

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 6TH DAY OF JUNE 2018

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

A. No.1999 of 2018 and A. No.6712 of 2015  
in  
C.S. No.171 of 2015

1.Mr.P.Murali Pandian,  
S/o.K.Pandian,  
Plot No.38, 19<sup>th</sup> street,  
Lakshmi Vadhana Nagar,  
Kottivakkam,  
Chennai - 600 041.

2.Mrs.Vithya Radhakrishnan  
W/o.P.Murali Pandian,  
Plot No.38, 19<sup>th</sup> street,  
Lakshmi Vadhana Nagar,  
Kottivakkam,  
Chennai - 600 041.

: Applicants / Plaintiffs  
(A. No.1999 of 2018)

Vs.

1.Dr.P.Saravanan,  
S/o.K.Pandian,  
No.C-101, Balasubramaniam Salai,  
Periar Nagar, Chennai - 600 082.

2.Dr.S.Rajamani,  
W/o.Dr.P.Saravanan,  
No.C-101, Balasubramaniam Salai,  
Periar Nagar, Chennai - 600 082.

: Respondents / Defendants  
(A. No.1999 of 2018)

**A. No.6712 of 2015**

1.Dr.P.Saravanan,  
S/o.K.Pandian,

2.Dr.S.Rajamani,  
W/o.Dr.P.Saravanan,  
17 & 18, First Street,  
Ponnusami Nagar,  
Perambur, Chennai - 600 011.

: Applicants / Defendants

Vs.

1.Mr.P.Murali Pandian,  
S/o.K.Pandian,  
Plot No.38, 19<sup>th</sup> street,  
Lakshmi Vadhana Nagar,  
Kottivakkam,  
Chennai - 600 041.

2.Mrs.Vithya Radhakrishnan  
W/o.P.Murali Pandian,  
Plot No.38, 19<sup>th</sup> street,  
Lakshmi Vadhana Nagar,  
Kottivakkam,  
Chennai - 600 041.

: Respondents / Plaintiffs

3.Mr.K.Pandian, aged 75,  
Retired Sanitary Officer,  
S/o.Late Kannappa Pillai,  
Residing at 51 , Subramania Puram,  
Mayiladuthurai - 609 001.

: Respondent / 3<sup>rd</sup> Party

**A. No.1999 of 2018**

Application praying that this Hon'ble Court be pleased to post the Suit in C.S.NO.517 of 2013 on the file of this Hon'ble court now pending on the file of the Hon'ble Master IV along with this suit in C.S.No.171 of 2015 on the file of this Hon'ble court for joint Trail.

**A. No.6712 of 2015**

Application praying that this Hon'ble Court be pleased to issue Third party Notice to proposed Third Party respondent as contemplated in Order VIII A of the Civil Procedure Code read with Order V-A of the Original Side Rules and permit the Appellants to claim to the indemnified by him and if need be pass a Cross Decree directing the proposed party to indemnify the Applicants from any loss and other consequences that may accrue in respect of the claims made in prayer for accounting in the suit and directing him to pay us any money so found to be recovered.

These Applications coming on this day before this court for hearing, the court made the following order:

A.No.6712 of 2015 has been filed by the Defendants in CS.No.171 of 2015, seeking a direction to issue third party notice to the proposed third party Respondent as contemplated under Order VIII(A) of CPC read with Order V(A) of the Original Side Rules and permit the Applicant to claim to be indemnified by him and if need be pass a decree, directing the proposed party to indemnify the Applicant for any loss and other consequences that may accrue in respect of the claims made in prayer for accounting in the suit and directing him to pay any money so found to be recovered.

2. The suit had been filed by Murali Pandian, and his wife Vijaya Radhakrishnan, against Dr.P.Saravanan and his wife Dr.S.Rajamani. It has to be mentioned that the 1<sup>st</sup> Plaintiff and the 1st Defendant are brothers.

3. Even before going into the details of the plaint, it

must also be mentioned that there was an earlier suit in CS.No.517 of 2013 between the parties and that suit had been filed by Dr.P.Saravanan and his wife Dr.S.Rajamani, against Murali Pandian.

