

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:07.03.2018

Coram
THE HONOURABLE Mr. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE Mr. JUSTICE S.VAIDYANATHAN

O.S.A.No.67 of 2018

M/s.Aditya Real Estates,
Rep. By Mr.Manish Agrawal,
19/20, General Muthiah Mudali Street,
Chennai - 600 079. ... Appellant/Plaintiff

Vs.

P.Baskar, Partner,
M/s.Vasavi Builders Medavakkam
Now known as Sri Aishwaryam Homes
Regd. Office at Survey No.111/1.
Sathya Sai Nagar Main Road,
Behind Rajparis, Medavakkam,
Chennai - 600 100. ...Respondent/3rd Defendant

Prayer: Appeal filed under Order XXXVI Rule 1 of the O.S. Rules read with Clause 15 of the Letters Patent against the fair and decretal order dated 21.12.2017 passed in Application No.6870 of 2017 in C.S.No.402 of 2014 on the file of this Court, praying to revoke the leave granted in Application No.2767 of 2014 dated 23/04/2014

For Appellant : Mr.V.Balasubramanian

For Respondent : Mr.K.V.Babu

JUDGMENT

[Judgment of the Court was delivered by M.VENUGOPAL, J.]

Heard the Learned Counsel for the Appellant and the Learned Counsel for the Respondent.

Preamble:

2.The Appellant/Plaintiff has preferred the instant Original Side Appeal as against the order dated 21.12.2017 in Application No.6870 of 2017 in C.S.No.402 of 2014 passed by the Learned Single Judge.

3. Earlier, the Learned Single Judge, while passing the impugned order in A.No.6870 of 2017 in C.S.No.402 of 2014 [filed by the Respondent/3rd Defendant], at paragraph 44, had observed the following:

"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."

and resultantly, revoked the Leave granted in Application No.2767 of 2017 on 23.04.2014 and directed the Registry to return the Plaint to the Appellant/Plaintiff, for presentation before the appropriate Court.

4. Assailing the legality, validity and correctness of the order dated 21.12.2017 passed by the Learned Single Judge in A.No.6870 of 2017 (filed by the Respondent/3rd Defendant), the Appellant/ Plaintiff has focussed the present Original Side Appeal on the ground that the Learned Single Judge had erred in allowing the Application for 'Revocation of Leave to Sue', which was granted under Clause 12 of the Letters Patent of the Madras High Court on the premise that the claim in Plaint comes under 'suit for land'.

5. Appellant's Contentions:

5.1. The Learned Counsel for the Appellant/Plaintiff contends that the Learned Single Judge had failed to appreciate that the main suit is for specific performance without a specific prayer for possession is not a suit for land and in fact, a suit for specific performance is only a suit to enforce a personal right against a particular individual which cannot be characterised as a 'suit for land' and viewed in that perspective, the invocation of Clause 12 seeking 'Leave to Sue' is perfectly maintainable in Law.

5.2. Advancing his arguments, the Learned Counsel for the Appellant/Plaintiff projects an argument that the Appellant/Plaintiff in the main suit had not sought for relief of possession specifically, but only for the relief was for specific performance which is squarely covered by Clause 12 of

the Letters Patent, which empowers of this Court to entertain the suit notwithstanding the fact that the suit property is outside the jurisdiction of city limits of Madras.

5.3.The Learned Counsel for the Appellant takes a plea that in the instant case, in the main suit, the relief of permanent injunction was sought against the Defendants restraining them or any person/s claiming through or under them from in any manner alienating or encumbering the suit schedule B properties which is maintainable in Law. In short, the Learned Single Judge, while passing the impugned order in A.No.6870 of 2017 had failed to keep in mind the difference between the injunction restraining interference with the possession and enjoyment and alienating or encumbering, and thereby has come to a wrong conclusion in holding that the suit filed by the Appellant/Plaintiff is a suit for land.

