



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 15TH DAY OF DECEMBER, 2020

THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

C.S. No.23 of 2020

and

O.A.No.39 of 2020

and

A.No. 287 of 2020

and

A.No.2746 of 2020 in A.No.9848 of 2019

M.K.M.Aboobakar,
S/o.late Mena Muna Kassim,
No.1/27, Arabia Street,
Thriukkalacherry Post,
Tharangambadi Taluk,
Nagapattinam District.

..Plaintiff/Applicant.

(in O.A.No.39 of 2020 and
A.Nos.9848 of 2019 and
A.No.287 of 2020)

Vs.

Ajima Beevi
W/o. late Abdul Razak,
No.1/231, Madina Street,
Thriukkalacherry Post,
Tharangambadi Taluk,
Nagapattinam District.

..Defendant/Respondent.

(in O.A.No.39 of 2020 and
A.Nos.9848 of 2019 and
A.No.287 of 2020)

C.S. No.23 of 2020

Civil Suit praying that this Hon'ble Court be pleased to pass a decree

and judgment:-



(a) direct the defendant to pay the sum of Rs.1,20,00,000/- (Rupees One Crore and Twenty Lakhs Only) together with interest at the rate of 12% per annum on Rs.1,20,00,000/- from the date of plaint till realisation for the services rendered by the plaintiff in his capacity as Power of Attorney agent of the suit property at Chennai;

(b) For the cost of the suit.

O.A.No.39 of 2020

Original Application praying that this Hon'ble Court be pleased to appoint an Advocate Receiver to collect arrears of rent and current rent from the tenant occupying various portions in the suit property morefully described in the schedule to the judge's summons and deposit the same into court to the credit of the above suit pending disposal of the above suit.

A.No. 287 of 2020

Application praying that this Hon'ble Court be pleased to furnish security for the suit claim of Rs.1,20,00,000/- failing which pass an order of attachment before judgment of the property morefully described in the Schedule to the Judge's summons pending disposal of the above suit.

A.No.2746 of 2020

Ajima Beevi
W/o. late Abdul Razak,
No.1/231, Madina Street,
Thriukkalacherry Post,
Tharangambadi Taluk,
Nagapattinam District.

..Applicant/Defendant

Vs.

M.K.M.Aboobakar,
S/o.late Mena Muna Kassim,
No.1/27, Arabia Street,
Thriukkalacherry Post,
Tharangambadi Taluk,
Nagapattinam District.

..Respondent/Plaintiff



Application praying that this Hon'ble Court be pleased to revoke the leave granted by order 06.01.2020 in A.No.9848 of 2019 in C.S.No.23 of 2020.

This Civil Suit along with these applications coming on this day before this court for hearing in the presence of Mr.S.Sadasharam, Advocate for the Plaintiff in C.S.No.23 of 2020 and for the applicant in O.A.No.39 of 2020 and A.No. 287 of 2020 and for the respondent in A.No.2746 of 2020 and Mr.N.A.Nissar Ahmed, Advocate for the defendant in C.S.No.23 of 2020 and for the respondent in O.A.No.39 of 2020 and A.No.287 of 2020 and for the applicant in A.No.2746 of 2020 and upon reading the Plaint filed in C.S.No.23 of 2020 and the judge's summons and the affidavit of M.K.M.Abookakar filed in O.A.No.39 of 2020 and A.No.287 of 2020 and the judge's summons and the affidavit of Ajima Beevi filed in A.No.2746 of 2020 and this court having observed that the plaintiff and the defendant are residing at Nagapattinam and they are being Senior Citizens the convenience of the parties is relevant, and after all the suit is for recovery of money, if such suit are entertained based on the some service said to have been rendered this court is of the view that it is nothing but harrasment of the aged defendant, it is ordered as follows:-

That the leave granted by order dated 06.01.2020 in A.No.9848 of 2019 in C.S.No.23 of 2020, be and is hereby rejected.

2. That the plaint is returned for representation before the Nagapattinam jurisdiction.



3. That the plaintiff herein, be and is hereby permitted to represent the suit within two months from the date of receipt of a copy of this order by paying the necessary court fee as per the Tamil Nadu Court Fee (Suit and Valuation) Act.

