

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 17TH DAY OF APRIL 2018

THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

A.No.8015 of 2017
in
C.S.No.629 of 2017

1.C.Padmanabhan
S/o Late C.S.Chakravarthy Iyengar,
S-1, Ground Floor 7th Cross Street,
Thiruvalluvar Nagar, Thiruvannamipur
Chennai 600 041

2.M/s Ohm Water Beverages Company,
Rep.by its Partner C.Padmanabhan,
6/121, Agraharam,
Mutharasanallur,
Trichy 620 101

3.Mrs.Vijayam Padmanabhan
W/o C.Padmanabhan
S-1, Ground Floor,
7th Cross Street,
Thiruvalluvar Nagar,
Thiruvannamipur,
Chennai 600 041

4.Mrs.Sudha Srikrishna,
W/o C.P.Srikrishna,
S-1, Ground Floor,
7th Cross Street,
Thiruvalluvar Nagar,
Thiruvannamipur,
Chennai 600 041

..Plaintiffs

Vs.

1.K.Paranthaman,
S/o Krishnasamy,
Proprietor,
M/s American Organic Food Products Inc,
6/121, Agraharam, Mutharasanallur,
Trichy 620 102.

2.M/s.Dena Bank,
Rep.by its Chief Manager,
Raj Towers,
No.6, VN Nagar,
Karur Bye-Pass Road,

Near Kalaighnar Arivalayam,
Trichy 620 002

..Defendants

A.No.8015 of 2017 :

K.Paranthaman,
S/o Krishnasamy,
Proprietor,
M/s American Organic Food Products Inc,
6/121, Agraharam, Mutharasanallur,
Trichy 620 102.
Now residing in California,
3593, Granada Avenue,
#418, Santa Clara, California, USA 95051

Rep.by his Power of Attorney Agent,
M.Raja,
S/o Manoharan,
No.2/23, Jothi Nagar East Extension,
Nachikurichi,
Vayalur Road,
Trichy.

..Applicant/1st Defendant

Vs.

1.C.Padmanabhan
S/o Late C.S.Chakravarthy Iyengar,
S-1, Ground Floor 7th Cross Street,
Thiruvalluvar Nagar,
Chennai 600 041

2.M/s Ohm Water Beverages Company,
Rep.by its Partner C.Padmanabhan,
6/121, Agraharam,
Mutharasanallur,
Trichy 620 101

3.Mrs.Vijayam Padmanabhan
W/o C.Padmanabhan
S-1, Ground Floor,
7th Cross Street,
Thiruvalluvar Nagar,
Thiruvanmiyur,
Chennai 600 041

4.Mrs.Sudha Srikrishna,
W/o C.P.Srikrishna,
S-1, Ground Floor,
7th Cross Street,
Thiruvalluvar Nagar,
Thiruvanmiyur,
Chennai 600 041

..Respondents/Plaintiffs

5.M/s.Dena Bank,
Rep.by its Chief Manager,
Raj Towers,
No.6, VN Nagar,
Karur Bye-Pass Road,
Near Kalaignar Arivalayam,
Trichy 620 002

..Respondent/2nd Defendant

Application praying that this Hon'ble Court be pleased to revoke the leave to sue granted in Application No.2676 of 2017 dated 27.4.2017 be not ordered.

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

This application has been filed to revoke the leave granted by this Court for filing a suit for specific performance.

2. The applicant is the Power Agent of the first defendant. The main contention of the applicant is that the property in question, which is the subject matter of the Memorandum of Understanding is situate at Mutharasanallur lying within the jurisdiction of the Civil Courts at Trichirapalli. The prayer 'A' is for specific performance for execution of the sale deed and the same would amount to the entire business and would amount to control or management and possession of the property which is the subject matter of the Memorandum of Understanding, which is situated outside the jurisdiction of this Court. Similarly, the prayer 'B' in respect of the permanent injunction would also amount to control or management and possession of the property. Therefore, this Court has no jurisdiction. Similarly, the second plaintiff is only an unregistered partnership firm. Further, it is the contention of the learned counsel that no cause of action arise within the jurisdiction of this Court. Hence, leave granted by this Court has to be revoked.