5.4.The stand of the Appellant/Plaintiff is that 1st Defendant in the suit is a Builder and also the owner of the property described in the schedule A as item 2 and also the Power Agent of the 18th Defendant who is the owner of the property described in Schedule A as item No.3. The Defendants 5 to 7 are represented by the Power Agent P.B.Krishna Prasad (brother of the 2nd Defendant).

5.5.It comes to be known that from the avements made in the Plaint by the Appellant/Plaintiff that the 1st Defendant (Vasavi Builders) booked twenty flats for the Plaintiff in its project named "MAJESTICA" in respect of the Plaint schedule A property and the Defendants as the land owners entered into twenty Agreements for sale at Chennai dated 18.10.2011 with the Appellant/Plaintiff for an undivided share in the land proportionate and relevant for those flats, which were registered in the Sub-registration Office at Chennai South, Joint I. Further, the Appellant/Plaintiff had paid different amounts under the said agreements towards advance and the time stipulated in the said agreements is six months. Moreover, the Appellant/Plaintiff paid the entire sale consideration payable under the sale agreements for an undivided share for which the 1st Defendant executed receipts dated 18.10.2011 for all twenty transactions. Added further, the 1st Defendant as a Builder had entered into three construction agreements dated 18.10.2011 for the said flats and received the entire cost of construction as per the said agreements. The time mentioned in the said agreements is 18 months with grace period of six months. In Clause 23 of the said agreements, it is mentioned that the construction agreement and the sale agreement for undivided share in land are interdependent, and therefore, both the agreements are to be considered as forming part of a single transaction.

5.6.The Learned Counsel for the Appellant/Plaintiff cites the Judgment of the Hon'ble Supreme Court in Appeal (Civil) Case No.1566 of 1991 dated 12.09.2001 between Adcon Electronics Private Limited V. Daulat and another, whereby and whereunder, it is observed as under:

"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. But in this connection it is necessary to refer to Section 22 of the Specific Relief Act, 1963 which runs:
22. Power to grant relief for possession, partition, refund of earnest money, etc.-

(1)Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908, any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for-

(a) possession, or partition and separate possession, of the property, in addition to such performance; or

(b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or made by him in case his claim for specific performance is refused.

(2) No relief under clause (a) or clause(b) of sub-section (1) shall be granted by the court unless it has been specifically claimed:

Provided that where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

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 reliefs of possession and partition and separate possession of the property, in addition to

specific performance. The mandate of sub-section (2) of 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 or 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. 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.

We cannot also accept the contention of Mr. Chitale that the suit is for acquisition of title to the land and is a suit for land. In its true sense a suit simpliciter for specific performance of contract for sale of land is a suit for enforcement of terms of contract. The title to the land as such is not the subject-matter of the suit. In this view of the matter, we do not find any illegality in the order of the Division Bench of the Bombay High Court under challenge. The appeal is dismissed but in the circumstances of the case without costs."

5.7. The Learned Counsel for the Appellant brings it to the notice of this Court that the decision in A. Vellaingiri and 3 others V. M/s. Ram Bahadur Takur (P) Ltd., reported in (1998) II MLJ 298, wherein at paragraph 23 to 25, it is observed as under:

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

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

24. The learned counsel for the appellant placed reliance on a Division Bench decision of this Court in the case of N.Dhanalakshmi and two others V. S.Eknathan, Proprietor, Eknath Real Estates, to which one of us (Shivaraj Patil, J) was a party, to contend that the suit for specific performance of the agreement to sell property is not suit for land, and hence leave granted ought not have been revoked. In our view, the said Judgment does not help the plaintiff - appellant.

25. That was a suit principally for specific performance of an agreement, and alternatively for refund of money. In the said suit, ancillary relief of permanent injunction was sought, for restraining the respondents from alienating or dealing with the suit property in anyway. On the facts of that case it is clear that neither the suit was one for title or possession; in other words neither the title nor possession would be affected by granting a decree for specific performance. That was not a suit in which the primary object was to establish claims regarding title to the property or to possession of the property."

