

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.01.2019

DELIVERED ON : 05.03.2019

CORAM:

THE HON'BLE MR.JUSTICE N.KIRUBAKARAN
and

THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

O.S.A.No.260 of 2018
and C.M.P.No.12253 of 2018

K.Paranthaman

Proprietor,

M/s.American Organic Food Products Inc.,

6/121, Agraharam,

Mutharasanallur,

Tiruchi - 620 102

Now residing in California 3593,

Granada Avenue,

#418, Santa clara,

California,

USA 95051.

Rep. by his Power of Attorney Agent

Mr.Raja,

No.2/23, Jothi Nagar East Extension,

Nachikurichi,

Vayalur Road,

Tiruchi.

... Appellant

Vs.

1.C.Padmanabhan

2.M/s.Ohm Water Beverages Company,

Rep. by its Partner C.Padmanabhan,

6/121, Agraharam,

Mutharasanallur,

Tiruchi - 620 101.

3.Mrs.Vijayam Padmanabhan

4.Mrs.Sudha Srikrishna

5.M/s.Dena Bank,

Rep. by its Chief Manager,

Raj Towers,

No.6, V.N. Nagar,

Karur Bye-pass Road,

Near Kalaigiar Arivalayam,

Tiruchi - 620 002.

... Respondents

PRAYER: Original Side Appeal filed under Order XXXVI Rule 9 of O.S. Rules read with Clause 15 of Letters Patent, against the Order and Decree dated 17/4/2018 made in A.No.8015 of 2017 in C.S.No.629 of 2017 by the learned Single Judge, on the file of this Court.

For Appellant : Mr.Murugamanickam, Senior Counsel
for Mr.Babu Rangasamy

For Respondents : Mr.R.Parthasarathy for R1 to R4
Mr.G.R.Laxmanan for R5

JUDGMENT

[Judgment of the Court was delivered by ABDUL QUDDHOSE, J.]

The issue whether the suit is a suit for land or not continues to keep resurfacing, despite several judicial pronouncements made by the Hon'ble Supreme Court as well as various High Courts. We need to plug the loopholes to prevent in future such suits being filed before the wrong Court by clever drafting of the plaint and camouflaging the actual reliefs.

2.The instant intra Court appeal has been filed under Order XXXVI Rule 9 of O.S Rules, r/w.Clause 15 of Letters Patent, challenging the order dated 17.04.2018, passed by the learned Single Judge of this Court in Application No.8015 of 2017 in C.S.No.629 of 2017.

3.The brief facts leading to the filing of the instant appeal are as follows:

3.1.The appellant is the first defendant in the suit in C.S.No.629 of 2017, filed by the respondents 1 to 4. The fifth respondent is the second defendant in the suit and is the bank to whom monies are payable for the loan availed by the appellant. The respondents 1 to 4 filed the suit in C.S.No.629 of 2017, against the appellant, seeking the following reliefs:

"A. Direct the appellant 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 07.04.2018;

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 appellant to refund an amount of Rs.1,67,72,952.59/-.

D. 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 appellant to pay an amount of Rs.10,00,000/- towards compensation.

E. Directing the appellant to pay the costs of the suit; and

F. To pass such further or other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and thus render justice."

4.The learned Single Judge of this Court in Application No.2676 of 2017, filed by the respondents 1 to 4, granted leave to institute the suit. Thereafter, the appellant filed Application No.8015 of 2017, in C.S.No.629 of 2017, seeking to revoke the leave granted in Application No.2676 of 2017, since according to the appellants, the memorandum of understanding was not signed by the appellant at Chennai and the subject property is situated at No.6/121, Agraharam, Mutharasanallur, Tiruchirappalli - 620 101, lying within the jurisdiction of Civil Courts at Tiruchirappalli and not within the territorial jurisdiction of this Court. According to the appellant, if at all any cause of action arises out of the averments contained in the plaint, then it is only the civil Court at Tiruchirappalli, which will have jurisdiction to entertain the suit.