3. The learned counsel for the applicant submitted that the reliefs claimed in the suit for enforcement of the agreement virtually amount to control over the immovable property, which is situated outside the jurisdiction of this Court. Hence, this is suit for land. This Court has no jurisdiction. Similarly, the prayer 'B' sought in the plaint also amounts to control over the immovable property. This property, where the business is run situate within the jurisdiction of the Courts at Trichirapalli. Hence, this Court has no jurisdiction. The learned counsel for the applicant further submitted that the Memorandum of Understanding executed by the parties clearly show that all the assets owned in the name of the business shall be handed over by the vendor. Similarly, there is a specific covenant to execute a document of title in favour of the buyer. In fact, the entire document is with respect to the immovable property. Therefore, this suit is for land and not for specific performance simplicitor. Further, it is the contention of the counsel that cause of action does not arose within the jurisdiction of this Court and on that ground also, the suit is not maintainable. In support his contentions, he relied upon the judgements reported in **1998 - L.W. 762 [A.Velliangiri (deceased) and others Vs. M/s.Ram Bahadur Takur (P) Ltd., and others]**, **2013 (4) CTC 175 [M.Banupriya Vs. M.Lakshmi and others]** and **2016 (4) CTC 777 [Sumer Builders Pvt. Ltd., Vs. Narendra Gorani]**. Hence prayed for revoking the leave.

4. It is the contention of the learned counsel for the respondent that part of the cause of action arose within the jurisdiction of this Court and the suit is only for specific performance simplicitor and suit cannot be termed as a suit for land. The possession of the land and machinery were already handed over to the plaintiff. Therefore, it is the suit for specific performance

simplicitor and prayed for dismissal of the application.

5. The learned counsel for the respondent further submitted that the possession was already handed over to the first plaintiff. The entire business was also taken over by the plaintiff. The bank has also given no objection for taking over the assets of American Organic Food Products, namely, the subject matter of the Memorandum of Understanding. Hence, it is the contention of the learned counsel that it is only a suit for enforcing the Memorandum of Understanding and suit for specific performance simplicitor and not that of land. In support of his argument, he has also relied upon the judgment reported in **2007 (11) Supreme Court Cases 335 (Alchemist Ltd. And another Vs. State Bank of Sikkim and others** and the judgment of the Division Bench of this Court in **2008 [4] CTC 160 [A.C.Subba Reddy Vs. Jawahar International Trading Corporation Company represented by its Managing Partner]** and the judgment reported **2017 (5) CTC 33 [Bollineni Developers Ltd. Vs. K.Sailendra Kumar and others]**.

6. In the light of the above submissions, now the point that arises for consideration is

Whether the leave granted is liable to be revoked.

7. This suit has been laid for following reliefs :

A. Direct the 1st defendant to forthwith specifically perform the terms and conditions of the MoU dated 09.12.2013, signed on 07.04.2015, by executing a sale deed and/or such other documents necessary to completely transfer the entire business of M/s.American Organic Food Products Inc. in favour of the plaintiff.

B. Permanent injunction restraining the defendants, their men, servants, agents or any other persons claiming through or under them from in any manner acting contrary to the terms and conditions of the MoU dated 09.12.2013, signed on 07.04.2015;

C. Alternatively and without prejudice, in the event of this Hon'ble Court coming to a conclusion that the relief of Specific Performance of the MoU dated 09.12.2013, signed on 07.04.2015 cannot be granted, this Hon'ble Court may be pleased to direct the 1st Defendant to refund an amount of Rs.1,67,72,952.59/-.

D. Alternative and without prejudice, in the event of this Hon'ble Court coming to a conclusion that the relief of Specific Performance of the MoU dated 09.12.2013, signed on 07.04.2015 cannot be granted, this Hon'ble Court may be pleased to direct the 1st defendant to pay an amount of Rs.10,00,000/- towards compensation.