5.8.The Learned Counsel for the Appellant seeks in aid of the decision in Dhanalakshmi and two others V. S.Ekanathan, Proprietor, Eknath reported in (1998) 1 MLJ 132 wherein at paragraph 14, it is observed as under:

"14.Looking to the relief sought for in the plaint, it is plaint that principally the suit is for Specific Performance of the agreement, and alternatively for the relief of refund of money. Even the ancillary relief of permanent injunction is also for

restraining the defendants from alienating or dealing with the suit property in any way. In order words the suit is not one for title or possession. The ancillary reliefs of injunction sought did not affect the title or possession. The reliefs sought for are against the defendants in personem. In this view, it is not possible to hold that the suit filed by the plaintiff is for land, even having regard to the decision cited by the learned counsel for the defendants."

5.9.The Learned Counsel for the Appellant relies on the decision of the Hon'ble Supreme Court in Excel Dealcomm Private Limited V. Asset Reconstruction Company (India) Limited and others, (2015) 8 Supreme Court Cases 219 wherein it is held that 'The suit for specific performance simpliciter without a prayer for delivery of possession is not a suit for land'.

5.10.In short, the pith and substance of the contention advanced on behalf of the Appellant/Plaintiff is that in the main suit, a specific prayer for possession was not sought for and Leave to Sue was obtained in accordance with Law and when that be the fact situation, the contra view taken by the Learned Single Judge in revoking the Leave by coming to the conclusion that the present suit filed by the Appellant/Plaintiff in C.S.No.402 of 2014 is a suit for land, cannot be countenanced in the eye of Law.

6.Respondent's Submissions:

6.1.Per contra, the Learned Counsel for the Respondent submits that the Appellant/Plaintiff in his Plaint at paragraphs 5 to 7 had clearly made the following averments:

"5.The plaintiff further submits that despite having paid the entire sale consideration and cost of construction to the defendants, and inspite of expiry of the stipulated period, the defendants failed and neglected to register sale deeds for undivided share in land in favour of the plaintiff and handover vacant possession of the flats duly completed in all respects as agreed, and went on delaying giving one excuse or other. The defendants assured and promised to honour the commitments and complete the transactions by the end of December 2013. However, even thereafter, they failed to keep up their promise, and whenever the plaintiff approached and insisted to register sale deed for undivided

share and handover vacant possession of the flats, the defendants tried to evade the plaintiff by giving one reason or other and promised to do so in March 2014. In March 2014 also the plaintiff approached the defendants many times but citing Income tax, service tax problems and year ending accounting reason, they finally promised to complete everything in the first week of April 2014.

6. While so, on 07.04.2014, the defendants called the plaintiff to their house at R.A. Puram in the evening for a discussion and threatened, assaulted and blackmailed the plaintiff through anti-social elements to handover all the original agreements and receipts and cancel all the agreements against some sort of settlement by accepting amount whatever they give, as otherwise, the plaintiff will face dire consequences, for which the plaintiff has given complaint to the police department.

7. The Plaintiff further submits that as stated above he has already paid the entire sale consideration for undivided share and cost of construction as per the agreements and thereby already performed his part of the obligations but it is the defendants who have failed to perform their part of the obligations, and hence the plaintiff is obliged to file this suit for specific performance."

6.2. Apart from that, in the cause of action paragraph No.11 in the Plaint in C.S.No.402 of 2014, the Appellant/Plaintiff had averred as under:

"11. The cause of action for the suit arose at Chennai within the jurisdiction of this Hon'ble Court, the place where Plaintiff and the defendants are residing and having office; the place where the Agreements were executed, payments were made by the plaintiff to the defendants; on 18.10.2011 when the Agreements were entered into and the defendants received the money. Even though, the suit properties are situated outside the city jurisdiction, the entire cause of action arose within the city of Chennai. Hence, to

enforce a personal right, the provision of clause 12 of the Letters Patent of Madras High Court is invoked to seek enforcement of personal right to execute the sale deed. Since the suit agreements to sell and for construction relate to Apartments to be constructed in the common property mentioned in the schedule A and the parties to the agreements are one and the same, the cause of action is joined together in a single suit."

