

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:27.04.2018
CORAM:
THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

O.S.A.No.128 of 2018 & CMP.No.8085 of 2018

1. Mrs.P.Mariammal
2. Mr.P.Sakthikumar ... Appellants
Vs

1. Mrs.S.Shri Subitha
2. Mrs.Adhi Lakshmi
3. Mrs.Vijayalakshmi
4. Mr.A.Jeyaraman
5. Mr.A.Ganesa Pandiyan
6. Mr.S.Alagarsamy

7) M/s.Ramaniyan Real Estates Private Limited,
No.17/35, 2nd Main Road,
Gandhi Nagar, Adyar,
Chennai 600 020.

8) Jayanthi Jewellers,
No.69, L.B.Road,
(near Thiruvanmiyur Signal),
Thiruvanmiyur Chennai 600 041.

9) Amirtha Ice Cream Company,
Mr.Thirupathi Raja,
No.69, L.B.Road,
(Near Thiruvanmiyur Signal),
Thiruvamiyur Chennai 600 041.

10) Jai Sports,
Mr.C.Saravanan,
No.69, L.B.Road,
(Near Thiruvanmiyur Signal),
Thiruvanmiyur, Chennai 600 041.

11) Gajendra Rubber Stamp Works
Mr.Balasundaram,
No.69, L.B.Road,
(Near Thiruvanmiyur Signal),
Thiruvanmiyur,
Chennai 600 041

- 12) Mercury Electronics,
No.69, L.B.Road,
(Near Thiruvanmiyur Signal),
Thiruvanmiyur,
Chennai 600 041
- 13) Sai Ganesh Enterprises
Mr.Anantha Shankar
No.69, L.B.Road,
(Near Thiruvanmiyur Signal),
Thiruvanmiyur,
Chennai 600 041
- 14) Mr.Muthu Kumar
- 15) Konica Silver Colour Lab
Mr.P.S.Pushpanayagam,
No.69, L.B.Road,
(Near Thiruvanmiyur Signal),
Thiruvanmiyur,
Chennai 600 041
- 16) Darshan Optics
Mr.Ravi Kumar,
No.69, L.B.Road,
(Near Thiruvanmiyur Signal),
Thiruvanmiyur, Chennai 600 041.
- 17) Indus Towers Ltd.,
No.5, ESSPEE IT Park,
Jawaharlal Nehru Street,
(opp. Jaya TV)
Ekkattuthangal,
Thiruvanmiyur,
Chennai 600 032.
- 18) Tummy Tuckle,
361, OMR ESCAPADE,
Madha Koil Street,
Okkiyam Thoraipakkam,
Chennai 600 096.
- 19) Cricket Drome,
361, OMR ESCAPADE,
Madha Koil Street,
Okkiam Thoraipakkam,
Chennai 600 096

20) Academy of Indian Music and arts,
361, OMR ESCAPADE,
Madha Koil Street,
Okkiyam Thoraipakkam,
Chennai 600 096.

21) Kriyates Recreation Club,
361, OMR ESCAPADE,
Madha Koil Street,
Okkiam Thoraipakkam,
Chennai - 600 096

22) MAS School,
361, OMR ESCAPADE,
Madha Koil Street,
Okkiam Thoraipakkam,
Chennai 600 096.

23) Karate Training Centre,
361, OMR Escapade,
Madha Koil Street,
Okkiam Thoraipakkam,
Chennai 600 096.

24) Mr.Ranjith Baba

25) RK Centring, Thoraipakkam,
Chennai-96.

26) Mr.Karupiah .. Respondents

Prayer:- Original Side Appeal filed under Order XXXVI Rule 1 O.S.Rules to allow the present appeal by setting aside the order passed by the Hon'ble Judge in Application No.8376 of 2017 in CSD No.45760 of 2017 dated 05.04.2018.

Application No.8376/2017 has been filed praying to grant leave to the plaintiff to institute the suit before this court against the defendants pending disposal of the suit.

For Appellant : Mr.K.V.Babu

For Respondents: No Appearance

JUDGMENT

[Judgment of the Court was made by M.SATHYANARAYANAN, J.]

The Defendants 1 and 2 in C.S.Diary No.45760 of 2017 are the appellants and aggrieved by the impugned order dated 05.04.2018 passed in A.No.8376 of 2017, in and by which, the leave was granted to the 1st respondent / plaintiff, who instituted a suit on the file of this Court and hence, came forward to file this appeal.

2. The 1st respondent / plaintiff has instituted a suit for partition to declaring her 1/5th share in the Suit Schedule properties described in Schedule A to I, by passing a preliminary decree and directing the defendants 1 and 2 to pay the mesne profit and other consequential benefits.

3. Since majority of the suit properties except four items viz., 16(1), 17 & 19 of Schedule A Properties and item 37 in C Schedule properties situate outside the jurisdiction of this Court, leave is sought for under Clause 12 of the Letters Patent Act by filing A.No.8376 of 2017. It is a stand of the 1st respondent / plaintiff that he is in joint possession of all the properties "forum conveniens" for all the properties as this Court for the reason that all are residing in Chennai or outer periphery of Chennai and the witnesses have to be examined are also within the jurisdiction of Chennai and that Okiyam Nagar is now also annexed to the Corporation of Chennai.

