

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 16.07.2018	Delivered on 23.07.2018
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CORAM

The Honourable Mr.Justice M.M.SUNDRESH
and
The Honourable Mr.Justice N.ANAND VENKATESH

Original Side Appeal Nos.104, 105, 110, 111,
122 & 123 of 2017

and

CMP Nos.7343,7344,7517 & 8147/2017

M/s.Harsha Estates,
Rep.by its Managing Partnership
Dr.M.Shivabhagyan & 3 Others,
No.1/1, Arihant Occan Towers,
No.77, Wallajah Road,
Chennai-600 002.

..Appellant/Plaintiff in OSA.105,
110/17, 122/17 and 1st
appellant in OSA.104/17,
111/17, 123/17

2.V.Noorjahan

3.M.P.Farook

(Impleaded in A.No.3289/2013 dt.29.07.2013)

4.Dr.DMasthan

(Impleaded in A.No.3898/2013 dt.17.09.2013)

.. 2 to 4 Appellants/Plaintiffs
in O.S.A.No.104/2017, 111/17,
123/17

Vs.

1.Dr.P.Kalyana Chakravarthy, ..1st Respondent OSA.104/17
respondent in OSA.105/17

2.P.Naveen Chakravarthy, ..2nd respondent in OSA.104/17 &
Respondent in OSA.122/17,
1st Respondent in OSA.123/17

3.M/s.Om Sakthy Agencies

(Madras) Pvt.Ltd,

Rep.by its authorised Signatory,

S.Udayakumar,

TS-64, Sidco Industrual Estate,

Ekkattuthyangal,

Chennai 600 032.

..3rd respondent in OSA.104/17
2nd Respondent in OSA.111/17,
123/17

4.M.Ragunathan

..4th Respondent in OSA.104/17

3rd Respondent in OSA.111/17

(Defendants 2 to 4 impleaded as per order dated 27.10.2015 in A.No.3290 & 3292/2013 and time extended as per order dt.01.04.2016 in A.No.1786 to 1791/2016.)

1. P.Sivaramakrishna

..Respondent in OSA.110/17,

1st Respondent in OSA.111/1

Original Side Appeals are filed under Order XXXVI Rule 1 of O.S. Rules r/w Clause 15 of the Letters Patent to set aside the common judgment and decree dated 23.11., made in A.Nos.4437/2015, 3562, 3564/10, 4439/15, 3563/10, & 4438/2015, made in C.S.Nos. 197 to 199/2007 and restore the suit on file.

Prayer in CS.197 of 2007 to 199 of 2007: Civil Suit praying this Hon'ble Court be pleased to pass a decree and Judgment against the defendant in favour of the plaintiffs;

a) for specific performance of the agreement dated 8.8.2006 by directing the defendant to execute and register sale deed and convey the suit property more fully described in the schedule thereunder on or before a date fixed and further directing the plaintiff to deposit balance of sale consideration in court within a time stipulated failing which the plaintiff prays that this Hon'ble Court may execute the sale deed on behalf of the defendant and convey the suit property to the plaintiff and;

b) For perpetual injunction restraining the defendants from in any manner dealing disposing alienating changing or encumbering the suit property

c) to pay the costs of this suit.

Prayer in A. 3562/10 3563/10 and 3564/10: Application revoke the leave granted by this Court dated 19.01.2007 on the file of above suits.

Prayer in A.4439/15 and 4438/15 application to filed by the defendants seeking to reject the plaintiff in the above suits.

For Appellants: Mr.Sriram panchu, Sr. counsel
for Mr.V.Chandraprabu
(OSA Nos.104 & 105/2017)
Mr.T.Shanmugananda Vijayakumar
(OSA Nos.110 & 111/2017)
Mr.P.Raja
(OSA Nos.122 & 123/2017)

For Respondents : Mr.Vijay Narayanan,
Sr.counsel
for Mr.K.Chandrasekaran and
Mr.P.Solomon Francis.
(For R-3 in OSA Nos.104 &
105/2017)
(For R-2 in OSA Nos.110, 111,122
& 123/2017)

Mr.Yashod Vardhan, Sr.counsel
for Mr.K.S. Vaidyanathan

(For R-4 in OSA Nos.104 & 105/2017)
(For R-3 in OSA Nos.110 &111/2017)

COMMON JUDGMENT

N.ANAND VENKATESH., J.

These appeals arises against the common orders passed in applications filed in three suits wherein viz; C.S.Nos.197 to 199/2007. The learned Single Judge has in effect revoked the leave granted to the plaintiff to file the suit and has also rejected the plaint in the suits filed by the plaintiffs by a common order dated 23.11.2016.

2.For the sake of convenience, the parties shall be addressed as plaintiffs and defendants in these appeals.

3.The plaintiffs filed three suits for the relief of Specific Performance and Consequential Permanent Injunction based on three independent agreements of sale dated 08.08.2016 entered into with the defendants. The property in question are vacant lands which are situated at Puduvoyal Village, Gummidipoondi Taluk. Initially, the suit was decreed ex-parte by a ex-parte judgment and decree dated 19.02.2009, and the plaintiffs pursuant to the ex-parte decree also deposited the balance sale consideration as directed by this Court. The plaintiffs also filed execution petitions for getting the sale deed executed in their favour. Subsequently, the defendants filed an application to set aside the ex-parte decree with delay and those applications were allowed and the written statement filed by the defendants was also taken on file. Originally, defendants 1 and 2 were the only parties to the suit as owners of the property. Subsequently, the property was alienated to Om Sakthi Agencies which was impleaded as the 3rd defendant and there was further alienation in favour of Mahendra World City Developers who in turn transferred the property to their sister concern Mahendra Industrial Park. The plaintiff took steps to implead these subsequent purchasers also and notice was ordered to these entites. In the meantime, the defendants in the suit filed applications for the revocation of leave in A.Nos.3562 to 3564 of 2010 and for rejection of plaint in A.Nos.4437 to 4439 of 2015. All

these applications came to be allowed by a common order dated 23.11.2016.

4.The case of the defendants for seeking revocation of leave and rejection of plaint is as follows:

The suit property is admittedly situated beyond the territorial jurisdiction of this Court. The relief sought for in the plaint will tantamount to "suit for land" and therefore, the suit can be maintained only within jurisdiction of the appropriate Court where the property is situated. Both the reliefs claimed by the plaintiffs will fall within Clause 12 of the Letters Patent and therefore it is "suit for land" and necessarily the suit property should be situated within the territorial jurisdiction of this Court, failing which the suit itself is not maintainable. The first plaintiff Firm is not the registered Firm and therefore it cannot enforce the right arising from a contract in view of the bar contained under Section 69 [2] of the Indian Partnership Act, 1932.

5.The case of the plaintiffs in defending the applications for revocation of leave and rejection of plaint is as follows:

The plaintiffs have specifically pleaded that possession was already handed over at the time of entering into an agreement of sale and the only relief that was sought for in the plaint was to enforce the agreement of sale and therefore it will not fall within the meaning of "'suit for land'" under Clause 12 of the Letters Patent. Therefore, this Court will have the jurisdiction to entertain the suit and consequently, the leave should not be revoked. Insofar as the registration of partnership is concerned, the bar under Section 62 (2) of the Indian Partnership Act, 1932, will not operate since what was enforced by the plaintiffs was statutory right given to them by the Specific Relief Act, 1963. Even otherwise subsequent to the filing of the suit, the partnership Firm was registered on 09.04.2009, before the Registrar of Firms, and therefore, the plaintiffs are entitled to prosecute the suits.