6.3.The Learned Counsel for the Respondent points out the relief portion at paragraph 13 of the Plaint which reads as under:

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

IN THE ALTERNATIVE

Directing the defendants in the extreme case of this Hon'ble Court refusing to grant the decree for specific performance which the plaintiff insists, to pay to the plaintiff the sum of Rs.6,44,19,875-00 being return of total amount of Rs.4,44,27,500-00 and Rs.1,99,92,375-00 being compensation at 18% p.a. till the date of the plaint, and compensation on Rs.4,44,27,500-00 at 18%p.a from the date of plaint till payment or realization.

b) Granting permanent injunction restraining the Defendants or any person/s claiming through or under them from in any manner alienating or encumbering the suit schedule B properties;

c) Directing the defendants to pay cost of this suit;"

6.4.The Learned Counsel for the Respondent cites the decision in B.Ratansingh V. P.G.Sekar, 2014 (4) CTC 735 at special page 748 and 749, at paragraphs 35, 37 and 38, wherein

it is observed as follows:

"35. In the Judgment reported in Adcom Electronics Pvt. Ltd. v. Daulat and another, 2001 (4) CTC 39 (SC): 2001 (7) SCC 698: AIR 2001 SC 3712, which is relied upon by the learned Counsel appearing for the Respondent/Plaintiff, Clause 12 of the Letters Patent was considered by the Hon'ble Supreme Court. The Hon'ble Supreme Court though held that in a Suit for Specific Performance of Contract for Sale of immovable property containing stipulation that on execution of a 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. But in view of the mandate of sub-section(2) of Section 22 of the Specific Relief Act, no relief under clauses (a) & (b) of sub-section (1) shall be granted by the Court unless it has been specifically claimed and therefore, in a Suit where the prayer is for Specific Performance of Agreement of Sale, without a prayer for delivery of possession, the Suit cannot be treated as 'Suit for land' and the Suit is simpliciter for Specific Performance of a Contract for Sale and it is a Suit for enforcement of terms of contract and the title to the land as such is not the subject matter of the Suit.

37. It is further held that as per Section 22(2) of the Specific Relief Act, 1963, no relief under clauses (a) & (b) of sub-section (1) of Section 22, shall be granted, unless it has been specifically claimed and therefore, without asking for the relief of possession, the same cannot be granted without amending Plaint.

38. It is pertinent to mention here that the Judgment reported in Babu Lal v. Hazari Lal Kishori Lal, AIR 1982 SC 818, was not brought to the notice of the Hon'ble Judges and the learned Judges, while deciding the case reported in Adcon Electronics Pvt Ltd. v. Daulat and another, 2001 (4) CTC 39 (SC): 2001 (7) SCC 698: AIR 2001 SC 3712, also did

not consider the scope of Section 28.

6.5. The Learned Counsel for the Respondent draws the attention of this Court to the aforesaid decision at special page 752 wherein at paragraphs 47 and 50, it is held as under:

"47. As the dispute is with respect to subject matter of the Suit and the contention of the Applicant is that this Court has no jurisdiction over the subject matter of the Suit, as the property is situate outside the jurisdiction of this Court, the objection can be taken, at any point of time, as any order passed by this Court, without jurisdiction is a nullity.