4. CS.No.517 of 2013 has been filed, seeking a judgement and decree for permanent injunction restraining the Defendant or anybody acting under him from interfering with the Plaintiffs' possession and enjoyment of the suit property and for costs. The property described in the Schedule to the plaint was the land and building at Door No.27B, New Door No.43/1 and 43/2, Mathavaram High Road, Perambur, Chennai 600011, measuring 12519 sq.ft. , in which there is a permanent hospital building known as 'Apple Hospitals', consisting of ground, first and second floors with car parking, generators and other appurtenants. The suit property had been purchased by the Defendant on 23.1.2014 with the help of the 1<sup>st</sup> Plaintiff, who was the Power of Attorney of the Defendant. Thereafter, the Plaintiffs with licence from the Defendant had put up a building for hospital in 2008. However, the Defendant started to interfere with the peaceful possession of the Plaintiffs and demanded handing over of the building. It was under these circumstances that the suit had been filed.

5. Subsequently, in that suit, the Defendant had filed his written statement and this Court had also framed issues on 20.10.2016. The matter was referred to the Additional Master IV for commencing of recording of evidence on 21.11.2016. The matter had been listed before the Additional Master IV on 22 hearing dates. The Plaintiff had not even commenced the trial. In the mean while, the Plaintiff and his wife had filed CS.No.171 of 2015. The Defendants

were the Plaintiffs in CS.No.517 of 2013. As stated above, the 1<sup>st</sup> Plaintiff and the 1st Defendant were brothers.

6. This suit in CS.No.171 of 2015 had been filed for a direction against the Defendants to hand over vacant possession of the suit property and for a sum of Rs.48,98,510/- with interest from the date of filing of the suit and for a sum of Rs.3 lakhs per month as damages for use and occupation from 21.6.2013 and for a preliminary decree for accounting with respect to the amounts received in account No.428573283 maintained with the Indian Bank, Erukancherry, Chennai-118 for the period from 2004 till date and for mandatory injunction, directing the Defendants to hand over the original sale deed dated 23.1.2014 registered as Document No. 521 of 2004 in the Office of the Sub Registrar, Sembium, with respect to the suit property and for costs.

7. The suit property was the same property as given in the Schedule to the plaint in CS.No.571 of 2013, namely, the land and building at Door No.27B, New Door No.43/1 and 43/2, Madhavaram High Road, Perambur, Chennai, in which there is a hospital, called, 'Apple Hospitals'. In the said suit, the Defendants had filed A.No.6712 of 2015 under Order VIII(A) of CPC to issue notice to a third party, namely, K.Pandian, who is none other than the father of the 1<sup>st</sup> Plaintiff and the 1st Defendant.

8. Subsequently, the Plaintiffs have filed A.No.1999 of 2018, seeking joint trial of both CS.No.171 of 2015 and CS.No.517 of 2013. In A.No.6712 of 2015, the Applicants who are the Defendants in the suit have stated that the Plaintiffs had sent remittances to a sum of Rs.3,24,26,466/- from USA for investment purposes and as Power

of Attorney Agent, he had invested a sum of Rs.2,12,13,286/- in certain properties and had also remitted a sum of Rs.1,99,29,500/- to the father, to whom notices sought to be issued.

9. It has been further stated that the amounts had been sent from USA for purchase of lands for establishing a school at Mayiladuthurai. It has been further stated that the suit property in Perambur had also been purchased with the amounts so sent. It has been further stated that the Applicant acted as Power of Attorney Agent of the Plaintiffs and had also remitted money through SB A/c.No.752621079, at Indian Bank, Erukkanchery. He claimed that the allegations of betrayal and breach of trust are all false. He further stated that he had transferred funds to the account of K.Pandian, to whom notices sought to be issued under Order VIII(A) of CPC, to his own account no.756456860 at Indian Bank, Koranadu, Mayiladuthurai Branch. It has been further stated that there were also transfers to a sum of Rs.1,17,42,000/-, apart from Rs.15 lakhs, Rs.5 lakhs, Rs.14 lakhs in 2008-2009.

10. It has been further stated that the funds transferred to K.Pandian were diverted to various other accounts at IOB, Lakshmi Vilas Bank, operated by him and by close relatives. It has been further stated that the funds flow can be tracked, which they sought to be suppressed probably for the purpose of tax evasion and avoidance of stamp duty in purchase of properties. It has been further stated that in these circumstances, K.Pandian, father is bound to indemnify the Applicants/ Defendants in the suit. It has been further stated that he is also a proper and necessary party in the suit. It is under these circumstances that this application had

been filed, seeking to issue notice to him.