6. SUBMISSIONS:

Mr.Sriram Panchu, learned Senior Counsel for Mr.V.Chandrababu Mr.T.Shanmugananda Vijayakumar, and Mr.P.Raja, learned counsel appearing for the appellants made the following submissions:

- The sale agreement specifically states that the Vendor has handed over possession to the agreement holder on the date of execution of the agreement of sale and this has been reiterated in the plaint averments. Therefore, the only relief that was sought for in the suit is for Specific Performance directing the defendants to execute a Sale Deed

in favour of the plaintiffs. This relief will not fall within the ambit of "suit of land" provided under Clause 12 of the Letters Patent.

- The Permanent Injunction that was claimed as a relief was only a consequential prayer where the relief was against the defendants restraining them from in any manner dealing, disposing, alienating, charging or encumbering the suit property. Such a relief does not fall within the ambit of "suit for land" under Clause 12 of the Letters Patent.

- A Contempt Petition has been filed before the learned Single Judge against the defendants for violating the order of permanent injunction and encumbering the property. Unless and otherwise the defendants purge themselves of the contempt proceedings, they should not have been allowed to prosecute the applications filed by them.

- The order of the learned Single Judge goes against the judgment of Hon'ble Supreme Court wherein, the Supreme Court has held that the "suit for land" is a suit in which the relief claimed relates to title or delivery of possession of land or immovable property and a suit for Specific Performance of the agreement of sale wherein the relief of delivery of possession has not been specifically claimed, such a suit cannot be treated as "suit for land".

- While deciding the issue on jurisdiction, the Court has to see only the averments made in the plaint and the relief sought for in the plaint and the Court cannot decide a leave petition on the basis of some eventuality that may happen in future on the ground that the plaintiff may ask for possession in future in the suit or at the execution stage.

- The subsequent purchasers in the present suit viz; Om Sakthi Agencies, and Mahendra are bound by the doctrine of lis pendens and the Court need not take into consideration the subsequent alienation while deciding the revocation of leave petition.

- The plaintiff Firm is seeking to enforce in the present suit a statutory right provided under the Specific Relief Act. The plaint averment itself touches upon the requirements of Section 16 and 20 of the Specific Relief Act and therefore the bar contemplated under Section 69 (2) of the Indian Partnership Act, 1932, cannot be made applicable to the present case.

- The learned Senior counsel relied on the following judgments to substantiate the meaning of the word "suit for land", in a suit for Specific Performance.

1) Adcon Electronics Pvt.Ltd., .Vs. Daulat and Another reported in [2001 (7) SCC 698].

2)Excel Dealcomm Private Limited .Vs. Asset Reconstruction Company (India) Limited and Ors reported in [2015 (3) CTC 189].

3) A.C.Subba Reddy .Vs. Jawahar International Trading Corporation Company, rep.by its Managing Partner, No .69, Linghi Chetty Street, Chennai-1 & Others reported in [2008 (4) CTC 160]

4) N.Dhanalakshmi and two Others .Vs. S.Eknathan, Proprietor, Eknath Real Estates reported in [1997 (3) LW 391]

- The learned Senior counsel relied on the following judgments to substantiate his arguments with regard to the bar under Section 69 (2) of the Indian Partnership Act, 1932.

- 1) Raptakos Brett & Co.Ltd., .Vs. Ganesh Property reported in [1998 (7) SCC 184]

- 2) Haldiram Bhujiawala and Another .Vs. Anand Kumar Deepak Kumar and Another reported in [2000 (3) SCC 250]

- The learned Senior counsel relied on the following judgments to substantiate his arguments on the effect of violation of the orders of the Court.

- 1) All Bengal Excise Licensees Association .Vs. Raghabendra Singh and Others reported in [2007 (11) SCC 374]

- 2) Robust Hotels Private Limited and Others .Vs. Eih Limited and others reported in [(2017) 1 SCC 622]

- The learned Advocate General Mr.Vijaya Narayan, Senior counsel appearing for Mr.K.Chandrasekaran and Mr.P.Solomon Francis and Mr.R.Yashod Vardhan, learned Senior counsel appearing for Mr.K.S.Vaidyanathan, learned counsel for respondents make the following submissions.

- If the suit had been filed for the relief of Specific Performance of a contract simpliciter, probably the appellant could have continued to prosecute the suit before this Court but however since a perpetual injunction has been sought for as a relief in the suit, the suit automatically becomes "suit for land" under Clause 12 of the Letters Patent.

- The defendants have raised the specific plea with regard to possession both in the application for revocation of leave and also in the written statement questioning the claim made by the plaintiff regarding possession and a specific stand had been taken that possession was not given to the plaintiff by defendants 1 and 2. Therefore, this Court while trying the suit will have to necessarily frame an issue with regard to possession at which point of time the suit automatically will become "suit for land" and will go beyond the territorial jurisdiction of this Court. Therefore, this issue also assumes significance while deciding the application for revocation of leave.

- The first plaintiff is admittedly an unregistered Firm at the time of filing the suit, and therefore, the plaintiffs are barred from enforcing the contractual right under Section 69 (2) of the Indian Partnership Act, 1932. This defect cannot be cured by subsequent registration of the partnership Firm since the suit has become void-ab-initio.

- The effect of the claim made by the plaintiffs will fall under Section 53-A of the Transfer of Property Act, and the same cannot be claimed unless the agreement of sale is registered. In the instant case, the agreement of sale is not registered and therefore, the plaintiffs are not

entitled to enforce the agreement based on part performance.

● The defendants did not violate any orders passed by this court and it is very clear from the order itself that the injunction will operate only till the disposal of the impleading application and the moment the impleading application was allowed by an order dated 27.10.2015, the effect of the interim order came to an end and the subsequent alienation made on 05.11.2015 and 29.12.2015 are not in violation of the injunction order.

● The learned Senior counsel relied on the following judgments to substantiate their arguments on "suit for land".

1) Moolhi Jaitha and Co. Vs. Khandesh Spg. And Wvg. Mills Co. Ltd. Reported in [AIR 1950 FC 83]

2) Babu Lal .Vs. M/s. Hazari Kishori Lal and Others reported in [1982] (1) SCC 525].

3) Excel Dealcomm Private Limited .Vs. Asset Reconstruction Company reported in [2015 (8) SCC 219]

4) Thamiraparani Investments .Vs. Meta Films Pvt. Ltd reported in [2006 (1) CTC 270]

5) Timothy Bowen .Vs. Clenergen Corporation reported in [2011 (6) CTC 835].

6) P. Baskar, Partner, Vasavi Builders, Medavakkam, now known as Sri Aishwaryam Homes .Vs. Aditya Real Estates, rep. by Mr. Manish Agarwal, 19/20, General Muthiah Mudali Street, Chennai-600 079 reported in [2018 (1) CTC 342].

7) M/s. Aditya Real Estates .V. P. Baskar, Partner, M/s. Vasavi Builders, reported in [2018 2 LW 97]

8) Sumer Builders Private Limited .vs. Narendra Gorani reported in [(2016) 2 SCC 582].