5.A counter affidavit was filed by the respondents 1 to 4, reiterating that the suit filed is a suit for specific performance simpliciter and the same cannot be termed as a suit for land. According to them, the relief sought for in the present suit is limited to seeking enforcement of the aforesaid memorandum of understanding which was executed within the jurisdiction of this Court. It is also contended that the possession of all the plant and machineries, land and building, inventory etc., were handed over to the respondents 1 to 4 and no relief with respect to possession has been sought for in the suit and therefore, the suit is not a suit for land and is a suit for specific performance simpliciter. Further, it is the contention of the respondents 1 to 4 that even though, the appellant is in United States of America, the fact remains that the signed MoU was sent by the appellant from the United States of America to the first respondent at Chennai and the signature of the first respondent was affixed at Chennai within the jurisdiction of this Court and therefore, part of cause of action has arisen within the jurisdiction of this Court.

6.The learned Single Judge of this Court by his order dated 17.04.2018, dismissed Application No.8015 of 2017, in C.S.No.629 of 2017, filed by the appellant. Aggrieved by the dismissal of Application No.8015 of 2017, the instant intra Court appeal has been filed by the appellant who is the first defendant in the suit.

SUBMISSIONS OF THE LEARNED COUNSELS:

7.Heard Mr.T.Murugamanickam, learned Senior Counsel for the Appellant and Mr.R.Parthasarathy, learned Counsel for the respondent Nos.1 to 4.

8.According to the learned Senior Counsel for the Appellant, the suit filed by the respondents is a suit for land since the property and factory are located at Tiruchirapalli, outside the territorial jurisdiction of this Court. He drew the attention of this Court to the prayers sought for in the plaint and submitted that the respondents have sought for specific performance of an MOU dated 09.12.2013 signed on 07.04.2015 by executing a sale deed and have also sought for permanent injunction in respect of a property situated at Tiruchirapalli and therefore, this Court does not have territorial jurisdiction to decide the suit. Further, he would contend that the alleged MOU was entered into only between the first respondent and the Appellant and the second, third and fourth respondents, who are also the plaintiffs in the

suit are not parties to the MOU, and on this ground also the suit ought not to have been entertained by the learned Single Judge of this Court.

9.The learned Senior Counsel further contended that there is no schedule in the plaint filed by the respondents and submitted that no part of cause of action arose within the city of Chennai and therefore, this Court does not have territorial jurisdiction to entertain the suit.

10.The learned Senior Counsel for the Appellant then drew the attention of this Court to the averments contained in the plaint and submitted that there is no averment in the plaint as to when the respondents 1 to 4 took possession of the property at Tiruchirapalli from the Appellant. He also contended that assuming possession of the property is with the respondents 1 to 4, as per Section 53A of the Transfer of Property Act, the MOU must be a registered document only then it is admissible in evidence.

11.The learned Senior Counsel for the Appellant further contended that on the ground of suppression of material facts, the application filed by the Appellant before the learned Single Judge for revocation of leave ought to have been allowed. He submitted that the Appellant had filed an earlier suit for an injunction before the District Munsif Court, Tiruchirapalli on 26.09.2016, whereas, the suit filed by the respondents 1 to 4 before the original side of this Court was only on 25.04.2017.

12.He drew the attention of this Court to the relief sought for by the appellant in the plaint filed by him in O.S.No.945 of 2016 on the file of the District Munsif Court, Tiruchirapalli, wherein he has sought for an injunction restraining the first respondent from interfering with the peaceful possession and enjoyment of the suit property. He referred to paragraph No.6 of the plaint filed by the appellant and submitted that the first respondent stopped the business abruptly and left for Chennai five months prior to the filing of the suit in O.S.No.945 of 2016 on the file of the District Munsif Court, Tiruchirapalli. According to him, the first respondent is based only in Chennai and was not in possession of the property at the time when the suit was filed by him before the original side of this Court. He also referred to the counter filed by the first respondent in I.A.No.390 of 2016 in O.S.No.945 of 2016 on the file of the District Munsif Court, Tiruchirapalli wherein he has admitted that he would take over the existing liability of

the Appellant with Dena Bank, Tiruchirappalli Branch subject to a maximum limit of Rs.2,47,58,226.26/-. Therefore, according to the learned Senior Counsel, the entire cause of action arose only at Tiruchirappalli and no part of cause of action arose at Chennai.