11. This Court had directed notice to be issued by order dated 7.10.2015. The third party had filed an affidavit. He has stated that he is the father of the 1<sup>st</sup> Plaintiff and the 1st Defendant. He has further stated that the Applicants had opened account no.752621079 in Indian Bank, Erukkanchery Branch, Chennai in his name and transactions were not informed. It was specifically stated that the 1<sup>st</sup> Applicant had also misused and forged his signatures. He has further stated that since the 1<sup>st</sup> Applicant and the 1st Defendant were brothers, he had not involved himself in the transactions between them. He claimed not to have received any money at any point of time. He has further stated that the money which was sent to the Indian Bank at Mayiladuthurai, was for the purpose of purchasing agricultural land for tax saving purpose of the Applicants. He has further stated that all the amounts were returned to the Applicants to pay capitation fee to his first daughter to join the Medical College. It has been further stated that the Applicant did not put up the hospital, which had been put up in the name of 'Apple Hospitals, in the property at Perambur. He has further stated that he is neither a necessary party nor a proper party in the suit and consequently, sought to dismiss the application.

12. The Plaintiffs have filed a counter affidavit. The 1<sup>st</sup> Plaintiff claimed in the affidavit that he was in USA from 1992 to 2011 and his wife, who is the 2<sup>nd</sup> Plaintiff, from 1998 to 2010. He claimed that he had earned and possessed sufficient income by virtue of employment and also saved earnings to a larger extent with an intention to invest the money in India. He had appointed the 1<sup>st</sup>

Applicant as his Power of Attorney on 1.11.2003. A bank account was opened in the Indian Bank, Erukkanchery Branch. He had transferred a sum of Rs.3,24,26,811/- with the said Bank account in account no.428573283/- The Applicant had invested a sum of Rs.2,21,68,301/- for purchase of four properties. He has specifically denied the allegation that a sum of Rs.1,99,29,500/- was remitted to the account of the third party to whom notice sought to be issued. He claimed that the Applicant herein alone was the Power of Attorney Agent and answerable to the claim in the suit. He had not authorised the Applicant to remit money to the account of his father. He has further stated that the Applicants have played fraud by giving a false statement of account. The Applicants have been withdrawing and depositing in the account of the father by forging his signature or by utilising signed cheques. As a matter of fact, a sworn statement signed before an Oath Commissioner had been filed as a plaint document. He further claimed that it was with his money which was sent from USA that the suit property was purchased and the hospital was constructed. He had also given instructions regarding the nature of construction, nature of staff structure and the functioning of the hospital. When he questioned, CS.No.517 of 2013 had been filed for injunction. Consequently, the suit had to be filed for accounts and for comprehensive reliefs. He has further stated that the third party has no connection or was never involved with the transactions mentioned. The entire account was opened by the Applicants alone. He has further stated that he had trusted the Applicants and had also appointed him as his Power of Attorney Agent to establish a hospital. He also claimed that the application must be dismissed.

13. This Court heard the arguments of the learned counsel on either side.

14. The Plaintiffs in CS.No.517 of 2013, namely, Dr.P.Saravanan and his wife, Dr.S.Rajamani, had filed the suit against Murali Pandian, brother of the 1<sup>st</sup> Plaintiff. They had filed the suit, seeking an order of permanent injunction restraining the Defendant from interfering with their possession of the suit property. The suit property is the land and building in Old Door No.27B, New No.43/1 and 43/2, Madhavaram High Road, Perambur, Chennai, measuring about 12519 sq.ft. , wherein a building called, 'Apple Hospitals', had been constructed and is running. After about two years, CS.No.171 of 2015 had been filed. This had been filed by the Defendant in CS.No.571 of 2013 and his wife against the Plaintiffs in CS.No.517 of 2013. The reliefs sought in the said suit are substantial in nature. They are for a direction against the Defendant to hand over vacant possession of the suit property and for a judgement and decree for payment of a sum of Rs.48,98,510/- together with interest and for a sum of Rs.3 lakhs per month as damages for use and occupation and for accounts and for return of the original sale deed pertaining to the suit property. The suit property is the same property mentioned in CS.No.517 of 2013, namely, the building called, 'Apple Hospitals', at Door No.27B, New Door No.43/1 and 43/2, Madhavaram High Road, Perambur, Chennai.

15. It is the common case of both the parties in both the suits that the Plaintiffs in CS.No.171 of 2015 had been residing in USA and had earned substantial amount of money. They had forwarded the money from USA to the Defendants in CS.No.171 of 2015. The

Defendants were Doctors. The Plaintiffs wanted them to invest the money in purchase of land for construction of a hospital and they also wanted to purchase lands at Mayiladuthurai for construction of a school and for all these purposes, the 1st Defendant was appointed as the Power of Attorney Agent of the Plaintiff and bank accounts were also opened. Monies were transferred to the bank accounts.