● The learned Senior counsel relied on the following judgments in order to substantiate their arguments on the issue of non registration of partnership Firm and the bar under Section 69(2) of the Indian Partnership Act, 1932.

1) Seth Loonkaran Seithiya .Vs. Ivan E John reported in [1977 (1) SCC 379]

2) Shreeram Finance Corporation .Vs. Yasin Khan reported in [1989 SCI 1769 = 1989 SCC (3) 476]

3) Balaji Constructions Company .Vs. Lira Siraj Shaikh reported in [AIR 2006 BOM 106]

DISCUSSION:

7. The important point that arises for consideration in these appeals are whether the suits filed by the plaintiffs fall within the four corners of "suit for land" as contemplated under Clause 12 of the Letters Patent.

8. If this Court is satisfied that the suit in question is "suit for land", then it touches upon the very jurisdiction of this Court to entertain the suit and in which case there will be no necessity to go into the other questions that have been raised for rejection of plaint and also the arguments on the violation of interim orders which can all be left open to be

considered by the Court of competent jurisdiction. On the other hand, if this Court is satisfied that the suits in question does not fall within the ambit of "suit for land" then there will be a necessity to get into the other questions that are involved in this case.

9. The judgments that have been cited on either side on the question of "suit for land" will be analyzed first and the principles that have been laid down in these judgments will be deduced and thereafter the same will be applied to the facts of the present case in order to answer the moot point that has been taken up for consideration.

1) Adcon Electronics Pvt.Ltd., .Vs. Daulat and Another reported in (2001) 7 SCC 698, wherein it is held as follows:

"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.

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 purchaser, it is implied that delivery of possession of the immovable property is part of the decree of specific performance of contract.

17. It may be seen that sub-section (1) is an enabling provision. A plaintiff in a suit of specific performance may ask for further reliefs mentioned in clauses (a) and (b) thereof. Clause (a) contains relief of possession and partition and separate possession of the property, in addition to specific performance. The mandate of sub-section (2) 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 of 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.

18. In the instant case the suit is for specific performance of agreement for sale of the suit property wherein relief of delivery of the suit property has not been specifically claimed as such it cannot be treated as a "suit for land".

2)Excel Dealcomm Private Limited .Vs. Asset Reconstruction Company (India) Limited and Ors reported in [2015 (3) CTC 189] , wherein it is held as follows:

"11. The suit for land is a suit in which the relief claimed relates to the title or delivery of possession of land or immovable property, [See: Adcon Electronics Pvt. Ltd. v. Daulat and Anr. MANU/SC/0550/2001 : (2001) 7 SCC 698]. Further it is an established rule that to determine whether it is a suit for land, the Court will look into barely the Plaint and no other evidence, [Indian Mineral and Chemicals Co. and Ors. v. Deutsche Bank MANU/SC/0525/2004 : (2004) 12 SCC 376]. If by the averments in the plaint and prayers therein, it appears that the suit is one for land, it shall be so held and if it does not so appear, then the suit shall continue under leave granted Under Clause 12. In the present case, the prayer in the plaint was couched in following words:

A decree for specific performance of the agreement for sale recorded in the document dated February 13, 2007 being Annexure "A" hereto by directing the Defendant No. 1 and 2 to issue in favour of the Plaintiff Sale Certificate in respect of assets mentioned in Schedule 1 to Annexure A hereto and on as is where is basis in terms of the said agreement

12. The learned Counsel for the Respondent has very emphatically argued that this prayer is in effect a prayer for possession of the said properties since the procedure under the Rules for execution of the sale certificate, the transfer of possession is pre-requisite. Therefore, he has submitted that although, the possession is not asked for in direct words but that would be the obvious corollary to granting

of the prayer. Further, another point which has been emphasized on behalf of Respondent is that the prayer requires sale to be effected in terms of the Agreement, and therefore, the entire agreement may be read as a part of the prayer.

13. 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. v. Daulat Ram and Anr.* MANU/SC/0550/2001 : (2001) 7 SCC 698, 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".

3) A.C.Subba Reddy .Vs. Jawahar International Trading Corporation Company, rep.by its Managing Partner, NO.69, Linghi Chetty Street, Chennai-1 & Others reported in [2008 (4) CTC 160], wherein it is held as follows:

"3.The Suit has been filed by the appellant/plaintiff for the following reliefs:

(a)directing the defendants 1 to 5 specifically perform their part of the obligations of the agreement for sale dated 05.03.2004 as merged in supplemental agreement dated 25.02.2005 by executing and registering sale deed or deeds in respect of the suit property and register the name on receipt of the balance sale consideration of Rs..5.35 lakhs on a date to be fixed by this Hon'ble Court and in default direct the Court to execute and register the deed or deeds of sale in respect of the Plaint schedule property in favour of the plaintiff at the expense of the plaintiff on deposit of the balance sale consideration payable by him to the credit of the Suit or in the alternative direct the refund of the advance amount of Rs.5,35,000/- paid by the plaintiff with interest at 24% per annum from the date of payment till the date of realization:

(b)For a permanent injunction restraining the defendants 1 to 6 or their men, agents, servants or any person or claim through them or authorised by them from interfering with the peaceful possession and

enjoyment of the property, more fully described in the schedule hereunder;

(c) For a permanent injunction restraining the defendants 1 to 6 or any other person or person claiming through them from alienating or encumbering dealing with the suit schedule mentioned property either by way of sale, mortgage, joint development lease or in any other manner detrimental to the interest of the plaintiff except in accordance with law."

4. If we look at the prayer "a" and "c" alone, it is clear that principally the Suit is for specific performance of the agreement and even the ancillary relief of permanent injunction is also for restraining defendants from alienating or dealing with the suit property in any way. Prayers "a" and "c" are not for title or possession and the injunction relief sought for also does not affect the title or possession.

5. The learned Single Judge has, however, held that the prayer for 'b' permanent injunction would amount to control of the suit property and therefore the Suit must be regarded as a Suit for land and since the property is situated outside Chennai, this Court has no jurisdiction to try the Suit.

6. The learned counsel appearing for the appellant wants to give up the prayer for permanent injunction in terms of prayer 'b'. We do not see any reason why such a prayer should not be granted and accordingly plaintiff is permitted to delete prayer "b". Consequently, the order of the learned Single Judge is set aside".

4) N.Dhanalakshmi and two Others .Vs. S.Eknathan, Proprietor, Eknath Real Estates reported in [1997-3L.W.391], wherein it is held as follows:

"14. 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 re-lief 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 other words the suit is not one for title or possession. The ancillary relief of injunction sought did not affect the title or possession. The reliefs sought for are

against the defendants in personam. In this view, it is not possible to hold that the suit filed by the plaintiff is for land, even having regard to the decisions cited by the learned Counsel for the defendants.

15. In none of the decisions cited on behalf of the defendants except the decision in M/s. Ram Bahadur Thakur (P) Ltd. v. A. Velliangiri & 3 Ors. (1989) 2 L.W. 529 the suit for specific performance of an agreement came up for consideration, and in none of these decisions law is laid down to state that a suit for specific performance of an agreement in respect of land was a suit for land. In the case of M/s. Ram Bahadur Thakur (P) Ltd (1989) 2 L.W. 529 the plaintiff prayed for a decree directing the defendants to deliver vacant possession of the suit property to the plaintiff. In that case although the suit was one for decree for specific performance, the second prayer was for recovery of possession. The learned single Judge, on the basis of the prayer made in the plaint for recovery of possession, took a view that it was a suit for land as is evident from paragraph 8 of the said judgment, which reads:

"Thus, it is seen that all the Judges who constituted the Bench in the Federal Court are unanimous on this aspect of the matter that if a relief is sought in the suit for recovery of possession, then it will be a 'suit for land'. In the present case, the second prayer is for recovery of possession. That is sufficient to hold that this is a 'suit for land'.