13.The learned Senior Counsel also drew the attention of this Court to the transfer application filed by the respondents 1 to 4, namely Application No.6924 of 2017 in C.S.No.629 of 2017 to transfer the suit, on the file of the District Munsif Court, Tiruchirappalli to the file of this Court. He submitted that the said transfer application is still pending on the file of the learned Single Judge of this Court. According to the learned Senior Counsel, the respondents 1 to 4 have sought for reliefs in their plaint filed in C.S.No.629 of 2017, which if, entertained will amount to indirectly awarding reliefs which the respondents 1 to 4 are not legally entitled to seek, since the property is situated at Tiruchirappalli beyond the territorial jurisdiction of this Court. According to him, only to avoid payment of excess Court fee before the Court at Tiruchirappalli, the respondents 1 to 4 have initiated the suit before the original side of this Court.

14.The learned Senior Counsel for the Appellant then drew the attention of this Court to an unregistered partnership deed dated 15.07.2015 between the respondent Nos.1 to 4, wherein the respondent Nos.2 to 4 were inducted as new partners in M/s.American Organic Food Products Inc.

15.The learned Senior Counsel further submitted that the stamp paper for the partnership deed was purchased on 27.06.2015 at Valangaiman, which is situated outside the jurisdiction of this Court. According to him, there is no cause of action for the respondent Nos.2 to 4 for filing the suit against the Appellant as they are not parties to the MoU.

16.The learned Senior Counsel then drew the attention of this Court to the impugned order of the learned Single Judge and in particular referred to paragraph No.13, wherein according to him, the learned Single Judge has given an erroneous finding that the Appellant has admitted that the possession of the property is with the respondents 1 to 4.

17.The learned Senior Counsel then drew the attention of this Court to a latest Division Bench judgment of this Court in the case of M/s.Harsha Estates & others vs.

Dr.P.Kalyana Chakravarthy and others reported in 2018 3 L.W.900 and in particular referred to paragraph Nos.10 and 15 of the said judgment, wherein the Division Bench has analyzed all the precedents and laid down the principles of law to decide whether a suit is a suit for land. According to learned Senior Counsel, the suit filed by the respondents 1 to 4 before this Court in C.S.No.629 of 2017 is only for the enforcement of the MOU and the relief for possession is inherent in the relief for specific performance sought for by the respondents 1 to 4 and hence following the principles of law laid down in paragraph No.10 of the Division Bench judgment referred to supra, the suit filed by the respondents 1 to 4 is a suit for land.

18.Per contra, Mr.R.Parthasarathy, the learned Counsel for the respondents 1 to 4 would submit that the relief sought for in the plaint will not amount to indirectly seeking recovery of possession. He also submitted that the MOU entered into between the Appellant and the first respondent need not be a registered document by virtue of Section 49 of the Registration Act, 1908. According to him, the Division Bench judgment of this Court on the same issue rendered in M/s.Harsha Estates & others vs. Dr.P.Kalyana Chakravarthy and others reported in 2018 3 L.W.900 is contrary to the view taken by two other Division Benches of this Court in the case of A.C. Subba Reddy vs. Jawahar International Trading Corporation Company and others reported in 2008 (4) CTC 160 and in the case of N.Dhanalakshmi and two others vs. S.Eknathan, Proprietor, Eknath Real Estates reported in 1997 3 LW 391. According to him, the suit filed by the respondents 1 to 4 is not one for title or possession and the ancillary relief for injunction sought for also does not affect title or possession. According to him, the reliefs sought for against the Appellant is an action in personam. He relied upon the Division Bench judgments of this Court reported in 2008 (4) CTC 160 and 1997 3 LW 391 referred to supra and submitted that the ratio laid down in those judgments are applicable to the facts of the instant case. According to him, a Division Bench of this Court in the case of M/s.Harsha Estates & others vs. Dr.P.Kalyana Chakravarthy and others reported in 2018 3 L.W.900 has not considered the earlier Division Bench judgments correctly and therefore, he submitted that this Court will have to either refer the instant appeal to a Larger Bench or lay down the correct law.

