

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.03.2021

Pronounced on : 16.04.2021

CORAM

THE HON'BLE MR.JUSTICE R.PONGIAPPAN

A.No.2288 of 2020

in

C.S.No.64 of 2020 and OA No.101 of 2020

1. Mr.VGP.Babudas
2. Mr.VGP.Ravidas
3. Mr.VGP.Rajadas
4. Mr.VGP.Prasadas
5. Mr.VGP.Murphydas
6. Mrs.Jayathi Selvamanikam
7. Mr.V.G.Santhosam

... Applicants/defendants 1 to 5, 8 & 9

Vs.

1. Mr.V.G.Selvaraj
2. Mr.V.G.S.Vinodth Raj
3. Mr.V.G.S.Bharath Raj
4. Mr.S.Vatchaladevi

... Respondents/Plaintiffs

5. Mr.Shanthi Gnanasekar
6. Mrs.Usha Rajkumar
7. Mr.V.G.S.Rajesh
8. Mrs.Latha David

9. Mrs.Elizabeth Rani Jesuraj

10. Mrs.Selvi Julian

11. Mrs.Amudha Rajan

... Respondents/Defendants 6, 7, 10 to 14

Prayer: This application is filed under Order XIV Rule 8 of the Original Side Rules read with Clause 12 of the Letters Patent and Order III Rule 1 of Original Side Rules, praying to revoke the leave granted on 06.02.2020 in A.No.490 of 2020 by this Court in relation to suit Schedule B properties and consequently, reject the plaint in relation to suit Schedule B properties.

For Applicants : Mr.V.Suresh
for M/s.Shivakumar and Suresh

For Respondents : Mr.C.Arun C.Mohan (for R1 to R4/plaintiffs)
Mr.R.Saravanakumar (For R7/D10)

ORDER

Defendants 1 to 5, 8 and 9 in C.S.No.64 of 2020, pending on the file of this Court, are the applicants herein. They have filed this application under Order XIV Rule 8 of the Original Side Rules read with Clause 12 of the Letters Patent and Order III Rule 1 of Original Side Rules, seeking the relief to revoke the leave granted by this Court on 06.02.2020 in Application No.490 of 2020 and consequently, to reject the plaint, in respect to Schedule 'B' Properties

2. The instant suit has been filed by respondents 1 to 4 herein as against applicants herein and the respondents 5 to 11, claiming partition in suit 'A' and 'B' schedule properties. Since the suit 'B' Schedule properties, is situated outside the jurisdiction of this Court, while at the time of filing the suit, the plaintiffs/respondents 1 to 4 herein, filed an application in A.No.490 of 2020 praying to grant leave to sue the respondents 8 to 10 herein/defendants 11 to 13, in respect to suit 'B' schedule properties. This Court by order dated 06.02.2020, allowed the said application and granted leave to sue respondents 8 to 10 herein/defendants 11 to 13, in respect to suit 'B' schedule properties. Thereafter, while at the time the suit is posted for filing written statements, the applicants herein had approached this Court and filed this application, for the relief stated supra.

3. The first and foremost contention raised by the learned counsel appearing for the applicants is that cause of action in respect to suit 'A' and 'B' schedule properties, is different and separate one. Further, for clubbing the cause of action, no application has been filed by the respondents 1 to 4/plaintiffs. More than that, under Order II Rule 3, joining of cause of action is not permissible.

Further, Clause 14 of the Letters Patent, is a bar to club the cause of action in respect to the suit on land. He would further submit that in the said circumstances, granting leave to sue the respondents 8 to 10 herein/defendants 11 to 13, in respect to Schedule 'B' properties, is a violative of procedure laid down under the Letters Patent Act and accordingly, the leave granted by this Court, is liable to be revoked.

4. In response to the submissions made by the learned counsel appearing for the applicants/defendants 1 to 5, 8 and 9, the learned counsel appearing for the respondents 1 to 4/plaintiffs would contend that the suit 'A' and 'B' Schedule properties are the properties acquired by the famous V.G.Pannerdass and his family members. Now, after the demise of the said V.G.Pannerdass, due to the dispute arose between the family members, the present suit has been filed for the relief of partition.

5. The learned counsel would further contend that only because of the reason that the partition is between the family members, for avoiding multiplicity of proceedings, the instant suit has been filed, after getting leave from this Court.

In the said circumstances, if the leave granted by this Court is revoked, it would cause hardship to the parties concerned and accordingly, the learned counsel for the respondents 1 to 4/plaintiffs, prayed to dismiss this application.