50. Therefore, it has been held that the nature of the Suit and its purpose have to be determined by reading of the Plaint as a whole and inclusion or absence of a prayer is not decisive for the determination of the Suit and the substance or object of the Suit can be gathered from the averments made in the Plaint and on which the reliefs asked in the prayers are based and by clever drafting, a Suit cannot be brought before the Court, which has no jurisdiction. Therefore, by praying only for the relief of Specific Performance simplicitor, it cannot be brought before the Court, which has no jurisdiction. Therefore, by praying only for the relief of Specific Performance simplicitor, it cannot be contended that it is not a Suit for land, as no relief for possession was sought for, without considering the main object of the Suit to enforce the Contract for Sale, which contains a stipulation that possession would be delivered on execution of the Sale Deed and as per Sections 22 & 28 of the Specific Relief Act, 1963, possession could be obtained later in execution with or without amending the relief prayed in the Plaint. Hence, the Suit of such nature has to be construed as a Suit for land."

6.6. The Learned Counsel for the Respondent relies on the decision of the Hon'ble Supreme Court in Excel Dealcomm Private Limited V. Asset Reconstruction Company (India) Limited and others, (2015) 8 Supreme Court Cases 219 wherein it is laid down that 'To determine if a suit is for land, a Court has to look into the plaint and no other evidence and if by averments in plaint and prayers therein, it appears that the said suit is one

for land, it shall be held as 'Suit for Land'.

An Appraisal:

Cause of Action:

7.It is to be noted that the term 'cause of action' is a 'Bundle of Facts' meaning every fact which traversed, it would be essential for the Plaintiff to establish with a view to support his right to a Judgment in his favour by the Court. In wider sense, the term 'Cause of Action' means the necessary conditions for the maintenance of the suit, including not only the infraction of right, but the infraction together with the right itself. Inconvenience or hardship of the Plaintiff is not sufficient consideration to permit him to file a suit based on agreement to sell.

8.Ordinarily, a Plaintiff can joint several causes of action in a single suit to avoid plurality of proceedings, it must be kept in mind for several causes of action against the single Defendant can be joined in one suit.

9.It is to be pointed out that 'cause of action' means the 'cause of action based on which the suit is brought'. The 'cause of action' is cause of action which provides a platform for the foundation of the suit in question.

Seller's Duty:

10.It is to be remembered that Section 55(1) of the Transfer of Property Act, 1882 which provides that the seller is bound to act on being so required the buyer or such person as he desires such possession of property as its nature admits.

11.It cannot be brushed aside that the Legislature has now made a statutory provision in the suit for specific performance and empowering the Court to provide in the Decree itself that upon the payment by Plaintiff of the consideration money within the given time, the Defendants to execute the document and put Plaintiff under possession.

12.In a case where exclusive possession is with the other contracting party a decree for specific performance of contract of sale simpliciter without specifically providing for delivery of possession may give a 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 put the property in possession of the Decree Holder. Even though one is to ask for possession though the Decree is silent as to possession, he can in execution of decree obtain possession. This is because the seller is bound to deliver possession under Section 55(1)(g) of the Transfer of Property Act.

Alternative Remedy:

13. There is no quarrel over the proposition that in a suit for specific performance, the Plaintiff is entitled to seek an alternative relief for refund of advance/earnest money, in the event of the Decree for specific performance cannot be granted for any reason. Also that, in the said suit for specific performance, it is always open to the Plaintiff to seek the relief of temporary/permanent injunction restraining the Defendants, agents, representatives or any persons claiming through in any manner alienating or encumbering the concerned property(properties).

A Bird's Eye View of Specific Relief Act, 1963:

14. In this connection, it may not be out of place for this Court to make a pertinent mention that Section 22(1) of the Specific Relief Act, 1963 under the caption 'Power to grant relief for possession, partition, refund of earnest money, etc.' reads as under:

"22.(1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 (5 of 1908) any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for

(a) possession, or partition and separate possession, of the property, in addition to such performance; or

(b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or (substituted by the Repealing and Amending Act, 1964 (52 of 1964), S.3 and sch.II, for "made to" [made by] him, in case his claim for specific performance is refused."

15. It is to be remembered that relief of possession is inherent in the relief of specific performance of "contract for sale". Indeed, the grant of specific performance decree is a discretionary relief under Section 20 of the Act, 1963 wherein it is inequitable to enforce specific performance, then, the decree for specific performance may be refused by a Court of Law.