19.He referred to the various clauses under the Memorandum of Understanding and in particular referred to clause 2 wherein, it is stated that as from the date of

signing of the Memorandum of Understanding, the complete management of the unit will be handed over to the first respondent with due instructions to the bank as well as the employees. Therefore, according to him, possession was delivered by the Appellant to the first respondent even on the date of signing of the Memorandum of Understanding.

20. According to the learned Counsel for the respondents 1 to 4, a partnership deed dated 15.07.2015 is an internal management document and there is no suppression of facts in the counter filed before the Tiruchirapalli Court in the suit filed by the Appellant. According to him, the induction of new partners will not have any bearing on the outcome of the suit. The date of signing of the Memorandum of Understanding is not in dispute as it was signed only on 07.04.2015 even though, the stamp paper was purchased on 09.12.2013.

21. The learned Counsel for the respondents 1 to 4 also drew the attention of this Court to a letter dated 19.11.2015 sent by Dena Bank, the fifth respondent herein and the Appellant's bankers to the first respondent wherein they have sanctioned the take over of assets of M/s. American Organic Food Products Inc., by the first respondent. He drew the attention of this Court to an e-mail dated 12.12.2015 sent by the Appellant to the first respondent wherein according to him, the Appellant has admitted to have given an authority to the respondents to operate his business.

22. He also drew the attention of this Court to the reply dated 14.12.2015, sent by the first respondent to the Appellant complaining about the improper working condition of the machineries. According to him, disputes relating to payment raised by the Appellant will not erase the fact that the first respondent is in possession of the property.

23. According to him, even in the e-mail dated 29.12.2015, the Appellant has assured the first respondent that the sale deed would be executed at the earliest provided the first respondent deposits the money agreed in the bank account of the Appellant.

24. According to the learned Counsel for the respondents 1 to 4, either directly or indirectly, the respondents have not sought for the relief of the possession in the suit and execution of the sale deed by the Appellant is only an action in personam and the suit filed by the respondents is not a suit for land.

25.The learned Counsel for the respondents 1 to 4 drew the attention of this Court to the plaint filed by the Appellant before the District Munsif Court, Tiruchirapalli in O.S.No.945 of 2016 and in particular referred to paragraph No.5 wherein according to him, the Appellant has admitted that the first respondent is in possession and is carrying on the business transferred under the Memorandum of Understanding. He also referred to an averment contained in paragraph No.11 of the plaint wherein, the appellant has reserved his right to file a suit for recovery of machineries and materials from the first respondent. Therefore, according to him, the Appellant has admitted that the first respondent is in possession of the property.

26.He also drew the attention of this Court to the reliefs sought for in the plaint filed by the Appellant before the District Munsif Court, Tiruchirapalli and submitted that the suit filed by the Appellant is an abuse of process of Court as no relief of declaration has been sought for by the Appellant and it is settled law that when there is a cloud over the title, declaratory relief will have to be sought for.

27.The learned Counsel for the respondents 1 to 4 then drew the attention of this Court to the plaint averments made by the respondents in C.S.No.629 of 2017, wherein in paragraph No.12, they have categorically pleaded that consequent to the MoU, the entire management of M/s.American Organic Food Products Inc and possession of the Plant and Machineries, Land and Buildings, Inventories etc were handed over to the first respondent on an understanding that the necessary documents for transfer would be executed by the Appellant in favour of the first respondent.

28.He also drew the attention of this Court to paragraph No.35 of the plaint, wherein according to him, the respondents 1 to 4 have admitted that the Appellant has filed O.S.No.945 of 2016 on the file of the District Munsif Court, Tiruchirapalli, seeking a permanent injunction restraining the first respondent from interfering with the Appellant's possession and enjoyment of the property and therefore there is no suppression of any material fact including the filing of the suit by the Appellant before the District Munsif Court, Tiruchirapalli. According to him, the prayers sought for in the plaint filed by the respondents 1 to 4 is an action in personam and not an action in rem.

