

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 29TH DAY OF JANUARY 2020

THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

A.NO.6436 OF 2019

IN

C.S.DIARY NO.55466 OF 2019

M/S.SRI GURU MISHRI FOUNDATION
PARTNERSHIP FIRM
REPRESENTED BY ITS PARTNER
MR.LICKMI CHAND SINGHVI
NO.72, JERIMIAH ROAD,
VEPERY CHENNAI 600 007. ...Plaintiff

-vs-

1. GAUARA BAI FAMILY TRUST,
REPRESENTED BY ITS TRUSTEE.
MR.D.SHANTILAL BAFNA,
371/1, MINT STREET,
SOWCARPET, CHENNAI-600 001

2. MR.D.SHANTILAL BAFNA,
S/O.MR.DHANRAJ,
OLD NO.88, NEW NO.40,
DR.ALAGAPPA ROAD,
PURASAWALKKAM, CHENNAI-600 084.

3. MRS.AMRATH KAWAR,
W/O.MR.D.SHANTILAL BAFNA,
OLD NO.88, NEW NO.40,
DR.ALAGAPPA ROAD,
PURASAWALKKAM, CHENNAI-600 084.

4. MR.K.GOUTHAMCHAND,
S/O.D.KEWALCHAND,
NO.5,6 AND 7 STEPHENSON ROAD,
NORTH TOWN APARTMENTS,
PERAMBUR, CHENNAI-600 011.

5. MR.ARIHANT KUMAR,
35, CANRON SMITH ROAD,
CHENNAI-600 086.

NO.3, M R M STREET,
WEST TAMBARAM,
CHENNAI - 600 045.

7. MR.MAHAVEER CHAND
C/O.SRI LAKSHMI JEWELLERY
NO.508, M.K.N.ROAD,
ALANDUR, CHENNAI 600 016.

8. PADMA KAWAR,
W/O.GOUTAMCHAND
NO.5,6 AND 7 STEPHENSON ROAD,
NORTH TOWN APARTMENTS,
PERAMBUR, CHENNAI-600 011.

9. MARUDHAR KESARI ESTATE,
REP.BY ITS PARTNER,
MR.D.SHANTILAL BAFNA,
NO.371, MINT STREET,
CHENNAI-600 001.

...DEFENDANTS

A.NO.6436 OF 2019:

M/S.SRI GURU MISHRI FOUNDATION
PARTNERSHIP FIRM
REPRESENTED BY ITS PARTNER
MR.LICKMI CHAND SINGHVI
NO.72, JERIMIAH ROAD,
VEPERY, CHENNAI 600 007.

...Applicant/Plaintiff

-VS-

1. SMT.SUSILA BAI
W/O.UGANRAJ,
NO.3, M R M STREET,
WEST TAMBARAM,
CHENNAI - 600 045.

2. MR.MAHAVEER CHAND
C/O.SRI LAKSHMI JEWELLERY
NO.508, M.K.N.ROAD,
ALANDUR,
CHENNAI 600 016.

..1st and 2nd Respondents/6th and 7th Defendants

Application praying that this Hon'ble Court be pleased
to grant leave to file a suit against 6th and 7th
Respondents/Defendants in the above suit.

Application coming on this day before this court for
hearing and the Court made the following order:

This application has been filed seeking leave to sue the respondents herein, who are the sixth and seventh defendants in the suit, before this Court.

2. I heard the learned counsel for the applicant/plaintiff, the learned senior counsel for the respondents 2 to 3 and the learned counsel for the 6th and 7th respondents in the application.

3. The learned counsel for the applicant submitted that the suit is filed for dissolution of the 9th defendant partnership firm and for rendition of accounts. He further submitted that the sixth and seventh respondents in the application are the beneficiaries of the 1st defendant family trust, which entered into a partnership through its trustees namely, the 2nd and 3rd respondents. In view of the fact that the cause of action arose within the jurisdiction of this Court and only the 6th and the 7th defendants reside outside the jurisdiction, he submitted that the present application has been taken out and is liable to be allowed.

4. In response, the learned Senior counsel for the 2nd and 3rd defendants submitted that the suit is an abuse of process and amounts to re-litigation. In particular, he pointed out that there were previous rounds of litigation between the parties. The first round of litigation culminated in a compromise decree dated 28.06.2011 in C.S.No.912 of 2010. Thereafter, another suit in O.S.No.270 of 2013 was filed and the defendants 4, 7, 8 & 9

herein filed a written statement in the said suit stating that they have relinquished their rights and interest in the subject property pursuant to a family arrangement and therefore, they are neither necessary nor proper parties in the said suit, C.S.No.270 of 2013. He also pointed out that a memorandum of understanding was entered into on 28.04.2016, whereby the property in question was divided between the parties and the respective portions were also earmarked. Consequently, he submitted that this suit is clearly an abuse of process because the partnership firm does not own any property and there is no scope for rendition of accounts either.

4. By way of rejoinder, the learned counsel for the applicant submitted that the 6th and 7th defendants are admittedly the beneficiaries in the first defendant Trust and that therefore, it is necessary to implead them as parties in the suit. He further submitted that the 6th defendant has in any event given her no objection to being sued before this Court.

5. I considered the submissions of the respective learned counsel/senior counsel for the parties and examined the plaint and relevant documents.

6. The learned Senior counsel took me through various Court proceedings between the same parties and a compromise entered into pursuant thereto. On that basis, he submitted that the present suit constitutes an abuse of process and that the parties included as the respondents,

in this application, are neither necessary nor proper parties. At this juncture, these questions cannot be definitely decided. In addition, it is always open to the second and third defendants to take out appropriate applications in order to establish that the plaint is liable to be rejected or to delete certain parties from the array of parties. However, in view of the fact that a substantial part of the cause of action has arisen within the jurisdiction of this Court, this application is liable to be allowed. Therefore, this application is allowed, and leave is granted to sue the 6th and 7th respondents before this Court.

Sd/-S.K.R.J.
29.01.2020

//Certified to be true copy//
Dated at Madras this the day of 2020.

COURT OFFICER(O.S.)

Su.11.02.2020

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