16. In the above case, the learned Judge has referred to various decisions including Moolji Jaitha and Co. v. The Khandesh Spinning and Weaving Mills Co. Ltd. A.I.R. 1950 F.C. 83 and P.M.A. Velliappa Chettiar v. Saha Govinda Doss and Ors. A.I.R. 1929 Mad. 721. (F.B.) In the case of Moolji Jaitha and Co. considered by the Federal Court aforementioned, the first prayer in the plaint was that "it may be declared that the said land belonged and are the properties of the plaintiff company and the defendants have no beneficial interest therein. " In other words, the suit related to the title to the property, and any decree passed would affect the title. It was not a suit for specific performance of agreement.

17. In the said Judgment, it is clearly stated that in order to consider whether a suit is covered by the expression "suit for land" in Cl.12 of Letters Patent, one has to consider whether it is for obtaining a decree for possession, or a decision on title to land, or is something different, but involves the consideration of the question of title to the land indirectly. "Suit for land" covers three clauses of suits, viz., (i) suit for determination of title to the 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. 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, are primarily and substantially seeking an adjudication upon title to immovable property or a determination of any right or interest therein. The words "suit for 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.

18. In the same decision, 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 asked 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 is one for specific performance of the agreement. The other reliefs sought for were alternative, and ancillary having sought for the relief of specific performance of the agreement.

19. The Federal Court, having regard to the relief of the declaration sought in respect of the suit land in that case, has held that the case was covered by clause 12

of the Letters Patent. In the case of P.M.A. Velliappa Chettiar and Ors. v. Saha Govinda Doss and Ors. A.I.R. 1929 Mad. 721. (KB.) dealing with the suit filed by a purchaser for specific performance in respect of the land, the Full Bench of this Court has held that such a suit is not for land within the meaning of Clause 12 of Letters Patent (Madras). In the said decision the Full Bench was considering the question "Is a suit by a purchaser of lands situate outside Madras for specific performance of a contract to sell made in Madras by parties resident therein, a suit for land within the meaning of Clause 12 of the Letters Patent, and so not cognizable by the High Court in its ordinary original civil jurisdiction. " The last two paragraphs in the said judgment at pages 726 and 727 read thus:

"A suit for specific performance is a suit 'in personam'; a suit for land is an action 'in rem'. They are 'toto coelo' apart; they belong to different jurisdictions which are now no doubt fused. The object of Cl.12, Letters Patent is to bar the ordinary original civil jurisdiction of the High Court as to actions in rem, when the land is situate outside Madras; it does not bar the jurisdiction as to suits in personam. The word 'for' which has occasioned all the difficulty is the same in each case, but a suit for specific performance is not merely in its history but in its nature distinct from a suit for land. That the present suit is concerned with the passing of title to land is a mere accident.

In my opinion, therefore, a suit for specific performance of a contract to sell land without the ordinary original civil jurisdiction of the High Court, when the parties are resident in Madras and amenable to the enforcement of a decree in personam, is not a suit for land and the High Court has recognizance in its ordinary original civil jurisdiction. The Full Bench Judgment of this Court aforementioned is directly on the point.

22. We are also unable to agree with the submission of the learned Counsel for the defendants that the plaintiff could ask for the relief of possession in respect of

the suit lands as per Sections 22 and 28(4) of the Specific Relief Act and as such the suit must be considered as one for land. Looking to the averments made in the plaint and the reliefs sought as they are, the plaintiff has not sought for the relief of possession. It is crystallised judicial view that in determining the question of jurisdiction the plaint averments alone are to be seen. What relief the plaintiff may ask or may not ask on a future date cannot be taken into consideration in deciding the jurisdiction of the Court. As and when reliefs are asked on a future date, it is for the Courts to deal with them and decide the same at appropriate stage in accordance with law. Hence we have no hesitation to reiterate and hold that the suit for Specific Performance of an agreement in respect of land is not a suit for land so as to be included within the ambit of Letters Patent, Clause 12, (Madras) In the light of what is stated above."

5) In Moolji Jaitha and Co. V. Khandesh Spg. And Wvg. Mills Co.Ltd. reported in 1950 FC 83 ,

There is divergence of opinion among the learned Judges of the five-judge Bench of the Federal Court I regard to the import of the expression "suit for land". The Chief Justice

Kania opined : (AIR p.89, para 15)

"Taking the suit as a whole, one has to consider whether it is for the purpose of obtaining a direction for possession or a decision on title to land, or the object of the suit is something different but involves the consideration of the question of title to land indirectly."

Justice Fazl Ali observed : (AIR p.96. Para 47)

"If I had really felt that I was called upon to decide it, I would have agreed with the line of cases in which it has been held that, broadly speaking, the expression 'suit for land' covers the following three classes of suits: (1) suits for the determination of title to land; (2) suits for possession of land; and (3) other suits in which the reliefs claimed, if granted, would directly affect title to or possession of land".

Justice Patanjali Sastri took the view :
(AIR p.97. Para 53)

"The words in question, besides obviously covering claims for recovery of possession or control of land, are apt to connote also suits which primarily and substantially seek an adjudication upon the title to immovable property or a determination of any right or interest therein."

Justice Mahajan observed : (AIR p.105, para 81)

"If an attempt is made to find a comprehensive definition of the phrase, it will eventually be discovered that it has created further complications. I therefore content myself by saying that where the nature of the suit is such that in substance it involves a controversy about land or immovable property and the court is called upon to decide conflicting claims to such property and a decree or order is prayed for which will bring about a change in the title to it, that suit can be said to be in respect of land or immovable property; but where incidentally in a suit, the main purpose of which or the primary object of which is quite different, some relief has to be given about land, the title to it not being in dispute in the real sense of the term, then such a suit cannot fall within the four corners of this expression."

He added : (AIR p.110, para 102)

"In my opinion, if the suit is for specific performance and a decree for possession of the land sold is claimed, such a suit would certainly be a suit for land; but if the suit is simpliciter for specific performance, i.e., for the enforcement of the contract of sale and for execution of a conveyance, in that event there can be no good ground for holding that such a suit is a suit for determination of title to land or that the decree in it would operate on the land."

(emphasis supplied)

"10. In this state of the law Legislature intervened and on the basis of the report of the Law Commission enacted Section 22 in 1963 as it stands.

11. Section 22 enacts a rule of pleading. The Legislature thought it will be useful to introduce a rule that in order to avoid multiplicity of proceedings the plaintiff may claim a decree for possession in a suit for specific performance, even though strictly speaking, the right to possession accrues only when suit for specific performance is decreed. The Legislature has now made a statutory provision enabling the plaintiff to ask for possession in the suit for specific performance and empowering the court to provide in the decree itself that upon payment by the plaintiff of the consideration money within the given time, the defendant should execute the deed and put the plaintiff in possession.