29.The learned Counsel for the respondents 1 to 4 relied upon the following authorities:

(a) Babu Lal vs. M/s. Hazari Lal Kishori Lal and Others reported in (1982) 1 SCC 525 for the proposition that the word appropriate case in Section 22 (1) of the Specific Relief Act, permits a party who is in exclusive possession of the property to seek the relief of specific performance of the contract of sale simpliciter without specifically asking for delivery of possession.

(b) N. Dhanalakshmi and two others vs. S. Eknathan, Proprietor, Eknath Real Estates reported in 1997 3 LW 391 (Mad - DB) for the proposition that a suit for land covers three classes of suits, viz., (i) suit for determination of title to the land, (ii) suits of possession of land; and (iii) other suits in which the reliefs claimed if granted would directly affect title to, or possession of, the land. According to the learned Counsel, the averments contained in the plaint as a whole and the relevant relief sought for, the suit is clearly, substantially, and mainly one for specific performance of the agreement simpliciter. The other reliefs sought for are only alternative and ancillary.

(c) Adcon Electronics Pvt. Ltd. vs. Daulat and Another reported in (2001) 7 SCC 698. According to the learned Counsel, the Hon'ble Supreme Court has held in the above said decision that if the suit is simpliciter for specific performance i.e., for the enforcement of the contract of sale and for execution of conveyance, without seeking for delivery of possession there can be no good ground for holding that such a suit is a suit for determination of title to land or that the decree in it would operate on the land.

(d) A.C. Subba Reddy vs. Jawahar International Trading Corporation Company and others reported in 2008 (4) CTC 160 wherein, a Division Bench of Madras High Court held that the relief of permanent injunction in a suit for specific performance simpliciter and for executing sale deeds in respect of the property situated outside the jurisdiction is permissible as it is not a suit for land.

(e) Excel Dealcomm Private Limited vs. Asset Reconstruction Company (India) Limited and Others reported in (2015) 8 SCC 219. According to the learned Counsel, the Hon'ble Supreme Court following the decision rendered in Adcon Electronics Pvt. Ltd. vs. Daulat and Another referred to supra, has held that a suit for specific performance

simpliciter without a prayer for delivery of possession is not a suit for land as Section 22 of the Specific Relief Act, 1963 categorically bars any court to grant such relief of possession in a suit for specific performance unless specifically sought.

30. The learned Counsel for the respondents 1 to 4 further submitted that a Division Bench of Madras High Court in the case of M/s. Harsha Estates & others vs. Dr. P. Kalyana Chakravarthy and others reported in 2018 3 L.W. 900, has wrongly laid down the law insofar as principles vi(b) and vi(d) which are contrary to the earlier Division Bench judgment of the Madras High Court reported in 1997 3 LW 391 and 2008 (4) CTC 160, referred to supra. According to him, by the earlier Division Bench judgments, a suit for specific performance simpliciter and for consequential permanent injunction in respect of a property situated outside the jurisdiction is permissible but the latest Division Bench judgment has held in principles vi(b) that in a suit for specific performance where the suit is only for enforcement of the agreement simpliciter without seeking for another 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. According to him, the principle of law laid down by the Division Bench judgment of the Madras High Court in paragraph 10 in principle vi(d) in a suit for specific performance wherein 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, such suits will also come within the ambit of suit for land has not considered the earlier Division Bench judgments of this Court referred to supra. According to him, insofar as the other principles of law laid down by the latest Division Bench judgment on "suit for land" is the correct law.

31. The learned Counsel for the respondents 1 to 4 also contended that the latest Division Bench judgment of the Madras High Court referred to supra contradicts the findings of the Hon'ble Supreme Court in the case of Babu Lal vs. M/s. Hazari Lal Kishori Lal and Others reported in (1982) 1 SCC 525. In conclusion, the learned Counsel for the respondents 1 to 4 submitted that the Trial Court has rightly rejected the application filed by the Appellant to revoke the leave granted to the respondent.