16. It is on record that a sum of Rs.3,24,26,811/-, according to the Plaintiffs and a sum of Rs.3,24,26,466/- according to the Defendants, had been transferred from USA to the account of the 1st Defendant. It is also not in dispute that the 1st Defendant had invested a sum of Rs.2,21,68,301/-, according to the Plaintiffs and a sum of Rs.2,12,13,287/-, according to the Defendants, for purchase of properties. However, the Defendants claimed that they had remitted a sum of Rs.1,99,29,500/- to the account of their father, K.Pandian, the proposed party. This fact had been strictly denied by the Plaintiffs.

17. The Plaintiffs have approached the Court, seeking recovery of possession in CS.No.171 of 2015. On the other hand, CS.No.571 of 2013 had been filed seeking to protect possession. CS.No.171 of 2013 has also consequential reliefs for payment of damages and also for return of amount and also for accounts and also for return of the original sale deed. All these related to the property at Perambur, wherein there is a hospital called, 'Apple Hospitals'.

18. In the application, the Defendants have stated that they had transferred a sum of Rs.1,99,29,500/- to the account of the father, K.Pandian, the proposed party at Mayiladuthurai. The

property at Mayiladuthurai is not the subject matter of the suit. The subject matter of dispute is the property at Perambur where there is a hospital. Investments made for purchase of lands and construction of the building and towards running of the hospital alone are the primary issues to be decided.

19. The other investments made by the Plaintiffs and also involvement of the Defendants are not the subject matter of the present two suits. The Defendants are attempting to expand the scope of the suit by including their own father with respect to the account in Indian Bank at Mayiladuthurai, claiming that he had diverted the amount to his account. If he had done so, it was an entire transaction between him and the transferee. The Plaintiffs cannot be drawn into such transaction. There is no evidence that the transferee, K.Pandian, father of the 1<sup>st</sup> Plaintiff and the 1st Defendant has an obligation to indemnify the 1st Defendant. Even otherwise, it would only with respect to the transactions at Mayiladuthurai and not with respect to the transactions relating to the suit property. Consequently, the entire prayer is mischievous.

20. As stated above, the plaintiffs in CS.No.517 of 2013, who is the Applicants in A.No.6712 of 2015, had not even commenced evidence. It clearly shows that they are not interested in proceeding with the suit for the past three years. As many as 22 adjournments were granted without even a proof affidavit being filed. At this stage, attempting to protract the suit further, this application has been filed. Simultaneously, A.No.1999 of 2018 has been filed, seeking joint trial.

21. It is clear that the parties are not interested in

taking the allegations in the plaint to a logical end. Issuing of notice to the third party would be of no help. He is not directly involved in any of the transactions with respect to the suit property. If the Applicant in A.No.6712 of 2015 had provided transactions with the third party, then he would have to proceed in accordance with law. But, there cannot be a joinder of causes of action when there is no connection between the causes of action.

22. The primary condition required under Order VIII(A) of CPC by the Applicant is that he is entitled to be indemnified against any person. The entire application in the present case is misconceived. On the facts of the case, I am not convinced that the Applicants have made out any ground to consider the application favourably. There has been denial of the transactions between the Applicants and the third party by the Plaintiffs in the suit. There has been denial of any transaction by the third party in his affidavit. The Applicant, who is the 1<sup>st</sup> Plaintiff in CS.No.517 of 2013 had simply refused to get into the witness box and commence trial in the said suit.

23. The learned counsel forwarded certain citations. But, it is seen that the Applicant has not crossed the first stage of satisfying the Court that indemnity has to be granted to the third party and the very ingredients of Order VIII-A of CPC are not satisfied. The third party is not a proper and necessary party. The claim of the Defendant that he is entitled to protection from indemnifying against the third party has been denied by not only the Plaintiffs, but also by the third party. Therefore, I do not think it necessary to accept to the contentions made in A.No.6712 of 2015.

Consequently, A.No.6712 of 2015 is to be dismissed. Consequently, the reference to precedents are not made.

24. In the result, A.No.6712 of 2015 is dismissed. In so far as A.No.1999 of 2018 filed seeking joint trial, is concerned, it is seen that though the parties are the same and the property is also the same, nature of proof required in both the suits are different. Consequently, instead of joint trial, simultaneous trial can be conducted. Accordingly, A.No.1999 of 2018 is ordered. No costs.

Sd./- C.V.K.J.

06.06.2018

//Certified to be true copy//

Dated at Madras this the <sup>th</sup> day of 2018.

COURT OFFICER (O.S.)

TPY/6.6.2018

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