

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 19TH DAY OF JUNE 2019

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

A.No.2702 of 2019

in

C.S.SR.NO.45685 of 2019

M.Mohamed Zuhair,
S/o.M.S.Hussain Deen,
No.24/36, Jambulingam Street,
Nungambakkam,
Chennai 600 034
Rep.by his Power Agent
Mr.H.Syed Ahmed

...Applicant/Plaintiff

-vs-

Mrs.Nishat Salam,
W/o.Abdul Salam,
No.3, Foreshore Road
Haddow Post, Port Blair
Andaman Nicobar Islands

...Respondent/Defendant

Application praying that this Honble Court be pleased to grant leave to the plaintiff to sue the defendant within the jurisdiction of this Honble Court.

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

The applicant seeks leave to institute a suit for specific performance in this court with reference to property situate outside the jurisdiction of this court.

2. According to Mr.T.T.Ravichandran, learned counsel appearing for the applicant, since the plaintiff has not sought for the relief of possession or injunction relating

to immovable property, even though the present suit is one for specific performance which relates to the property situate outside the jurisdiction of this court, this Court has powers under Clause XII of Letters Patent to entertain the suit.

3. I find that this question has been specifically answered in **Harsha Estates Vs. Dr.P.Kalyana Chakravarthy** reported in **2018 (4) CTC 721**, wherein, the Division Bench has in paragraph 10 observed as follows:-

"10. An analysis of all the above Judgments brings out the following Principles of Law to decide whether a Suit is for "Suit for land":

(i) In a suit the reliefs claimed, if granted, would directly affect title to or possession of the land it will be "Suit for land".

(ii) If the object of the suit is something different, but involves the consideration of the question of title to land indirectly, it will also be "Suit for land".

(iii) A suit where the claim is for recovery of possession or control of land, it will be "Suit for land".

(iv) In a suit, where determination of any right or interest over an immovable property is involved, it will be "Suit for land".

(v) A suit for bare injunction restraining the defendant from interfering with the possession and enjoyment of the property by the plaintiff, will be "Suit for land".

(vi) In a suit for bare injunction where the plaintiff seeks to restrain the defendant from dealing with the suit property by creating a charge or alienating or encumbering the property, will also fall within the ambit of a "Suit for land". This court in *M/s. Raja Holdings, Financiers and Merchants, Partnership-Firm* represented by its Partner, Lalitha Raja in O.S.A.No.2/2018, dated 10.07.2018 has considered this issue in detail.

(vi)(a) In a suit for specific performance of an agreement of sale wherein the relief of delivery of possession of the suit property has been specifically claimed, it will be "Suit for land".

(vi)(b) In a suit for specific performance where the suit is only for enforcement of the agreement simpliciter without seeking for any other relief, the same will also fall within the ambit of "Suit for land" since

the relief of possession is inherent in the relief of specific performance.

(vi) (c) In a suit for specific performance, where the suit is only for enforcement of the agreement simpliciter and the plaintiff specifically claims to be in possession of the suit property and there is no denial of the said fact by the defendant, the said suit will not come within the ambit of "Suit for land".

(vi) (d) In a suit for specific performance, where the plaintiff apart from seeking to enforce the agreement also seeks a relief of injunction against the defendant, not to interfere with his possession and enjoyment or not to create any charge or encumbrance or not to alienate the suit property, such suits will also come within the ambit of "Suit for land".

4. In view of the said categorical pronouncement of the Division Bench, I do not think that the plaintiff can be permitted or granted leave to file a suit seeking specific performance simpliciter with reference to the

properties situate outside the jurisdiction of this court.

5. Mr.Ravichandran would contend that the Hon'ble Supreme Court in **Excel Dealcomm Private Limited Vs. Asset Reconstruction Company (India) Limited and others** reported in **2015 (8) SCC 219** had held that the suit for specific performance simpliciter without possession can be entertained by this court even if the property is situate outside the jurisdiction of this court. A perusal of the said judgment shows that the Hon'ble Supreme Court had infact held that relief of possession is implicit in a suit for specific performance and the prayer as sought in the plaint could not have been granted without delivery of possession.

6. The said judgment has also been considered by the Division Bench in **Harsha Estates Vs. Dr.P.Kalyana Chakravarthy** reported in **2018 (4) CTC 721**.

7. Hence, this application is **dismissed**. The Registry is directed to return the plaint to the counsel for the plaintiff to enable him to re-present in proper court.

Sd/.R.S.M.J

19.06.2019

//Certified to be a true copy//
Dated this the day of 2019.

R.s/25.06.2019

COURT OFFICER

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