32. Mr. G. R. Lakshmanan, learned Counsel for the fifth respondent bank would submit that the Appellant who had

borrowed huge amount of money from the bank by mortgaging property has not repaid the outstanding dues to the bank. According to him, neither the Appellant nor the first respondent has come forward to settle the outstanding dues with the bank. In view of the crossfire between the Appellant and the first respondent, the bank is put to loss. He seeks an equitable order from this Court for the protection of bank's interest.

DISCUSSION:

33.The point for consideration is whether the suit C.S.No.629 of 2017, filed by the respondents 1 to 4 before the original side of this Court against the appellant is a suit for land. The relief sought for by the respondents 1 to 4 in the plaint filed in C.S.No.629 of 2017 before the learned Single Judge of this Court are as follows:

"A. Direct the appellant 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 07.04.2018;

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 appellant to refund an amount of Rs.1,67,72,952.59/-.

D. 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 appellant to pay an amount of Rs.10,00,000/- towards compensation.

E. Directing the appellant to pay the costs of the suit; and

F. To pass such further or other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and thus render justice."

34.As seen from the above mentioned prayers, the respondents 1 to 4 have sought for specific performance of the MoU dated 09.12.2013, signed on 07.04.2015, by executing a sale deed and / or such other documents necessary to complete the transfer of the entire business of M/s. American Organic Food Products Inc., in favour of the respondents 1 to 4 and they have also sought for a permanent injunction restraining the appellant from in any manner acting contrary to the terms of the MoU. The respondents 1 to 4 have also sought for an alternate relief for refund of Rs.1,67,72,952.59/-, in the event of the Court coming to a conclusion that the relief of specific performance cannot be granted. As an alternate prayer, they have also sought for Rs.10 Lakhs as compensation.

35.In order to find out whether the suit filed by the respondents 1 to 4 is a suit for land, we need to examine the plaint averments as well as the documents filed along with the plaint. Clause 12 of the Letters Patent gives jurisdiction for the original side of this Court to entertain the suits. Clause 12 of the Letters Patent reads as follows:

"12.Original jurisdiction as to suits.- And we do further ordain that the said High Court of Judicature at Madras, in exercise of its ordinary original civil jurisdiction, shall be empowered to receive, try, and determine suits of every description if, in the case of suits for land or other immovable property, such land or property shall be situated, or, in all other cases, if the cause of action shall have arisen, either wholly, or, in case the leave of the Court shall have been first obtained, in part, within the local limits of the ordinary original jurisdiction of the said High Court: or if

the defendant at the time of the commencement of the suit shall dwell or carry on business or personally work for gain, within such limits; except that the said High Court shall not have such original jurisdiction in cases falling within the jurisdiction of the Small Cause at Madras, in which the debt or damage, or value of the property sued for does not exceed one hundred rupees."

36. Clause 12 of the Letters Patent consists of two parts. The first part of Clause 12 of Letters Patent empowers the High Court to receive, try and determine suits of every description, if in the case of suit for land and other immovable property such land or property shall be situated.

37. The second part empowers the High Court to deal with suits in all other cases where the jurisdiction is based either on the accrual of the cause of action wholly or in part or alternatively on the residence of the defendant within the local limits of the ordinary original civil jurisdiction of the High Court. What is clear is that the High Court in the exercise of its ordinary original civil jurisdiction under Clause 12 of the Letters Patent, is empowered to receive, try and determine suits for land or immovable property, if and only if such land or immovable property is situated within the local limits of the ordinary original civil jurisdiction of the High Court. In other words, the property or any part thereof, where leave is obtained must be within the local limits of the ordinary original civil jurisdiction of the High Court. It is the location of the land that confers the jurisdiction on the original side of the High Court under the first part of Clause 12 of the Letters Patent if the suit is a suit for land. The question whether the cause of action accrues wholly or in part within the original jurisdiction of the High Court or whether the defendant dwelled, carried on business are absolutely irrelevant insofar as suit for land is concerned. It is only with regard to 'all other cases' which is the second part of Clause 12 of Letters Patent where suit for land is not involved, the question of cause of action wholly or in part is relevant.