E. Directing the 1st defendant to pay the costs of the suit;

8. The suit itself filed primarily to enforce the Memorandum of Understanding dated 09.12.2013 signed on 07.04.2015 and also for permanent injunction restraining the defendants from any manner going contrary to the terms and conditions of the Memorandum of Understanding. The entire Memorandum of Understanding executed between the first plaintiff and the first defendant shows that there is an agreement to sell the business run by the first defendant in the name and style 'American Organic Food Products' for able management of the unit. Though there was a specific covenant between the parties, able

management of the unit will be handed over to the buyer with due instructions to the banks as well as employees and further, though one of the condition also stipulate that the vendors shall execute necessary documents to have proper title in favour of the buyer on the date of the agreement itself, entire management of the unit namely the business has taken possession by the first plaintiff. Thereafter, a letter dated 06.04.2015 has been addressed by the first plaintiff to its employees of American Organic Food Products, wherein it has been clearly stated that he has handed over the assets and liability standing in the name of the company as 'American Organic Food Products' and also sought co-operation from the employees. The bank also granted a sanction to the first defendant to take over the assets of the American Organic Food Products. All these facts clearly show that the entire unit namely, business unit, was handed over to the first plaintiff after the Memorandum of Understanding entered between the parties. Now the suit has been laid for enforcing the Memorandum of Understanding.

9. The learned counsel for the applicant relied upon the judgment reported in **1998 (1) L.W. 762 [Vellangiri (deceased) and others Vs. M/s.Ram Bahadur Takur (P) Ltd. and others]**, wherein it has been held as follows :

"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 for land, keeping in view that 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 and made in Application No.1818 of 1987."

10. Another judgement relied on by the applicant reported in **2013 (4) CTC 175 [M.Babupriya Vs. M.Lakshmi and others]**, wherein it is held as follows :

"Therefore, I am of the opinion that if it is a suit for land, whether cause of action arose within the jurisdiction of this Court or not is immaterial. If the relief sought for by the plaintiff leads a control over the land situated outside the jurisdiction of the High Court, then the Suit is not maintainable on the Original Side of the High Court. In the instant case, as observed above, Suit for declaration would affect the title of the defendants. Hence, the present suit is 'Suit for land' and is not maintainable before this Court."

11. In **2016(4) CTC 777 [Sumer Builders Pvt Ltd., Vs. Narendra Gorani]**, it has been held as follows :

"On a studied scrutiny of the Agreement and the MoU, it is clear as day that the

Development Agreement indubitably had created certain interests in the land in favour of the Appellant. The assertions made in the Application along with the relief clause when read in entirety and appreciated in a holistic manner, it becomes luminescent that the core dispute pertains to possession of the land, for the Appellant claims to be in exclusive possession and the Respondent, per contra, has asseverated that it had taken over possession. It can irrefragably be stated that any Order passed under Section 9 of the 1996 Act will have the impact on the land. It is difficult to accede to the submissions that it will not conceptually fall within the category of "Suit for land" as engrafted under Clause 12 of the Letters Patent. It is clearly a dispute with regard to the possession which is evincible from the Correspondences and the averments made in the Application preferred Under Section 9 of the 1996 Act. Thus, there has to be determination as regards possession and impliedly issue of direction for recovery of possession. Hence, the conclusion arrived at by the Division Bench on the basis of the scrutiny of documents that the dispute is embedded with regard to the possession of the land because the fundamental Claim Pertains to certain constructed space on the land and, therefore, it would conceptually fall within the conception of "Suit for land" appearing in Clause 12 of the Letters Patent is unexceptionable. Prayer (a) quoted above seeks restraint by a Temporary Order of Injunction from entering upon the property . It is difficult to accept the submission that

it is a Money claim and, therefore, the Bombay High Court would also have the Territorial jurisdiction and accordingly we unhesitantly repel the idea.

