

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2018

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice N.ANAND VENKATESH

O.S.A.No.2 of 2018
and
C.M.P.No.278 of 2018

M/s.Raja Holdings, Financiers and
Merchants, Partnership Firm
rep. by its Partner Lalitha Raja ... Appellant

Vs

1.R.R.P Housing Pvt. Ltd., rep. by its
Managing Director N.Padmanabhan

2.N.Padmanabhan
3.P.Thamizh
4.P.Vigraman

... Respondents

Appeal preferred under Order XXXVI Rule 1 of O.S. Rules r/w
Clause 15 of Letters Patent against the order dated 25.07.2017
CSD.16760/2017.

For Appellant ... Mr.G.Rajagopalan,
Sr. Counsel

For Respondents.. Mr.M.S.Krishnan,
Sr. Counsel
for Mr.B.Manimaran

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

The appellant herein filed the suit for the following
reliefs:

(i) Permanent injunction restraining the
defendants, their men and agents from in any manner
alienating or encumbering the schedule mentioned
property pending settlement of the loan amount with
interest due by the defendants to the plaintiff.

(ii)directing the respondents to pay costs of the suit.

2.The suit was not numbered and returned by the Registry with the objection that the prayer sought for against the respondents qua alienation is a suit on land. The learned single Judge upheld the objection of the Registry and hence the present appeal.

3.Learned senior counsel appearing for the appellant would submit that the relief sought for is not one for possession or protecting such possession. There is no adjudication on title. Therefore, as per Clause 12 of the Letters Patent the suit is maintainable. The averments in the plaint are to the effect that the suit property was purchased from the money given as loan by the appellant. Though for the loan transaction, there are other properties, which have been given as securities, they could not be proceeded with in view of the encumbrance created. Thus the appeal will have to be allowed. Learned senior counsel placed reliance upon the decisions of this Court in Dhanalakshmi N. and 2 Others Vs. S.Eknathan (1997-3 L.W.391) and A.C.Subba Reddy Vs. Jawahar International Trading Corporation Company (2008 (4) CTC 160).

4.Learned senior counsel appearing for the respondents would submit that the prayer itself is one for permanent injunction. The above decisions relied upon by the learned senior counsel for the appellant are not applicable to the case on hand since in those cases, the main relief is for specific performance and the consequential relief is for a permanent injunction. In the present case, the main relief itself is only for permanent injunction. Incidentally, no relief of specific performance has been sought for. Even otherwise, in view of the latest decision rendered, the suit for specific performance with the consequential relief of permanent injunction is also not maintainable where the suit property is situated outside the territorial jurisdiction of this Court. Further, the suit property is not situated within the territorial jurisdiction of this Court. Reliance has been made on M/s.Aditya Real Estates Vs. P.Baskar, Partner, M/s.Vasavi Builders (2018-2 L.W.97), wherein in paragraphs 25 to 27, it has been held as under:

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.

27. At this stage, this Court points out the Division Bench Judgment of this Court in Thamiraparani Investments Private Limited, represented by its Director V. Gopal, Chennai V. Meta Films Private Limited, (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. 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.

5. We find force in the submission made by the learned senior counsel for the respondents. It is a suit for permanent injunction seeking a positive prohibitory order against the respondents for the land owned by them. Admittedly, the suit property is situated outside the territorial jurisdiction of this Court. As held by the Federal Court in *Moolji Jaitha and Company v. The Khandesh Spinning and Weaving Mills Company Ltd.* (AIR 1950 Federal Court 83), which has been taken note of in the judgment referred supra in *Thamiraparani Investments Private Limited*, represented by its Director V. Gopal, *Chennai V. Meta Films Private Limited*, (2006) 1 MLJ 357, what is important is the existence of interest over the suit property. Such an interest or control can be from the point of view of the plaintiff or defendant as the case may be. The relief sought for must be directly relatable to the suit property. Therefore, the words "any interest" or "control" will have to be given a wider import.