38. The dictionary meaning of 'other' from various dictionaries also connote that the second part of Clause 12 of Letters Patent is different from the first part and each part is independent of each other. The word 'other' means 'different from and not similar as the one in question'

[Chamber's dictionary]. The term 'other' signifies 'not the same as the one or something already mentioned or implied; separate in identity or different in kind' [Oxford Dictionary 9th Edition]. The expression connotes 'the one distinct from those first mentioned' and not the same [Webster]. The expression 'other' implies 'different from that which has been specified; not the same; different' [Ramanatha Iyer's Law Lexicon]. By no stretch of imagination, the expression 'in all other cases' in Clause 12 of the Letters Patent can be said to take within its ambit, the suits for land or other immovable property falling under the first part of Clause 12 of the Letters Patent.

39. The latest Division Bench judgment of the Madras High Court in the case of M/s. Harsha Estates & Others Vs. Dr. P. Kalyana Chakravarthy and others reported in 2018-3 L.W. 900, following the judgments of the Hon'ble Supreme Court in the case of Adcon Electronics Pvt. Ltd. Vs. Daulat and another reported in (2001) 7 SCC 698, Excel Dealcomm (P) Ltd. Vs. Asset Reconstruction Co. (India) Ltd. reported in (2015) 8 SCC 219 and other judgments, has laid down the correct law regarding suit for land.

40. The substance or object of the suit has to be gathered from the averments made in the plaint, on which the relief asked in the prayers are based. In the case on hand, the relief sought for in the plaint revolves on the MoU dated 09.12.2013 signed on 07.04.2015. Under the MoU, it is seen from the plaint averment made in C.S.No.629 of 2017, before the learned Single Judge of this Court that the appellant had agreed to hand over complete management and possession of M/s. American Organic Food Products Inc., unit to the first respondent immediately on signing the MoU. It is also averred in the plaint that the appellant will have to execute the sale deed and other necessary documents for conveying title and completing the total transfer of business from the appellant to the first respondent within ten days on the fifth respondent bank approving the transfer of the existing liabilities owed by the appellant to the first respondent with regard to the loan availed by him. It is also admitted in the plaint as seen from paragraph No.15 to 20, that the appellant has failed to execute all necessary documents including the sale deed transferring the entire business in favour of the first respondent within 10 days from the date of the sanction letter issued by the fifth respondent bank. According to the respondents 1 to 4, the sanction letter for the transfer of business in favour of the first respondent was issued by the fifth respondent Bank on

19.11.2015, but despite the said sanction letter, the appellant failed to execute all the necessary transfer documents in favour of the first respondent.

41. Admittedly, in the case on hand, the business unit is situated at Tiruchirappalli beyond the original side jurisdiction of this Court. The fifth respondent bank from whom the appellant availed loan for the purpose of his business is also located at Tiruchirappalli and the loan was also availed only from there. The plaint prayer for execution of sale deed can be executed only at Tiruchirappalli, where the concerned Sub-Registrar's office is situated. Majority of the documents required for transfer of business in favour of the first respondent can be done only at Tiruchirappalli. Therefore, the contention of the respondents 1 to 4 that the suit filed by them before the original side of this Court for specific performance is only a suit for specific performance simpliciter cannot be accepted. Further, the appellant has also disputed that the respondents 1 to 4 are in possession of the business unit and the property. In fact, in a prior suit filed by the appellant before the District Munsif Court, Tiruchirappalli, the appellant has categorically pleaded that he is in possession of the business unit and the property. Despite knowledge of the prior suit filed by the appellant, the respondents 1 to 4 have gone ahead and filed the suit before the Original Side of this Court. All these factors clearly indicate that there is a dispute as to who is in possession of the business unit and the property. Since admittedly, the business unit and the property is situated at Tiruchirappalli, the proper Court for adjudication of the dispute between the parties is the Courts at Tiruchirappalli where the entire evidence pertaining to the dispute including the location of the property and the Sub-Registrar's office and other authorities involved for the valid transfer of the business and property in favour of the respondents 1 to 4 are located.

