

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 27TH DAY OF APRIL 2018

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

A.No.2946 of 2018

in

C.S.D.No.15941 of 2018

T.K.S.Pugazhendhi,
S/o T.K.sivakumaran,
No.70, Raja Agraharam Street,
Poonamallee, Chennai 600 056

..Applicant/Plaintiff

Vs.

1.Kanishk Gold Private Limited,
Having Regd.Off at No.39,
North Usman Road,
Prashanth Real Gold Tower,
7th Floor, T.Nagar, Chennai 600 017
Rep.by its Managing Director/
Authorized Signatory,
Mr.Boopesh Kumar Jain

2.Mr.Boopesh Kumar Jain,
S/o Bhoormal Jain,
Managing Director,
Kanishk Gold Private Ltd.,
residing at The Art,
32 and 33, Kothari Road,
Nungambakkam, Chennai 600 034

3.Neeta Boopesh Kumar Jain,
W/o Boopesh Kumar Jain,
Director of Kanishk Gold Private Ltd.,
Residing at The Art, 32 and 33,
Kothari Road, Nungambakkam,
Chennai 600 034

4.State Bank of India,
Overseas Branch,
Rep.by it Assistant General Manager,
No.86, Rajaji Salai,
Chennai 600 001

..Respondents/Defendants

Application praying that this Hon'ble Court be
pleased to grant leave to the applicant/plaintiff to
institute the suit before this Hon'ble Court for the

properties described in the schedule hereunder situated outside the jurisdiction of this Hon'ble Court.

This application coming on this day before this court for hearing the court made the following order:

This Application has been filed, seeking leave to institute the suit within the jurisdiction of this court, since the properties in item Nos. 1, 2, 3 and 4 are all situated outside the jurisdiction of this court.

2. The suit had been filed by the plaintiff, T.K.S.Pugazhendhi, against four defendants namely 1) Kanishk Gold Private Limited, 2) Boopesh Kumar Jain, Managing Director of Kanishk Gold Private Limited, 3) Neeta Boopesh Kumar Jain, Director of Kanishk Gold Private Limited and 4) State Bank of India, Overseas Branch, Chennai - 600 001.

3. The reliefs sought in the plaint are as follows:

i. Declaring that the sale deed dated 29.12.2016 Registered as Doc.No.5058 of 2016 executed between the plaintiff and the 1st defendant in respect of the item 1 and 2 of the suit properties as null and void and not binding on the plaintiff in terms of clause 6 of the Memorandum of Understanding dated 27.12.2016 executed by the 1st defendant in favour of the plaintiff for treating the sale deed.

ii. Declaring that the sale deed dated 30.12.2016 registered as Doc.No.5075 of 2016 executed between the plaintiff and the 1st defendant in respect of the item 3 and 4 of the suit properties as null and void and not binding on the plaintiff in terms of clause 6 of the Memorandum of Understanding dated 27.12.2016 executed by the 1st defendant in favour of the plaintiff for treating the sale deed

iii. Directing the defendants 1 to 3 to pay a

sum of Rs.50,00,000/- as liquidated damages to the plaintiff.

iv Directing payment of the costs of the proceedings as cause in the suit.

4. According to the plaintiff, the cause of action arose within this court, where the registered office of the 1st defendant is situated and where the 1st, 2nd and 3rd defendants are residing and carrying out business. It has been stated that the 1st defendant had executed a Memorandum of Understanding, dated 27.12.2016 at Chennai, in favour of the plaintiff.

5. It had been further stated that the 4th defendant, had transferred various amounts to the Sub-Registrar Office, Poonamallee, and to the plaintiff. It had been further stated that cheques were drawn on the 4th defendant Bank in favour of the plaintiff by the 1st defendant and these cheques were returned as "dishonoured" on various dates.

6. According to the plaintiff, he is having a Real Estate business. He purchases plots and sells them for constructing apartments. He claims to have a unique name, fame and reputation in the business. It is further stated that the plaintiff approached a leading finance agent, Rajesh Bhatia and sought finance for his business. The said agent arranged a meeting with the 2nd defendant. The 2nd defendant proposed that he will provide 25% of the market value of property of not less than Rs.15,00,00,000/-, if property is offered as security in the name of the 1st defendant. The plaintiff told the 2nd defendant that he is in possession and enjoyment of the suit properties. A Memorandum of Understanding was entered into on 27.12.2016. One of the main objects of the Memorandum of Understanding is to reconvey the suit

property, which is offered for security purposes. The properties were to be given as security to the 4th defendant.

7. The 1st, 2nd and 3rd defendants released funds from 29.12.2016. Thereafter, the plaintiff was requested to execute sale deed, the sale deed in document No.5058/2016, dated 29.12.2016. The 4th defendant transferred funds for all these transactions. There was an another sale deed in document No.5075 of 2016 dated 30.12.2016. The 1st defendant thereafter issued one cheque for Rs.7,73,56,604/- and this was dishonoured. It is under these circumstances that the suit had been filed.

8. The entire suit surrounds the fact that the plaintiff had executed sale deeds. The plaintiff also seeks for declaration that the two sale deeds are null and void. This would naturally mean that the plaintiff would seek re-conveyance of the properties already sold by him and it is only for control of land. The properties are situated outside the jurisdiction of this court.

9. Reliance has been placed on precedents, where the properties situated outside the jurisdiction of this court. Where the suit is for control of land and where the property is situated outside the jurisdiction of this court, naturally this court would not have jurisdiction to entertain the suit.

10. In **2006 1 CTC 270 (Thamiraparani Investments Private Limited Vs. Meta Films Private Limited)**, this court had held 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 judgement, 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 judgement, 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 part 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.*, 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 Honourable First Division Bench of this court, in **OSA.No.174 of 2012, by judgement dated, 22.09.2016**, considering the decision reported in **2006 1 CTC 270 cited supra**, has dismissed the said OSA filed against the dismissal of the application to grant leave to file the suit.

12. In **2013 1 LW 728 (Jethmull Chordia Vs. C.Venkatasubba Reddy)** this court had rejected the leave granted in respect of a property which was situated outside the jurisdiction of this court, holding that the suit was for control of the land and consequently, the Original Side of the High Court would not have jurisdiction to try the issues.

13. In view of the above said pronouncements and on a perusal of the reliefs sought in the plaint, it is revealed that the Plaintiff seeks to have control over the land. This effectively means that the suit is only

for land and consequently, this court will not have jurisdiction to try the same. Consequently, the C.S.Diary No.15941 of 2018 is directed to be returned to the Plaintiff on proper acknowledgement and identification. The Plaintiff is at liberty to re-present the same before the competent court having jurisdiction within a period of two months from the date of return. Accordingly, this application is dismissed. No Costs.

Sd/- C.V.K.J

27.04.2018

//Certified to be true copy//

Dated at Madras this the day of 2018.

TR : 27.04.2018

COURT OFFICER(O.S.)

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