16. It is to be noted that Section 22 of the Specific Relief Act, 1963 indicates a pleading rule. Undoubtedly, in order to avoid plurality of proceedings, the Plaintiff may claim a decree for possession in a suit for specific performance even though the right to possession accrues only suit for specific performance is decreed. A mere relief or specific performance of contract of sale may not entitle the Plaintiff to obtain possession as against the party in actual possession of

property, as against him a decree for possession must be claimed and for such a person is not by contract sought to be enforced. In case where an exclusive possession is with the contracting party, a decree for specific performance of contract of sale simpliciter without providing for delivery of possession may give a whole relief to the Decree Holder in order to satisfy the decree against him, he is bound not only to execute the sale deed, but put the property in possession of Decree Holder.

17. An individual in a suit for specific performance of a contract for the transfer of immovable may ask for possession or for partition or for separate possession including the relief of specific performance. If the Plaintiff omits to sue or intentionally relinquishes in a portion of his claim, it is not permissible for him to sue in respect of the portion omitted or relinquished later on.

18. It is not out of place for this Court to make a relevant mention that a mere relief of specific performance of contract of sale may not entitle a plaintiff to obtain possession as against the person in actual possession of property. As against him, a decree for possession must be specifically claimed for such person may not be bound by contract sought to be enforced.

19. Under the Specific Performance of the Act, 1877 the relief of possession can be granted although the Plaint did not contain/ mention any prior as to the possession of suit property on the date when New Act, 1963 came into force, the same will be governed by the Old Law only the change in law effected by Section 22(1) of the Specific Relief Act will govern only in respect of the suit instituted after coming into force of the new Act.

20. Section 28(3) of the Specific Relief Act postulates that if the purchaser or lessee pays the purchase money or other sum, which he is ordered to pay into decree, the Court may on an application made in the same suit, award the purchaser or lessee such further relief as he may be entitled to.

21. Added further, Section 28(3) of the Act specifies the delivery of possession are partition and separate possession of property. But the execution of such conveyance or lease sub-section (4) of Section 28 of the Act bars the filing of a separate suit for any relief which may be claimed under this Section.

Glimpse of some provisions of C.P.C.:

22. As per Order 2 Rule 1 of the Civil Procedure Code, a Plaintiff is duty bound to claim the whole relief. Ordinarily, the suit is to be framed so as to afford a ground for final

decision upon the subjects in dispute and to prevent further Lis concerning them. Order 2 Rule 2 mentions that a Plaintiff is to include the entire claim which he is entitled to seek in respect of 'cause of action'.

23.It is to be pointed out that the exception specified under Order II Rule 4(c) of the Civil Procedure Code would apply since the claim to possession is also based on the same cause of action viz., the contract of sale.

24.At this juncture, this Court aptly points out that Section 120 of the Civil Procedure Code explicitly makes it quite clear that Section 16, 17 and 20 of the Civil Procedure Code do not apply to the High Court in exercise of its original civil jurisdiction. In fact, the High Court can exercise its ordinary original Civil jurisdiction, in case of suits for immovable property, only when such immovable property is situated within the jurisdiction of High Court or his entire cause of action has arisen within its jurisdiction, no other cases where only a part of the cause of action with its jurisdiction, Leave of the Court is required. In short, Section 120 of the Civil Procedure Code contains an extent to the rule in Section 117 C.P.C.

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 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 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.

28. Also, in the aforesaid Judgment, at page 360, in paragraph 12, it is held as follows:

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.

29. This Court points out the decision of the Hon'ble Supreme Court in Harshad Chiman Lal Modi V. DLF Universal Limited and another, (2005) 7 Supreme Court Cases 791 at special page 793, it is observed as under:

"In the instant case, the proviso has no application. The relief sought by the plaintiff is for specific performance of an agreement respecting immovable property by directing Defendant 1 to execute the sale deed in favour of the plaintiff and to deliver possession to him. The trial Court was, therefore, right in holding that the suit was covered by Section 16(d) CPC and the proviso had no application.