6. When the suit property is situated outside the territorial jurisdiction of this Court, unless the main relief is something different and has got no bearing on the suit property, the suit will have to be held as not maintainable. What the appellant seeks is a decree against the property, which is situated outside the territorial jurisdiction of this Court. Clause 12 merely speaks about the ordinary civil jurisdiction, which would come only when the property is situated within the jurisdiction.

7. In such view of the matter and in the light of the Division Bench judgment in *M/s. Aditya Real Estates Vs. P. Baskar, Partner, M/s. Vasavi Builders* (2018-2 L.W. 97), we are of the view that the order passed by the learned single Judge requires to be affirmed. The decisions relied upon by the learned senior counsel appearing for the appellant, in our considered view, are not applicable for two reasons viz, the relief of permanent injunction was incidental and the aforesaid judgments have been rendered without taking note of Section 22 of the Specific Relief Act and therefore there is no question as to whether the suit for specific performance per se is also maintainable before this Court. Accordingly, the Original Side Appeal stands

dismissed. No costs. Consequently, connected miscellaneous petition is closed.

8.Registry is directed to return the plaint to the learned counsel for the appellant within a period of one week from today. On receipt of the same, the appellant is at liberty to represent the same before the jurisdictional Court within a period of two weeks. The jurisdictional Court shall number the suit subject to other compliances and thereafter proceed in accordance with law.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

The Sub Assistant Registrar,
Original Side, High Court, Madras.

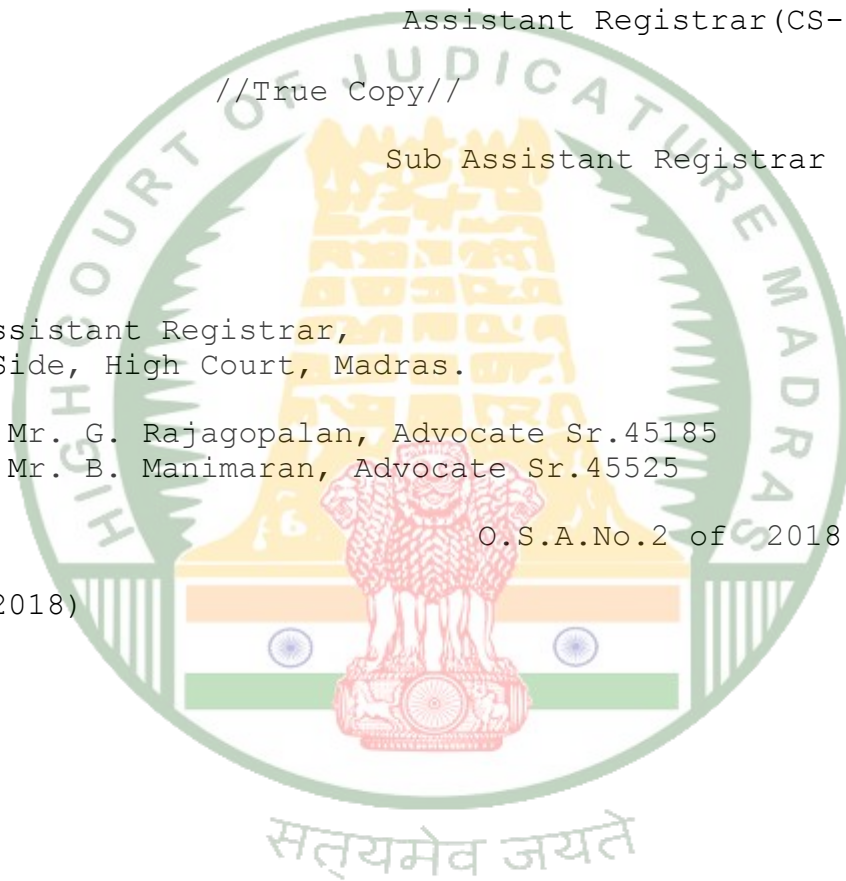
+ 1 cc to Mr. G. Rajagopalan, Advocate Sr.45185

+ 1 cc to Mr. B. Manimaran, Advocate Sr.45525

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