register sale deeds for undivided share in land in favour of the plaintiff and handover vacant possession of the flats duly completed in all respects as agreed, and went on delaying giving one excuse or other”

40. This averment in particular would show that the agreement, specific performance of which is sought for, obliged the defendant to hand over the possession of the property to the plaintiff. Enforcement of the agreement as a whole would also encompass within itself, the obligation of the defendant to hand over the possession of the suit property. Therefore, the agreement that is sought to be enforced will include the relief of possession also. The suit for specific performance though filed without an express prayer for delivery of possession would take in itself a prayer for delivery of possession. Therefore, on his own showing the plaintiff has prayed for delivery of possession also.

41. It will not be out of place to point out in ***Babu Lal Vs. Hazari Lal Klshori Lal & Ors.*** reported in ***AIR 1982 SC 818***, the Hon'ble Supreme Court had pointed out the difference between the old Specific Relief Act and the Specific Relief Act, 1963 and had concluded that the relief of possession is inherent in the relief of specific performance.

42. In fact , the Hon'ble Mr.Justice R.S.Ramanathan had pointed out that when *Moolji Jaitha and Co. v. Khandesh Spinning and Weaving Co. Ltd.* reported in *AIR 1950 FC 83* was decided by the Federal Court, there were no provisions similar to Section 22 and 28 of the Specific Relief Act, 1963. Therefore, the change in law brought about by the Specific Relief Act, 1963 has to be taken note of and once it is found that the defendants are under an obligation under the contract which is sought to be enforced to deliver possession of the property to the plaintiff, a suit for specific performance of such a contract would impliedly include the prayer for delivery of possession.

43. In such an event, as pointed out by the Hon'ble Supreme Court in *Excel Dealcomm Private Limited Vs. Asset Reconstruction Company (India) Limited and others* reported in *(2015) 8 SCC 219*, a suit for specific performance would assume the character of a suit for land.

44. I have already extracted the prayer in the present suit as well as the allegations made in para 5 of the plaint. A combined reading of para 5 and prayer (a) in the suit would show that the suit is one for specific performance of an agreement which obliged the defendants to put the plaintiff in possession of the property. Therefore, the present suit cannot but be termed as a suit for land. Once it is concluded that the suit is one for land and when admittedly suit

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property is situated outside the original jurisdiction of this Court, this Court cannot entertain the suit.

45. Therefore, the leave granted in A.No.2767 of 2014 on 23.11.2014 is liable to be revoked and is accordingly revoked. The Registry is directed to return the plaint to the plaintiff, for presentation before the appropriate Court. However, in the circumstances of the case there shall be no order as to costs.

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Speaking order

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