WITNESS THE HON'BLE THIRU AMRESHWAR PRATAP SAHI, THE CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 15th DAY OF DECEMBER, 2020.

Sd/-

ASSISTANT REGISTRAR (O.S.I)

// Certified to be true copy//

Dated at Madras this day of 2021.

Court Officer(O.S.)

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C.S. No.23 of 2020
and
O.A.No.39 of 2020
and
A.No. 287 of 2020
and
A.No.2746 of 2020 in A.No.9848 of 2019

ORDER :-

DATED: 15.12.2020

THE HON'BLE MR. JUSTICE
N.SATHISH KUMAR

FOR APPROVAL:09/02/2021

APPROVED ON: 11/02/2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.12.2020

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THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

C.S.No.23 of 2020
and A.Nos.2746 & 287 of 2020
and OA.No.39 of 2020
in
(*) A.No.9848 of 2019

M.K.M.Aboobakar

...Plaintiff

Vs.

Ajima Beevi

...Defendant

Prayer:- Complaint filed under Order VII rule 1 of CPC and order IV rule 1 of Original Side Rules praying for a decree to

a. direct the defendant to pay the sum of Rs.1,20,00,000/- (Rupees One Crore and Twenty Lakhs Only) together with interest at the rate of 12% per annum on Rs.1,20,00,000/- from the date of complaint till realisation for the services rendered by the plaintiff in his capacity as Power of Attorney agent of the suit property at Chennai;

b. For the cost of the suit

For Plaintiff : Mr.S.Sadasharam

For Defendant : Mr.N.A.Nissar Ahmed



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JUDGMENT

The suit is filed for recovery of money with regard to the immovable property together with interest for the service said to have been rendered by the Power of Attorney agent in Chennai. The relief sought for in the plaint is mainly on the ground of so called services rendered in respect of the immovable property in which the Power of Attorney has been given by the defendant. The plaintiff has been appointed as the Power of Attorney to look after immovable property which is situated within the jurisdiction of this Court.

2. The learned counsel appearing for the plaintiff submitted that the plaintiff has looked after the property as an agent and he has done a service and maintained the property, therefore he is entitled to recover a sum of Rs.1,20,00,000/- from the defendant.

3. Further reading of the plaint allegation indicates that the power deed has already been canceled by the defendant. Now the suit has been filed before this Court claiming a sum of Rs.1,20,00,000/- for the service rendered by the plaintiff. While entertaining the suit leave was granted by

this Court. Now this Application has been filed by the defendant mainly on



the ground that both the plaintiff and the defendant are admittedly residing within the jurisdiction of Nagapattinam, Chennai and aged about 83 and 75 years old respectively. Merely because the Power of Attorney was registered in Chennai, the part of cause of action itself may not be determinative factor to decide territorial jurisdiction. It is only a suit for recovery of money, since the parties are residing at Nagapattinam outside the jurisdiction of this Court, the convenience of parties are germane for consideration rather than the part of cause of action, hence, an application has been taken out to revoke the leave granted by this Court vide order dated 06.01.2020 in A.No.9848 of 2019.

4. Further it was submitted that the plaintiff and respondent are aged 83 and 75 years respectively both are residing at Nagapattinam. Suit is filed simply for recovery of money in respect of immovable property for alleged expenses. Such being the case, merely because power of attorney has been executed in Chennai which was later canceled that will not give a cause of action to lay a suit for recovery of money for the so called services rendered by the Power of Attorney in respect of the immovable property. Hence it is his contention that as both parties are residing outside the jurisdiction of this Court, convenience of the parties is relevant rather than part of cause of

action. Hence, leave granted by this Court has to be rejected. In support of



his contention the learned counsel placed reliance on the judgments in 2002

(1) CTC Page No.134 in the case of *Parameswari Veluchamy and two others Vs T.R.Jayaraman and seven others* and AIR 1997 (1) law weekly Page No.117 in the case of *Babu Singh Vs Union of India* and AIR 2004 (3) SC 2321 in the case of *M/s.Kusum Ingots & Alloys Ltd., Vs Union of India and another.*