12. The section enacts that a person in a suit for specific performance of a contract for the transfer of immovable property, may ask for appropriate reliefs, namely, he may ask for possession, or for partition, or for separate possession including the relief for specific performance. These reliefs he can claim, not-with standing anything contained in the CPC, 1908, to the contrary. Sub-section (2) of this section, however, specifically provides that these reliefs cannot be granted by the Court, unless they have been expressly claimed by the plaintiff in the suit. Sub-section (2) of the section recognised in clear terms the well-established rule of procedure that the court should not entertain a claim of the plaintiff unless it has been specifically pleaded by the plaintiff and proved by him to be legally entitled to. The proviso to this Sub-section (2), however, says that where the plaintiff has not specifically claimed these reliefs in his plaint, in the initial stage of the suit, the court shall permit the plaintiff at any stage of the proceedings, to include one or more of the reliefs, mentioned above by means of an amendment of the plaint on such terms as it may deem proper. The only purpose of this newly enacted provision is to avoid

multiplicity of suits and that the plaintiff may get appropriate relief without being hampered by procedural complications.

13. The expression in-Sub-section (1) of Section 22 'in an appropriate case' is very significant, The plaintiff may ask for the relief of possession or partition of Separate possession 'in an appropriate case'. As pointed out earlier; in view of Order 2, Rule 2 of the CPC, some doubt was entertained whether the relief for specific performance and partition, and possession could be combined in one suit; one view being that the cause of action for claiming relief for partition and possession could accrue to the plaintiff only after he acquired title to the property on the execution of a sale deed in his favour and since the relief for specific performance of the contract for sale was not based on the same cause of action as the relief for partition and possession, the two reliefs could not be combined in one suit. Similarly, as a case may be visualized where after the contract between the plaintiff and the defendant the property passed in possession of a third, person. A mere relief for specific performance of the contract of sale may not entitle the plaintiff to obtain possession as against the party in actual possession of the property. As against him, a decree for possession must be specifically claimed or such a person is not bound by the contract sought to be enforced. In a case where exclusive possession is with the contracting party, a decree for specific performance of the contract of sale simpliciter without specifically providing for delivery of possession, may give complete relief to the decree-holder. In order to satisfy the decree against him completely he is bound not only to execute the sale-deed but also to put the property in possession of the decree holder. This is no consonance with the provision of Section 55(1) of the Transfer of Property Act which provides that the seller is bound to give, on being so required, the buyer or such person as he directs, such possession of the property as its nature admits.

14. There may be circumstances in which a relief for possession cannot be effectively granted to the decree-holder

without specifically claiming relief for possession, viz., where the property agreed to be conveyed is jointly held by the defendant with other persons. In such a case the plaintiff in order to obtain complete and effective relief must claim partition of the property and possession over the share of the defendant. It is in such cases that a relief for possession must be specifically pleaded.

15. In the instant case, it is pointed out on behalf of the petitioner that the possession was not with the respondents Nos. 6 to 9 but was with a third person namely, the petitioner, who was subsequent purchaser and, therefore, this was an appropriate case where the relief for possession should have been claimed by the plaintiff-respondents Nos. 1 to 5.

16. It may be pointed out that the Additional Civil Judge had decreed the suit for specific performance of the contract. The High Court modified decree to the extent that the sale deed was to be executed by respondents Nos. 6 to 9 together with the petitioner. In short, the decree was passed by the High Court not only against respondents Nos. 6 to 9 but also against the subsequent purchaser i.e., the petitioner and thus the petitioner was himself the judgment-debtor and it cannot be said that he was a third person in possession and, therefore, relief for possession must be claimed. The contention on behalf of the petitioner is that the relief for possession must be claimed in a suit for specific performance of a contract in all cases. This argument ignores the significance of the words 'in an appropriate case'. The expression only indicates that it is not always incumbent on the plaintiff to claim possession or partition or separate possession in a suit for specific performance of a contract for the transfer of the immovable property. That has to be done where the circumstances demanding the relief for specific performance of the contract of sale embraced within its ambit not only the execution of the sale deed but also possession over the property conveyed under the sale deed. It may not always be necessary for the plaintiff to specifically claim possession over the property, the

relief of possession being inherent in the relief for specific performance of the contract of sale. Besides, the proviso to Sub-section (2) of Section 22 provides for amendment of the plaint on such terms as may be just for including a claim for such relief 'at any stage of the proceedings'.

20. It is thus clear that the Legislature has; given ample power to the court to allow amendment of the plaint at any stage, including the execution proceedings. In the instant case the High Court granted the relief of possession and the objection raised on behalf of the petitioner is that this was not possible at the execution stage and in any case the Court should have allowed first an amendment in the plaint and then an opportunity should have been afforded to the petitioner to file an objection.

21. If once we accept the legal position that neither a contract for sale nor a decree passed on that basis for specific performance of the contract gives any right or title to the decree-holder and the right and the title possession to him only on the execution of the deed of sale either by the judgment-debtor himself or by the Court itself in case he fails to execute the sale deed, it is idle to contend that a valuable right had accrued to the petitioner merely because a decree has been passed for the specific performance of the contract. The limitation would start against the decree-holders only after they had obtained a sale in respect of the disputed property. It is, therefore, difficult to accept that a valuable right had accrued to the judgment debtor by lapse of time. Section 22 has been enacted only for the purpose of avoiding multiplicity of proceedings which the law courts always abhor.

22. The only amendment' to be made in the plaint was to add a relief for possession necessitated because of the provisions of Section 22, which is only an enabling provision".

7)Thamiraparani Investments .Vs. Meta Films Pvt.Ltd
reported in [2006 (1) CTC 270], wherein it is held as follows:

"7. The short question which falls for our consideration is whether the present suit is a suit for land.

8. In M/s.Moolji Jaitha and Company v. The Khandesh Spining and Weaving Mills Company Ltd. AIR 1950 Federal Court 83, the Court noted that the first prayer in the plaint was that it may be declared that the lands belonged to and are the properties of the plaintiff company and the defendants have no beneficial interest therein. In the said judgment, the Court 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. 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.

9. A reference may also be made to the decision of the Supreme Court in *Adcon Electronics Pvt. Ltd. v. Daulate and Anr.* 2001 (4) CTC 39. In that case, the Supreme Court considered a suit for specific performance and an application for leave filed under Clause 12 of the Letters Patent before the High Court of Judicature at Bombay. The said Clause is in pari materia to Clause 12 of the Letters Patent of the High Court of Judicature at Madras. While considering the said Clause, the Supreme Court held that if a suit is for determination of title to land, or suit for possession of land, or other suits in which the reliefs claimed, if granted, would directly affect the title of possession of land, the suit could be filed only in the Court in which jurisdiction the land is situate.

10. In *Southern Petrochemical Industries Corporation Ltd. v. Durga Iron Works and Ors.* 1995 (2) CTC 602, a Division Bench of this Court has held that a suit involving determination of title and interest of land for recovery of possession and control of land would be a "Suit for land".

11. The plaintiff has filed the present suit alleging that the defendant has encroached upon the land which has allegedly been sold by the defendant's sister concern Citrex Products Ltd. to the plaintiff. In fact, in paragraph 18 of the plaint, the plaintiff has stated as follows:

"Since the defendant is attempting to encroach upon the "A" schedule property and action with the police has not brought about the desired result in view of the stand taken by the defendant, the plaintiff is left with no other alternative but to seek necessary relief from the Court".