42. The latest Division Bench judgment of this Court in the case of M/s. Harsha Estates & others Vs. Dr. P. Kalyana Chakravarthy and others reported in 2018-3 L.W. 900, has lucidly analysed the principles of law to decide whether a suit is a suit for land or not and the principles of law are as follows:

"(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".

43. The instant suit falls under principle vi(b), vi(c) and vi(d). Applying vi(d), the instant suit will also be a suit for land since the appellant has specifically denied that the first respondent is in possession of the property. Applying vi(d), the instant suit will also be a suit for land since the respondents 1 to 4 have not alone sought for specific performance of the MoU but have also sought for the relief of injunction against the appellant not to interfere with their peaceful possession and enjoyment of the property. Further, as observed earlier, Clause 12 of the Letters Patent comprises of two parts. Since the suit filed by the respondents 1 to 4 falls under the first part of Clause 12, it is certainly a suit for land and this Court does not have the jurisdiction to entertain the suit since the property is situated at Tiruchirappalli outside the jurisdiction of this Court.

44. The respondents 1 to 4 have sought for specific performance of the execution of a sale deed and for complete transfer of the entire business of M/s. American Organic Food Products Inc., in favour of the first respondent in terms of the MoU dated 09.12.2013 and said to have been signed on 07.04.2015. In effect, the relief sought for by the respondents 1 to 4, if granted, would amount to control, management and possession of the property which is the subject matter of the MoU and the property is also situated outside the jurisdictional limits of this Court. As observed earlier, cause of action is immaterial in the instant case, since the relief sought for is in respect of an immovable property which is situated outside the jurisdiction of this Court. The reliefs sought for, come within the ambit of the first part of Clause 12

which deals with a suit for land since the subject property falls outside the jurisdiction of this Court and therefore, this Court does not have the jurisdiction to entertain the suit under Clause 12 of the Letters Patent.

45. Clever drafting of plaint in order to bring the suit for land within the original side jurisdiction of this Court will not help the respondents 1 to 4. The averments and the prayers sought for in the plaint undoubtedly lead to the inference that the suit is a suit for land. In view of the aforesaid reasons given by us in the previous paragraphs, there is no necessity for us to determine whether Section 53-A of the Transfer of Property Act, 1882, is applicable or not as we are not deciding the suit on merits but deciding the same only on its maintainability before the Original Side of this Court.

46. The Division Bench judgments of this Court relied upon by the learned Counsel for the respondents 1 to 4 namely, (2008) 4 CTC 160 and 1997 3 L.W. 391, were considered in the latest Division Bench judgment passed by this Court reported in 2018 3 L.W. 990 and only thereafter, the principles of law on suits for land were enunciated by the Division Bench. Further, in both the cases, it is not clear as to whether the defendant in those cases disputed the possession of the plaintiff over the property. In the case on hand, there is a dispute as to who is in possession of the property. Therefore, the Division Bench judgments referred to by the learned Counsel for the respondents 1 to 4, cited supra, are not applicable to the facts of the instant case.

47. For the aforesaid reasons, we are of the considered view that the suit filed by the respondents 1 to 4 in C.S.No.629 of 2017 before the Original Side of this Court is a suit for land coming within the purview of the first part of Clause 12 of the Letters Patent. Hence, the impugned order of the learned Single Judge is erroneous and not in accordance with law.

48. In the result, the order dated 17.04.2018 made in A.No.8015 of 2017 in C.S.No.629 of 2017 by the learned Single Judge, is hereby set aside and Application No.8015 of 2017 filed by the Appellant for revocation of leave before the learned Single Judge is allowed and the respondents 1 to 4 are permitted to obtain return of the plaint filed in C.S.No.629 of 2017 from the Court registry and file the same before the appropriate Court at Tiruchirapalli, within a period of eight weeks from the date of receipt of a copy of this judgment and consequently

the appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (Co)

//True Copy//

Sub Assistant Registrar

MR

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

+1cc to Mr. Babu Rangasamy, Advocate SR.No. 21086

+1cc to Mr.R.Parthasarathy , Advocate SR.No. 21086
O.S.A.No.260 of 2018
A.SK(01/04/2019)



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