5. Whereas the learned counsel for the defendant vehemently contended that whether there is a cause of action or not only plaintiff allegation are germane for consideration not the defence. In the entire pleadings, it is clearly pleaded that the power of attorney was executed within the jurisdiction of this Court and the entire service in respect of immovable property were done by the defendant within the jurisdiction of this Court. Therefore his contention is that as the entire cause of action with regard to the immovable property has arisen within the jurisdiction of this Court and merely because the parties are residing outside the jurisdiction of this Court, it cannot be said that this Court has no jurisdiction to entertain this suit. Hence it is his contention that as per clause 12 of the letters patent, even part of cause of action arose within the jurisdiction of this Court, suit can very well be maintained. Whereas, in this case, the entire cause of action arose within the jurisdiction of this Court, hence, prayed for dismissal



of the suit. In support of which the learned counsel relied on judgment reported in 2004 (3) CTC 380 in the case of ***Indian Mineral & Chemicals Co. & others Vs Deutsche Bank***

6. Perused the entire materials. The suit has been filed for recovery of money on the ground that service rendered in respect of immovable property covered under power of attorney executed by the plaintiff to maintain the property. It is not in dispute that the so called Power of Attorney and its cancellation. Now the suit has been filed before this Court for recovery of Rs.1,20,00,000/- for the services said to have been rendered by the plaintiff. It is also not in dispute that both the parties are residing in Nagapattinam and both are senior citizens. Though the Power of Attorney was executed by the defendant in favour of the plaintiff to maintain the property which is situated within the jurisdiction of this Court, the suit is not in respect of any immovable property or in respect of execution of power of attorney. The suit has been filed after the power has been canceled claiming for so called service charges, therefore the suit in substance is only for recovery of money said to be due from the defendant.

7. Admittedly, both are residing in Nagapattinam, therefore convenience of the parties is moreover relevant rather than part of cause of



action arose within the jurisdiction of this Court. Merely because the Power of Attorney has been executed within the jurisdiction of this Court and some service said to have been given by the plaintiff in respect of the immovable property, this Court is of the view that the same cannot be a ground to entertain the suit on the ground that there is part of cause of action arose within the jurisdiction. Admittedly in this case both the plaintiff and the defendant are senior citizens aged about 83 and 75 years respectively, in such view of the matter merely because the Power of Attorney admittedly executed and canceled within the jurisdiction of this Court, the suit for recovery of money will not be maintainable before this Court, the same will be maintainable only before concerned jurisdiction where the defendant is residing. Though Section 20 of CPC and Clause 12 of letters patent operates in different field, forum convenience also cannot be ignored, considering the facts of the present case. In this case admittedly the parties are senior citizens aged 83 and 75 years respectively, such view of the matter it will be more convenient to the parties to agitate their rights before the Courts within the jurisdiction where they reside. In such view of the matter leave granted by this Court in A.No.9848 of 2019 dated 06.01.2020 has to be necessarily revoked. In 2002 (1) CTC Page No.134 in the case of

Parameswari Veluchamy and two others Vs T.R.Jayaraman and seven

others has held that the convenience of the parties is to be taken mainly.



Similarly in AIR 1997 (1) law weekly Page No.117 in the case of **Babu Singh Vs Union of India** and in AIR 2004 (3) (SC) 2321 in the case of **Indian Mineral & Chemicals Co. & others Vs Deutsche Bank** similar view has been taken. Wherein in this case both the plaintiff and the defendant are residing at Nagapattinam and they are being Senior Citizens the convenience of the parties is relevant. After all the suit is for recovery of money, if such suit are entertained based on the some service said to have been rendered this Court is of the view that it is nothing but harassment of the aged defendant. Accordingly the leave granted by this Court is rejected and the plaint is returned for representation before the Nagapattinam jurisdiction Court and plaintiff is given permission to represent the suit within two months from the date of receipt of a copy of this order by paying the necessary Court fee as per the Tamil Nadu Court Fee and Suits Valuation Act.

Sd/-N.S.K.J.
15.12.2020

// Certified to be true copy//
Dated at Madras this day of 2021.

Court Officer(O.S.)
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