12. Further, a reading of paragraph 20 of the plaint clearly shows that the allegation of the plaintiff is that since the defendant is encroaching upon the suit

"A" schedule property which is beyond the territorial jurisdiction of this Court, the plaintiff has sought for a decree for permanent injunction. It is not disputed that the registered office of the defendant is at No. 157/1, G.N.T. Road, Chinnambedu Post, Kavarapet-601 206, Tiruvallur District, which is situated outside the jurisdiction of this Court and the defendant has no office within the jurisdiction of this Court. The present suit being one for bare injunction, it is a suit for land. In other words, it is a suit for the purpose of acquiring possession of or safeguarding possession of or establishing title to or a right in land viz., the suit schedule property. 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 and consequently, the learned single Judge has rightly revoked the leave.

8) Timothy Bowen .Vs. Clenergen Corporation reported in [2011 (6) CTC 835], wherein it is held as follows:

"13. Be that as it may, let us now consider the prayer in the suit. In the plaint, the plaintiffs have sought for the following reliefs:

a. For a declaration that the plaintiffs have the first charge on the 1.5 MW Power Generation Plant near Salem, Tamil Nadu (hereinafter referred to as the "Said Plant"), owned by the First Defendant, through its wholly owned subsidiary, the Second and Third Defendant being the subsidiary of the second defendant, with effect from 24.05.2010/ 31.08.2011, pursuant to and in terms of the Bridge Loan Agreement dated 24.01.2011 and Settlement Agreement dated 31.08.2011;

b. For a Mandatory Injunction directing the Defendants to record the first charge on the said Plant created in favour of the plaintiffs and to register the charge with the Registrar of Companies, Tamil Nadu and other statutory authorities;

c. For a permanent injunction restraining the First and Second Defendants, their Directors and / or any other person/s in control or management of the First and Second Defendants and the Fourth Defendant, from transferring, alienating, encumbering or creating any charge, either directly or indirectly, of the shares held in the Second and Third Defendants and consequently, restraining the Second and Third Defendants, their Directors and/or any person/s in control or management of the Second and Third Defendants, from in any manner permitting, registering or recording the transfer of shares held by the First Defendant in the Second Defendant and/or by the Second Defendant in the Third Defendant, until repayment of the sum of US\$ 400,000/- (United States Dollars Four Hundred Thousand only) by the Defendants to the Plaintiffs;

d. For a permanent injunction restraining the Defendants, their directors, men, agents and/or any person acting through or under them, from transferring, alienating, encumbering or in any other manner creating any charge whatsoever on the Said Plant more fully set out in the Schedule.

"15..... The present suit is not merely the declaration of plaintiff's right over the charge (Plant) but also for further reliefs. Even though the appellants seek declaration to the effect that the plaintiffs have the first charge in favour of the plaintiffs over its asset viz., 1.5 MW Power Generation Plant near Salem, as per clause 2.1 of the Bridge Loan Agreement, in effect, the prayer is only for creation of charge over the plant. The plaint prayer (d) is for Permanent Injunction restraining the defendants from transferring, alienating, encumbering or in any other manner creating any charge over the said Plant erected in Salem and for acquiring control over the plant.

16. The contention of appellants is that since the 2nd and 3rd respondents are having registered office at Chennai and transfer of its shares can be effected only at Chennai, where the registered office of 2nd respondent is situate and therefore any relief restraining the respondents from

transferring, alienating or creating charge over the shares held by the 1st respondent in the 2nd and 3rd respondents could be filed only in the Madras High Court and the learned single Judge erred in saying that the 'suit is for land'.

19. Considering the question, whether the suit for injunction is suit for land, in *Tamiraparani Investments Private Limited Vs. Metfilms Pvt. Ltd.*, (MANU/TN/2492/2005 : (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".

20. Referring to *Moolji Jitha's* case and considering the expression "suit for land", in *Tamiraparani Investments* case, (MANU/TN/2492/2005 : (2006) 1 MLJ 357), the Division Bench has held as under:

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)

21. Applying the ratio of the above decisions to the case on hand, the suit, being one for declaration of appellants' charge over the Plant and also for permanent injunction restraining the respondents from alienating or encumbering the said Plant, which is lying outside the jurisdiction of this Court, this Court has no jurisdiction to entertain the suit. The learned single Judge rightly held that this Court has no jurisdiction to entertain the suit and rightly dismissed the application. We do not find any reason warranting interference with the order of the single Judge".

9) P. Baskar, Partner, Vasavi Builders, Medavakkam, now known as Sri Aishwaryam Homes .Vs. Aditya Real Estates, rep. by Mr. Manish Agarwal, 19/20, General Muthiah Mudali Street, Chennai-600 079 reported in [2018 (1) CTC 342], wherein it is held as follows:

"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 Kishori Lal & Ors. reported in MANU/SC/0049/1982 : 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 MANU/FE/0007/1950 : 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 MANU/SC/0384/2015 : (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 property is situated outside the original jurisdiction of this Court, this Court cannot entertain the suit".

10) M/s.Aditya Real Estates .V. P.Baskar, Partner, M/s.Vasavi Builders, reported in [2018 2 LW 97], wherein it is held as follows:

"25. In fact, as per Section 16 of the Civil Procedure Code, 'the suits are to be instituted where the subject matter is situate' and the same runs as under:

"16. Suits to be instituted where subject-matter situate:- Subject to the pecuniary or other limitations prescribed by any law, suits-

- (a) for the recovery of immovable property with or without rent or profits,
 - (b) for the partition of immovable property,
 - (c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property,
 - (d) for the determination of any other right to or interest in immovable property,
 - (e) for compensation for wrong to immovable property,
 - (f) for the recovery of movable property actually under distraint or attachment,
- shall be instituted in the Court within the local limits of whose jurisdiction the property is situate:

Provided that a suit to obtain relief respecting or compensation for wrong to, immovable property held by or on behalf of the defendant, may where the relief sought can be entirely obtained through his personal obedience be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

Explanation: In this section "property" means property situate in India."

26. Besides this, it is to be borne in mind that a 'Suit for Land' means the suit in which the reliefs claimed, if ultimately impeach upon the title or for possession of the land in question and also the purpose and object of the suit was something different, however, it involves consideration of question of title to land indirectly and suits for land would cover claim for recovery of possession or control of land. Even in a suit for specific performance of enforcement of agreement/contract of sale, a suit can be laid without seeking recovery of possession and even then, the said suit is only one to be construed in the eye of Law as one for land.

Case Laws:

27. At this stage, this Court points out that the Division Bench Judgment of this

Court in *Thamiraparani Investments Private Limited, represented by its Director v. Gopal, Chennai V. Meta Films Private Limited*, MANU/TN/2492/2005 : (2006) 1 MLJ 357 at special page 359, wherein at paragraph 8, it is observed as follows:

"8. In *Moolji Jaitha and Company v. The Khandesh Spinning and Weaving Mills Company Ltd.* MANU/FE/0007/1950 : AIR 1950 Federal Court 83, the Court noted that the first prayer in the plaint was that it may be declared that the lands belonged to and are the properties of the plaintiff company and the defendants have no beneficial interest therein. In the said judgment, the Court 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. 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.