12. There is no dispute with regard to the above judgments. But in the facts and circumstances of the case, the instant suit cannot be construed as suit for land and it is only for specific performance simplicitor. In this regard, it useful to refer to the judgment reported in **2008 [4] CTC 160** wherein the Division Bench of this Court has held as follows :

3.The Suit has been filed by the appellant/plaintiff for the following reliefs:

(a) directing the defendants 1 to 5 specifically perform their part of the obligation of the agreement for sale dated 05.03.2004 as merged in supplemental agreement dated 25.02.2005 by executing and registering sale deed or deeds in respect of the suit property and register the name on receipt of the balance sale consideration of Rs.5.35 lakhs on a date to be fixed by this Hon'ble Court and in default direct the Court to execute and register the deed or deeds of sale in respect of the plaint schedule property in favour of the plaintiff at the expense of the plaintiff on deposit of the balance sale consideration payable by him to the credit of the Suit or in the alternative direct the refund of the advance amount of Rs.5,35,000/- paid by the plaintiff with interest at 24% per annum from the date of payment till the date of realization;

(b) For a permanent injunction

restraining the defendants 1 to 6 or their men, agents, servants or any person or claim through them or authorized by them from interfering with the peaceful possession and enjoyment of the property, more fully described in the schedule hereunder;

(c) For a permanent injunction restraining the defendants 1 to 6 or any other person or persons claiming through them from alienating or encumbering dealing with the suit schedule mentioned property either by way of sale, mortgage, joint development lease or in any other manner detrimental to the interest of the plaintiff except in accordance with law."

4. If we look at the prayer "a" and "c" alone, it is clear that principally the Suit is for specific specific performance of the agreement and even the ancillary relief of permanent injunction is also for restraining defendants from alienating or dealing with the suit property in any way. Prayers "a" and "c" are not for title or possession and the injunction relief sought for also does not affect the title or possession."

13. Admittedly the facts reveals that the possession was already with the plaintiff after Memorandum of Understanding entered between the parties. The suit is filed for specific performance, for enforcing the Memorandum of Understanding and it is only specific performance simplicitor. The other prayer namely injunction not to act contrary to the terms of the Memorandum of Understanding also will not have an effect having control over the suit property. Hence, I am of the view that the relief claimed in the suit cannot be

construed as suit for land.

14. Another contention of the learned counsel for the applicant is that cause of action not at all arose within the jurisdiction of this Court. When the averments of the plaint carefully seen, necessary averments have been made by the plaintiff in the Memorandum of Understanding. One of the party signed in the Memorandum of Understanding within the jurisdiction of this Court. Only the averments are to be taken into account to decide the cause of action

15. In **2007 (II) SCC 335** it is held as follows :

"18. The legislative history of the constitutional provisions, therefore, makes it clear that after 1963, cause of action is relevant and germane and a writ petition can be instituted in a High Court with the territorial jurisdiction of which cause of action in whole or in part arises.

19. The question for our consideration is as to whether the assertion of the appellant is well founded that a part of cause of action can be said to have arisen within the territorial jurisdiction of the High Court of Punjab and Haryana. Whereas, the appellant Company submits that a part of cause of action had arisen within the territorial jurisdiction of that Court, the respondents contend otherwise.

From the aforesaid discussion and keeping in view the ratio laid down in a catena of decisions by this Court, it is clear that for the purpose of deciding whether facts averred by the appellant-petitioner would or would not constitute a part of cause of action, one has to consider

whether such fact constitutes a material, essential, or integral part of the cause of action. It is no doubt true that even if a small fraction of the cause of action arises within the jurisdiction of the court, the court would have territorial jurisdiction to entertain the suit/petition. Nevertheless it must be a "part of cause of action" nothing less than that."

16. From the above judgment, even a small traction of the cause of action arose would create territorial jurisdiction to entertain the suit. Admittedly the averments of the plaint shows that part of the cause of action arose within the jurisdiction of this Court. In view of the above discussions, I am unable to countenance the contention of the learned counsel for the applicant to revoke the leave.

17. Accordingly, this application is dismissed. No cost.

Sd/.N.S.K.J.

17.04.2018

//Certified to be a true copy//

Dated this the day of 2018.

TR/29.05.2018

COURT OFFICER(O.S)

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.