6. The submissions made by the learned counsel appearing on either side are considered.

7. Admittedly, the suit 'A' schedule properties are situated within the jurisdiction of this Court, and the suit 'B' schedule properties are situated out of the jurisdiction of this Court. Now on seeing the plaint averment it seems that the plaintiff Nos.2 and 3 have claimed partition against Defendants 1 to 8 in respect to suit 'A' Schedule properties. On the other hand, the plaintiff No.4 alone claims partition against defendants 9 to 14, in respect to suit 'B' schedule properties. In the said situation, on going through the cause of action, in respect to suit 'B' schedule properties, in plaint, in paragraph No.7 it was narrated as follows:

“the suit 'B' schedule properties, were jointly purchased in the name of Mrs.P.Parijatham, w/o. Late V.G.Paneerdass, Late Mrs.S.Philomanal, w/o.V.G.Santhosam and 4th plaintiff viz., Mrs.S.Vatchaladevi, w/o.V.G.Selvaraj.

Out of the three joint purchasers, only the 4th respondent/plaintiff, is alive. Being the purchaser, she is entitled to receive 1/3 share in suit 'B' schedule properties.”

Therefore, as per the pleadings set out in the plaint, the defendants 9 to 14 have no claim whatsoever in respect to suit 'A' schedule properties, further, it makes clear that in respect to the suit 'B' schedule properties, the cause of action arisen, is a separate one.

8. Therefore, in respect to the suit 'B' schedule properties, in the present scenario, it is necessary to see, whether the leave granted by this Court is maintainable or not. No doubt, since the suit has been filed for the relief of partition, the same can be termed as 'suit on land'. In the said circumstances, now, on going through Section 17 of the Code of Civil Procedure, it would appear that if the immovable property situated within the jurisdiction of different Court, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situated. In this regard, Section 16 & 17 of CPC reads as follows:

16. Suits to be instituted where subject-matter situate.-Subject to the pecuniary or other limitations prescribed by any law, suits-

- (a) for the recovery of immovable property with or without rent or profits,
- (b) for the partition of immovable property,
- (c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property,
- (d) for the determination of any other right to or interest in immovable property,
- (e) for compensation for wrong to immovable property,
- (f) for the recovery of movable property actually under distraint or attachment, shall be instituted in the Court within the local limits of whose jurisdiction the property is situate :

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant, may where the relief sought can be entirely obtained through his personal obedience be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

17. Suits for immovable property situate within jurisdiction of different courts.- Where a suit is to obtain relief respecting, or compensation for wrong to, immovable property situate within the jurisdiction of different Court, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate :

Provided that, in respect of the value of the subject matter of the suit, the entire claim is cognizable by such Court.

9. So, the person who claims partition is entitled to file a suit before the Court, which is having jurisdiction in respect to one of the suit property. But here it is a case, leave has been granted under clause 12 of the Letters Patent, which 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 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 Court at Madras, in which the debt or damage, or value of the property sued for does not exceed one hundred rupees.”

10. Further, from the law laid down by our Hon'ble Supreme Court in *Food Corporation of India Vs. Evdomen Corporation*, reported in 1992 (2) SCC 446, followed by *Jindal Vijayanagar Steel (JSW Steel Ltd.) Vs. Jindal Praxair Oxygen Co. Ltd.*, reported in 2006 (11) SCC 521, it appears that under Clause 12

of the Letters Patent, this Court has jurisdiction to try the suit if the defendant resides or carries on business or has a place of business within its territorial jurisdiction, even if no part of the cause of action arose within its jurisdiction.

11. By considering the same with relevant records, here it is a case, the factual position narrated in the plaint is a different one. The learned counsel appearing for the applicants, clearly indicated the situation that in respect to the suit 'B' schedule properties, the plaintiff No.4 alone is claiming partition, further, the cause of action arisen in respect to suit 'B' Schedule properties, is no way connected in respect to the suit 'A' schedule properties.

12. In this connection, it is necessary and useful to see the judgment of our Hon'ble Apex Court in *Shivnarayan Vs. Maniklal*, reported in **2019 (SCC) OnLine SC 136**, wherein our Hon'ble Apex Court has held as follows:

“30. Now, we revert to the facts of the present case and pleadings on record. The suit filed by the appellant contained three different sets of defendants with different causes of action for each set of defendants. Defendant Nos. four to six are defendants in whose favour Will dated 15.02.2000 was executed by late Smt. Vimal Vaidya.

In the plaint, relief as claimed in paragraph 25(H) is the will executed by late Smt. Vimal Vaidya was sought to be declared as null and void. The second cause of action in the suit pertains to sale deed executed by late Smt. Vimal Vaidya dated 15.10.2007 executed in favour of defendant Nos.7 and 8 with regard to Bombay property. The third set of cause of action relates to transfer documents relating to Indore property which was in favour of defendant Nos.9 and 10. The transfer documents dated 21.10.1986, 21.11.1988 and 20.08.1993 are relating to Indore property. The plaint encompasses different causes of action with different set of defendants. The cause of action relating to Indore property and Bombay property were entirely different with different set of defendants. The suit filed by the plaintiff for Indore property as well as Bombay property was based on different causes of action and could not have been clubbed together. The suit as framed with regard to Bombay property was clearly not maintainable in the Indore Courts. The trial court did not commit any error in striking out the pleadings and relief pertaining to Bombay property by its order dated 17.08.2011.