11) Sumer Builders Private Limited .vs. Narendra Gorani reported in [(2016) 2 SCC 582].

"28. In this context reference to the reliefs prayed for Under Section 9 petition gain significance. Prayers (a) and (b) of the paragraph relating to relief sought read as under:

(a) pending the hearing and final of the proposed arbitral proceedings and for a period of sixty days after the award therein, the Respondent by himself and through his servant and or his agent and/or in any manner, howsoever, be restrained by a temporary order or injunction from entering upon the property bearing Survey No. 1487/1 and 1487/2 at Kasba, Indore, Patwari Halka No. 15/2, Tahsil & District-Indore, Madhya Pradesh, and from dealing with or moving the Petitioners' construction machinery on the said property and from disturbing or interfering with the Petitioners possession thereof in any manner;

(b) pending and hearing and final disposal of the proposed arbitral proceedings and for a period of sixty days after the award therein, the Respondent by himself and or through his servants and/or his agents, be restrained by a temporary order of injunction from or in any manner directly or indirectly disposing off, alienating, encumbering or creating third party rights in any manner whatsoever in the property bearing Survey No. 1487/1 and 1487/2 at Kasba, Indore, Patwari Halka No. 15/2, Tahsil & District-Indore, Madhya Pradesh, and from disturbing or interfering with the Petitioners possession thereof in any manner.

32. The seminal issue is whether on the factual score which has been exposited, the application filed Under Section 9 of the 1996 Act before the High Court of Bombay can be regarded as a money claim. On a studied scrutiny of the agreement and the MoU it is clear as day that the development agreement undoubtedly had created certain interests in

the land in favour of the Appellant. The assertions made in the application along with the relief clause when read in entirety and appreciated in a holistic manner, it becomes luminescent that the core dispute pertains to possession of the land, for the Appellant claims to be in exclusive possession and the Respondent, per contra, has asseverated that it had taken over possession. It can irrefragably be stated that any order passed Under Section 9 of the 1996 Act will have the impact on the land. It is difficult to accede to the submission that it will not conceptually fall within the category of "suit for land" as engrafted Under Clause 12 of the Letters Patent. It is clearly a dispute with regard to the possession which is evincible from the correspondences and the averments made in the application preferred Under Section 9 of the 1996 Act. Thus, there has to be determination as regards possession and impliedly issue of direction for recovery of possession. Hence, the conclusion arrived at by the Division Bench on the basis of the scrutiny of documents that the dispute is embedded with regard to the possession of the land because the fundamental claim pertains to certain constructed space on the land and, therefore, it would conceptually fall within the conception of "suit for land" appearing in Clause 12 of the Letters Patent is unexceptionable. Prayer (a) quoted above seeks restraint by a temporary order or injunction from entering upon the property. It is difficult to accept the submission that it is a money claim and, therefore, the Bombay High Court would also have the territorial jurisdiction and accordingly we unhesitatingly repel the same".

10. An analysis of all the above judgments brings out the following principles of law to decide whether a suit is for "suit for land".

(i) In a suit the reliefs claimed, if granted, would directly affect title to or possession of the land it will be "suit for land".

(ii) If the object of the suit is something different, but involves the consideration of the question of title to land indirectly, it will also be "suit for land".

(iii) A suit where the claim is for recovery of possession or control of land, it will be "suit for land".

(iv) In a suit where determination of any right or interest over an immovable property is involved, it will be "suit for land".

(v) A suit for bare injunction restraining the defendant from interfering with the possession and enjoyment of the property by the plaintiff, will be "suit for land".

(vi) In a suit for bare injunction where the plaintiff seeks to restrain the defendant from dealing with the suit property by creating a charge or alienating or encumbering the property, will also fall within the ambit of a "suit for land". This Court in M/s. Raja Holdings, Financiers and Merchants, Partnership Firm represented by its Partner Lalitha Raja - in O.S.A.NO.2/2018, dt.10.07.2018 has considered this issue in detail.

vi (a) In a suit for Specific Performance of an agreement of sale wherein the relief of delivery of possession of the suit property has been specifically claimed, it will be "suit for land".

vi (b) In a suit for Specific Performance where the suit is only for enforcement of the agreement simpliciter without seeking for any other relief, the same will also fall within the ambit of "suit for land" since the relief of possession is inherent in the relief of Specific Performance.

vi (c) In a suit for Specific Performance, where the suit is only for enforcement of the agreement simpliciter and the plaintiff specifically claims to be in possession of the suit property and there is no denial of the said fact by the defendant, the said suit will not come within the ambit of "suit for land".

vi (d) In a suit for Specific Performance where the plaintiff apart from seeking to enforce the agreement also seeks a relief of injunction against the defendant, not to interfere with his possession and enjoyment or not to create any charge or encumbrance or not to alienate the suit property, such suits will also come within the ambit of "suit for land".

11. In the instant case, the plaintiff have taken a specific plea in the plaint as follows:

" 17. The plaintiff states, pursuant to the sale agreement, the defendant had put the plaintiff in possession of the schedule mentioned properties".

Pointing out to this averment and also the specific clause in the agreement of sale wherein it states that the possession has been handed over to the plaintiffs, the learned senior counsel would submit that what is sought to be enforced in the present suits are only the relief of Specific Performance simpliciter. Therefore, this suit will not fall within the ambit of the term "suit for land". The learned senior counsel made a further submission that at the time when the Court decides a petition for revocation of leave, the Court must

only look at the averments in the plaint and relief sought for in the plaint and nothing more.

12.The learned senior counsel for the plaintiffs would further submit that insofar as the subsequent purchasers are concerned, those are alienations that were made by the first and second defendant after the filing of the present suit, and therefore, those transactions are subject to the result of the present suit covered by the doctrine of lis pendense under Section 52 of the Transfer of Property Act. These third parties cannot be brought within the ambit of bonafide purchasers and they cannot claim the benefit of Section 19 (b) of the Specific Relief Act, 1963. The learned senior counsel further submitted that the consequential prayer of permanent injunction claimed by the plaintiffs will not bring this suit within the ambit of "suit for land".

13.It is true that at the stage of granting leave, this Court will only look into the averments made in the plaint and also the relief sought for in the plaint. The law on this issue is well settled. However, by the time when the revocation of leave was filed by the defendants in A.Nos.3562 to 3564/2010, a written statement came to be filed wherein the specific plea has taken by the defendants that possession was not given to the plaintiff and the clause in the agreement of sale that possession was given to the plaintiff is untrue. At the time when the revocation of leave petition was considered by this Court, this contra fact was also placed before the Court.

14.Even otherwise in this particular case, the plaintiff has specifically pleaded that it is in possession of the suit property and the defendant has refuted it and taken a specific stand that possession was never given to the plaintiffs. Apart from the other issues that will be framed in these suits, this Court must necessarily frame an issue on possession since the parties are at variance on a material fact regarding possession. This factor is so apparent in present cases and it will be too hyper technical for this Court to ignore this issue at the time of considering the revocation of leave petition since this issue is going to necessarily crop in at the time of framing issues.

15.The next question would be what will happen if the issue regarding possession is framed? The moment this issues gets framed, the suit automatically will fall within the ambit of "suit for land" and this Court will not have the jurisdiction to try the suit thereafter and must necessarily transfer the suit to a Court of competent jurisdiction.