4. However, the said petition was strongly opposed by the appellants / defendants 1 and 2 by contending that since except 4 items majority items of the Scheduled properties are located outside the Jurisdiction of this Court and especially, declaratory relief sought for by them in respect of property located outside the Jurisdiction of this Court, the "forum conveniens" cannot be the deciding issue and therefore, prays for dismissal of the said petition. Reliance was also placed upon a decision rendered by this Court reported in 2011 SCC online 207 and 2014 (6) CTC 241 [A.K.Mahmood Sulaiman Vs.Fathima Bathook] in support of the submission with regard to the grant of leave. The learned Judge taking note of the rival submissions and upon considering the documents found that the contesting parties are living within the Jurisdiction of this Court and the commercial properties i.e., 16 (1), 17, 19 in A Schedule property and item 37 in C Schedule properties are situated within the Jurisdiction of this Court, granted leave, vide impugned order.

5. Mr.K.V.Babu, learned counsel appearing for the petitioners has drawn the attention of this Court to the materials placed and would submit that the declaratory relief sought for by the plaintiff, pertains to properties which admittedly lie outside the Jurisdiction of this Court and that too far away and therefore, the "forum conveniens" alone cannot be a deciding factor to grant the relief and would further add that even assuming for the sake of arguments that the suit came to be decreed, there may be some difficulty in executing the decree also and therefore, would urge that in respect of the properties situated outside the Jurisdiction of this Court, leave cannot be granted and prays for interference.

6. This Court has considered the rival submissions and also perused the materials placed before it.

7. A perusal of address for service of notice of the plaintiff as well as the defendants would disclose that most of them are residing within the Jurisdiction of this Court and even in respect of some of the defendants, they are living in place, which lie close proximity to the city of Chennai and no doubt there are few items of properties which lie within the Jurisdiction of this Court.

8. This Court also taking into consideration "forum conveniens" also while granting leave and as already pointed out, almost all the defendants are residing within the Jurisdiction of this Court / residing close proximity to the City of Chennai and in the event of some of them being examined as witness, it will also be convenient to them.

9. It is a settled position of law that location of the properties alone is not the deciding factor while granting leave and this Court while granting leave under clause 12 of the Letters Patent Act has not decided the Jurisdictional issue for the reason that it is also a question of law and it is the issue relating to law and it can be raised at any point of time. The decision relied on by the learned counsel appearing for the appellants has no application to the case on hand for the reason that the parties in those cases are residing outside the Jurisdiction of this Court, majority of the properties also located far away from the city of Chennai and taking into consideration of the said fact, the decision was rendered with regard to the grant of leave.

10. This Court on an independent application of mind to the entire materials is of the considered view that there is no error apparent or any infirmity in the reasons assigned by the learned Judge for allowing the application in A.No.8376/2017 for granting leave and find no merit in this appeal.

11. In the result, the Original Side Appeal is dismissed confirming the order passed by the learned Single Judge in A.No.8376 of 2017 in C.S.D.No.45760 of 2017. It is made clear that the findings / observations made herein are only for the purpose of disposal of this appeal and this Court has not touched upon the merits / demerits of the case and it is to be decided on the quality of evidence and appreciation of the same. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

<https://hcservices.ecourts.gov.in/hcservices/>

Sub Assistant Registrar

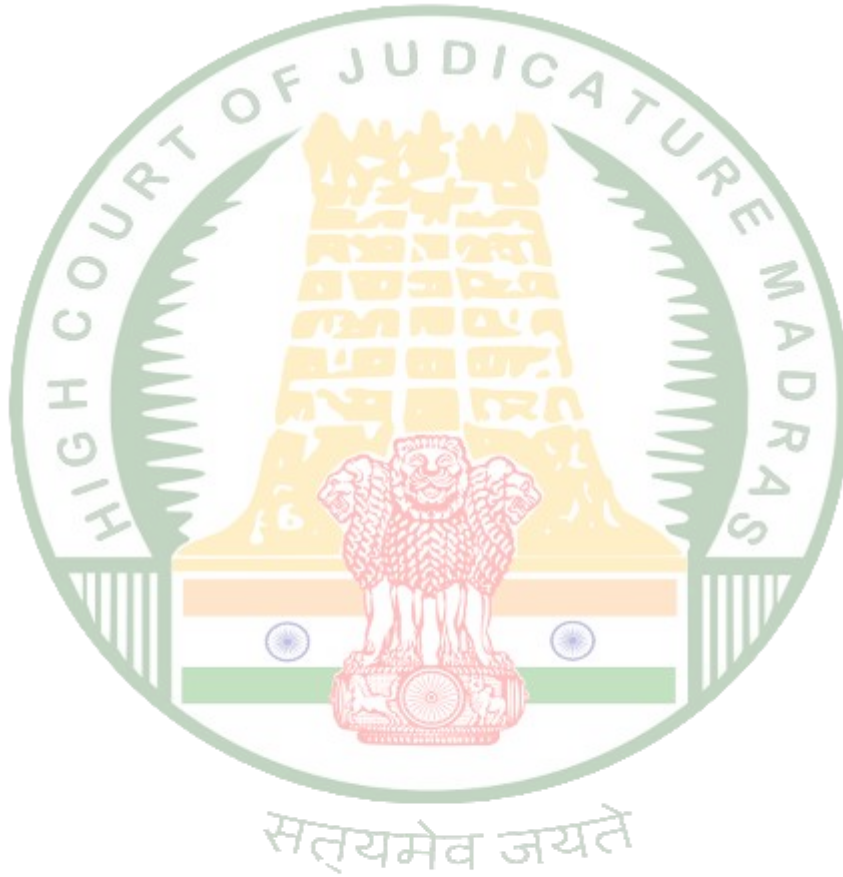
rka/sk

To
The Sub Assistant Registrar(Original Side)
High Court, Madras

+1cc to Mr.K.V.Babu, Advocate Sr.No.31612

GJ(CO)
sm:4.6.2018

O.S.A.No.128 of 2018



WEB COPY