A plain reading of Section 20 of the Code leaves no room for doubt that it is a residuary provision and covers those cases not falling within the limitations of Sections 15 to 19. The opening words of the section, "subject to the limitations aforesaid" are significant and make it abundantly clear that the section takes within its sweep all personal actions. The suit relates to specific performance of an

agreement of immovable property and for possession of plot. It is, therefore, covered by the main part of Section 16. Neither the proviso to Section 16 would get attracted nor Section 20 (residuary provision) would apply and hence the Delhi Court lacks inherent jurisdiction to entertain, deal with and decide the cause."

30. Moreover, in the decision of the Hon'ble Supreme Court in P.C.Varghese V. Devaki Amma Balambika Devi and others, AIR 2006 Supreme Court 145 at paragraphs 34 and 37, it is observed as under:

"34. The submission of Mr. Reddy to the effect that the learned Trial Judge committed a serious error in granting a decree for partition along with a decree for specific performance of contract need not detain us long as in view of Section 22(1) (a) of the Act a decree for partition and separate possession of the property can be granted in addition to a decree for specific performance of contract. As in this case, the Appellant herein in view of amended prayer 'C' relinquished his claim in respect of the property belonging to the minor - Respondent No. 4, he also prayed for a decree for partition and such a prayer having been allowed, no exception thereto can be taken. In any event, the said question has not been raised by the Respondents before the High Court at all. Section 22 enacts a rule of pleading that in order to avoid multiplicity of proceedings, the plaintiff may claim a decree for possession and/ or partition in a suit for specific performance. Even though strictly speaking, the right to possession accrues only when a suit for specific performance is decreed, indisputably such a decree for possession and/or partition is prayed for in anticipation of the grant of prayer for specific performance of contract.

37. Before parting with the case, however, we may observe that the manner in which the decree has been passed by the learned Trial Court is open to question in as much as a relief in terms of Section 22 of the Specific Relief Act being incidental or ancillary to the main relief of specific

performance of contract and, furthermore, being in addition thereto, ordinarily, a proceeding for grant of a final decree for partition should be initiated after the sale deed in terms of the decree for specific performance of contract is executed and registered and not vice-versa."

31.It is to be pointed out that in the decision *Ranjana Nagpal alias Ranjana Malik V. Devi Ram and others*, AIR 2002 Himachal Pradesh 166 and 167, it is laid down as follows:

"Suit being for specific performance and possession of immovable property under agreed to be sold falls under cl.(d) of S.16, Civil P.C.S.20 enacts the rule as to the forums in all cases not falling within the limitations of S.15 to 19, of Civil P.C., as is made clear by the opening words 'Subject to the limitations aforesaid' appearing in S.No.20. Since the suit under S.16(d) of the Civil P.C, is maintainable only before the Court within jurisdiction of which the suit property is situate and S.20 has no application, the parties cannot by agreement vest the jurisdiction in any other Court other than the Court within jurisdiction whereof the suit property is situate. Therefore, even if it be assumed that the parties agreed to the jurisdiction of Courts, such agreement being against the law would be bad under Ss.23 and 28 of the Contract Act."

Discussions:

32.As far as the present case is concerned, the Appellant/Plaintiff, in his Complaint, had, even though at paragraph 11, categorically averred that the cause of action for the suit arose at Chennai within the jurisdiction of this Court, the place where Plaintiff and Defendants are residing, having office, the place where the agreements were executed, payments were made by the Plaintiff to the Defendants, on 18.10.2011 when the agreements were entered into and the Defendants received the money etc., the crystalline fact is that the suit properties are situate outside the jurisdiction of Chennai city. But, the Plaintiff at paragraph 11 of the Complaint had averred even though the property are situate outside the city jurisdiction, the entire cause of action arose within the city of Chennai.