16.This issue of possession also gains a lot of significance in a suit for Specific Performance since at the time when a Court exercises discretion under Section 20 of the Specific Relief Act, this will also be one of the main

considerations while granting the reliefs. We agree with the contention put forth by the the learned senior counsel for the appellant that happening of a contingent event in future cannot be taken into consideration at the stage of deciding a revocation of leave petition. In the instant case, we are not considering a contingent event that will happen in future. On the other hand, we are faced with an immediate issue with regard to the possession of the suit property. This Court cannot close its eyes on this vital issue for the present since this issue is going to immediately crop up at the time of framing the issues based on pleadings at which point of time this Court will not be able to decide this issue and give a finding since the suit would then fall within the ambit of "suit for land".

17. In view of the above finding, the main relief sought for by the plaintiffs for Specific Performance, will fall within the ambit of "suit for land" and consequently this Court will not have the territorial jurisdiction to try the suit.

18. There is yet another reason for us to come to the conclusion that the present suit filed by the plaintiff is "suit for land". The plaintiffs have sought for the relief of perpetual injunction restraining the defendants from in any manner dealing, disposing, alienating, charging or encumbering the suit property. This Court has already held supra that a prayer of this nature will also fall within the ambit of a "suit for land", since the interest or control of the defendants over the suit property will be restricted if such a relief is granted. Therefore, even on this ground we must hold that the present suit is "suit for land" under clause 12 of the Letters Patent. We are in complete agreement on the finding of the learned Single Judge on this issue.

19. We wish to add that the moment, the learned Single Judge came to the conclusion that the leave granted has to be revoked, this Court should not have proceeded to consider the other applications and the learned Single Judge should have transferred the suit to the Court of competent jurisdiction by leaving open all the other issues which will be decided by the Court of competent jurisdiction. However in this case, the learned Single Judge has proceeded to decide the applications for rejection of plaint also and allowed those applications and also proceeded to close the contempt application filed by the plaintiffs. We are of the considered view that the learned Single Judge went wrong in adopting such a procedure.

20. This Court therefore proceeds to set aside the order of the learned Single Judge made in A.Nos.4437 to 4439 of 2015 and also the consequential orders passed in O.A.Nos.271/2007, 546/2013 and 335/2016 and A.Nos.2142 to 2144/2016. All these applications shall stand revived in order to be heard and decided by the Court of competent jurisdiction.

21.This Court, during the pendency of the appeals has passed an order dated 22.06.2017, restraining the defendants from interfering or encumbering or dealing with the suit property by way of sale, mortgage, joint development, lease or otherwise, pending disposal of the appeals and thereby revived the original orders made in OA.Nos.546 to 548/2013. This interim order shall continue to be in force till the Court of competent jurisdiction to which the present suits will be transferred, disposes of the suits finally.

22.In fine, we uphold the orders passed by the learned Single Judge in A.Nos.3562 to 3564/2010, dated 23.11.2016, and the appeals filed against the orders passed in these applications shall stand dismissed.

23.The original side appeals filed as against the orders passed in A.Nos.4437 to 4439/2015 shall stand allowed, and the orders passed by the learned Single Judge in these applications is hereby set aside.

24.The consequential orders passed in OA.Nos.269 to 271/2007, 546 to 548/2013, A.Nos.257/2014, 2142, 2145 and 2148/2016, 2143, 2146 and 2149/2016, 2144, 2147 and 2150/2016 and OA.Nos.333 to 335/2016, dated 23.11.2016, are hereby set aside and all these applications stands revived.

25.The suits in C.S.Nos.197 to 199 of 2007 is hereby transferred from the file of this Court to the file of District Court, Thiruvallur. The deposit of balance sale consideration made by the plaintiffs shall also stand transferred to the file of the District Court, Thiruvallur. The District Court, Thiruvallur on receipt of the records shall immediately re number the suits and applications and issue notice to the parties by fixing a date of hearing. The District Court, Thiruvallur shall not insist for payment of any Court fee and the Court fee already paid by the plaintiffs shall be taken to be the Court fees paid in the transferred suits. The suits were filed in the year 2007 before this Court and it has not reached even the stage of framing issues. Therefore, a direction is issued to the District Court, Thiruvallur to complete the proceedings within a period of six months from the date of the first hearing fixed by the District Court. All the parties to the proceedings are directed to co-operate and facilitate the completion of the proceedings within the time stipulated by this Court.

26The Original Side Appeals accordingly stands disposed of in the manner indicated above. In the facts and circumstances of the case, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

Kp

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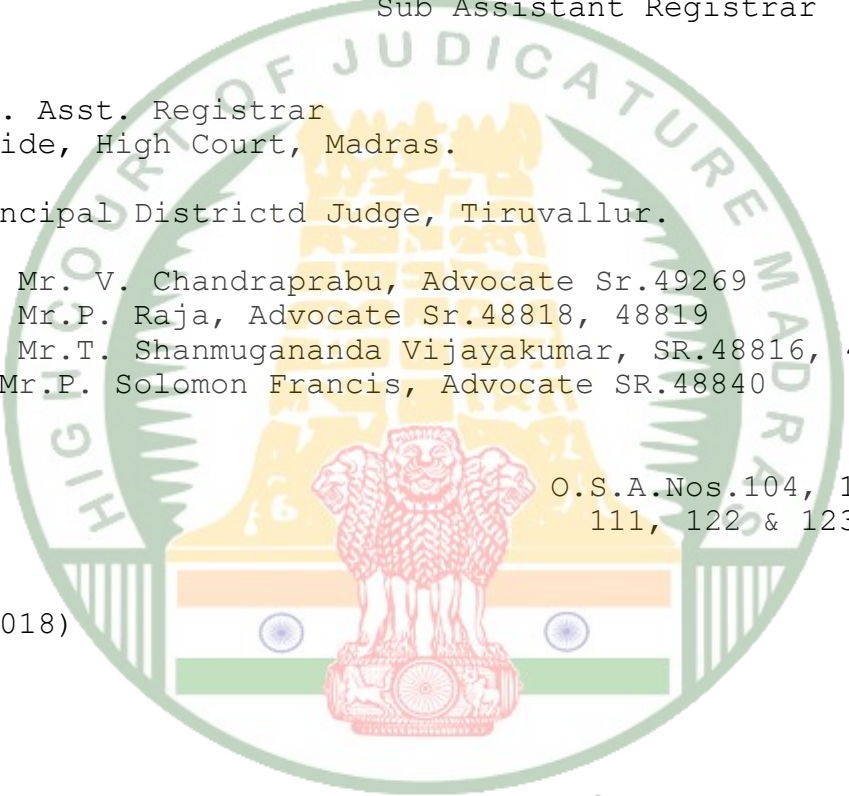
1. The Sub. Asst. Registrar
Original Side, High Court, Madras.

2. The Principal District Judge, Tiruvallur.

+ 2 ccs to Mr. V. Chandrababu, Advocate Sr.49269
+ 6 ccs to Mr.P. Raja, Advocate Sr.48818, 48819
+ 6 ccs to Mr.T. Shanmugananda Vijayakumar, SR.48816, 48817
+ 1 cc to Mr.P. Solomon Francis, Advocate SR.48840

O.S.A.Nos.104, 105, 110,
111, 122 & 123 of 2017

RSY (CO)
EU (14/08/2018)



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