31. Learned counsel for the appellant has also referred to and relied on order II Rule 2 and Order II Rule 3 C.P.C. Learned counsel submits that order II Rule 2 sub-clause (1) provides that every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action. The cause of action according to Order II Rule 2 sub-clause (1) is one cause of action. What is required by Order II Rule 2 sub-clause (1) is that every suit shall include the whole of the claim on the basis of a cause of action. Order II Rule 2

cannot be read in a manner as to permit clubbing of different causes of action in a suit. Relying on Order II Rule 3 learned counsel for the appellant submits that joinder of causes of action is permissible. A perusal of sub-clause (1) of Order II Rule 3 provides that plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly. What is permissible is to unite in the same suit several causes of action against the same defendant, or the same defendants jointly. In the present case suit is not against the same defendant or the same defendants jointly. As noticed above there are different set of defendants who have different causes of actions.”

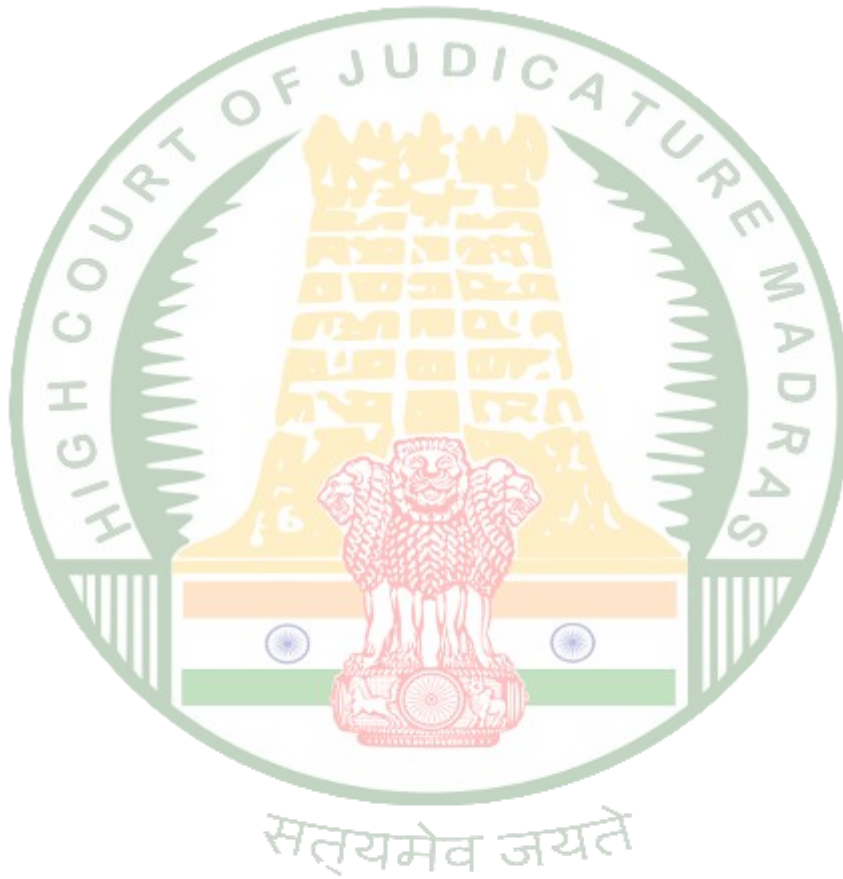
13. In the above referred judgment, our Hon'ble Apex Court has ruled the principle that if the cause of action has arisen against the different defendants, a single suit cannot be maintainable before this Court. Herein also, the cause of action in respect to the suit 'B' schedule properties, is not against the same defendants. Therefore, it is concluded that the suit filed in respect to suit 'B' schedule properties is maintainable only in District Court at Chengalpet.

14. Accordingly, this Court is of the considered opinion that in respect to the suit 'B' Schedule properties, the 4th plaintiff herein has to file a separate suit before the District Court, Chengalpet only and thereby, the leave granted by this

Court in respect to suit 'B' schedule properties, is revoked with liberty to the 4th plaintiff to file a fresh suit, before the appropriate forum, in respect to the suit 'B' schedule properties. In otherwise, in respect to suit 'A' schedule properties, the suit shall be proceeded with. Application No.2288 of 2020, is allowed, accordingly.

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R.PONGIAPPAN, J.

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Pre-delivery order in
A.No.2288 of 2020
in C.S.No.64 of 2020
and OA No.101 of 2020

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