33.It transpires that only because of the fact that the properties were outside the jurisdiction of Chennai City, the Appellant/Plaintiff had sought Leave to Sue in A.No.2767 of 2014

before this Court on earlier occasion, which was allowed by this Court. Later, the Leave to Sue which was granted to and in favour of the Appellant/Plaintiff was cancelled/revoked by the Learned Single Judge, while passing the impugned order in A.No.6870 of 2017 in C.S.No.402 of 2014 dated 21.12.2017. It cannot be ignored that the Appellant/Plaintiff in his cause of action paragraph in the Plaint at paragraph 11 had proceeded to state that to enforce a personal right, he had invoked the provision of Clause 12 of the Letters Patent of the Madras High Court viz., to execute the sale deed and since the suit agreements to sell and for construction relate to apartments to the construction in the common property mentioned in the Schedule A and parties to the agreements are one and the same, the cause of action, according to him, is joined together in a single suit. In short, the Appellant/Plaintiff in the cause of action paragraph has referred to several aspects and seeking to file a single suit before this Court by joining the cause of action together, in respect of the agreements entered into between the parties.

34. At this stage, a mere running of the eye of the contents of paragraph 11 of the Plaint in C.S.No.402 of 2014 filed by the Appellant coupled with the relief portion in paragraph 13 of the Plaint, as referred to supra, unerringly point out that the suit is not simpliciter a suit for enforcement of specific performance/contract /agreement and if ultimately the relief of specific performance is granted, it will impinge upon the inherent relief of possession in the performance of contract of sale and in fact, while reading the cause of action paragraph 11 and para 13(a) of the averments of the Plaint clinchingly point out that it is only a suit for land, although the Appellant had endeavoured to seek the relief of passing of a decree by this Court, in directing the Defendants to specifically perform the twenty agreements for sale dated 18.10.2011 for undivided share in land and twenty Construction Agreements dated 18.10.2011 for construction of flat, relating to the suit schedule B properties by executing and registering Sale Deed/s conveying twenty portions of undivided shares mentioned in Schedule B to the Plaint in favour of the Plaintiff and construct the twenty flats mentioned in schedule B to the Plaint etc., which, in the considered opinion of this Court, cannot be granted for the simple reason that the cause of action for the Appellant/Plaintiff in the present suit has arisen in regard to the immovable property situated on the outside city of Chennai and since the suit is one for control of land which will have a direct bearing on the title or the possession of the land in view of the alternative relief of seeking permanent injunction restraining the Defendants or any person/s claiming through or under them from in any manner alienating or encumbering the suit

schedule B properties and since the subject matter of the property is lying outside the jurisdiction of this Court, this Court has no jurisdiction to entertain the Suit, in the considered opinion of this Court. In fact, the Learned Single Judge had rightly held in A.No.6870 of 2017 in C.S.No.402 of 2014 that the Appellant/Plaintiff is to approach the Competent Court of jurisdiction to present the Plaint in C.S.No.402 of 2014 for redressal of his grievances, in the manner known to Law and in accordance with Law. To put it succinctly, this Court, on going through the impugned order of the Learned Single Judge in A.No.6870 of 2017 in C.S.No.402 of 2014 dated 21.12.2017, is of the considered view that the same is free from any Legal flaw. Consequently, the Original Side Appeal fails.

Disposition:

35.In fine, the Original Side Appeal is dismissed, leaving the parties to bear their own costs. The Appellant/Plaintiff is directed to take the return of Plaint and other relevant/requisite papers from the Registry of this Court in C.S.No.402 of 2014 and to present the same before the Competent Court of jurisdiction for redressal of its grievances, within a period of three weeks from the date of receipt of a copy of this Judgment.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

sgl

To

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

2.The Section Officer/Record Keeper, Original Side, High Court Madras.

+1cc to Mr.V.Balasubramanian, Advocate, S.R.No.17480

+1cc to Mr.K.V.Babu, S.R.No.17569

O.S.A.No.67 of 2018

GJII (CO)

RRK (9/04/2018)