

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 30.06.2021

Orders Pronounced on : 06.08.2021

Coram:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Application No.2590 of 2020
in
C.S.Diary No.71418 of 2020

1. Dr.C.L.Metha Educational Trust
(formerly known as C.L.Baid Metha College of Pharmacy),
Represented by its Founder and Managing Trustee,
Harish L.Metha,
Old No.62, New No.20, Burkit Road,
Chennai0-600 017.
2. Harish Metha, S/o Late Dr.C.L.Metha
3. Uday Metha, S/o Late Dr.C.L.Metha .. Applicants/plaintiffs

WEB COPY
Vs.

1. Tamil Nadu Chemists and Druggists Trust,
Represented by its Chairman R.Srinivasan,

No.2/305, Rajiv Gandhi Salai,
Thuraippakkam, Chennai-600 097.

2. C.L.Metha Sishya OMR School Trust,
Represented by Rajesh Khanna,
No.1/D, Highland Apartments,
4th Cross Road, Ormes Road,
Kilpauk, Chennai-600 010.

3. R.Srinivasan

4. K.K.Selvan

5. Mr.Rajesh Khanna

6. Mrs.Priyamvada Srinivasan

7. Shiksha Samithi Trust,
Represented by R.Srinivasan,
No.4/1, Shantha Priya Apartments,
135 Pillaiyar Koil Street,
Thuraipakkam, Chennai-600 097.

.. Respondents/defendants

Judge's Summons under Order XIV Rule 8 of the Madras High Court
Original Side Rules and Order III Rule 1 of the said Rules, read with Clause
12 of the Letters Patent and Application No.2590 of 2020 is filed praying
for leave to the applicants/plaintiffs to institute the present suit against the
respondents 1,3,4 and 7/defendants 1,3,4 and 7.

For applicants : Mr.V.Lakshmi Narayanan for M/s.Avinash Krishnan Ravi

For respondents: Mr.E.Om Prakash, Senior Counsel
for Mr.S.S.Rajesh for R-1/Caveator
and also for RR-2, 5 and 6

ORDER

This application is filed praying for leave to the applicants/plaintiffs to institute the present suit against the respondents 1,3,4 and 7/defendants 1,3,4 and 7.

2. The applicants are the plaintiffs in the suit.

3. The suit in C.S.D.No.71418 of 2020 has been filed for the following reliefs:

(a) to declare that C.L.Baid Metha College of Pharmacy is an institution owned, maintained and run by the first plaintiff;

(b) for permanent injunction restraining the defendants, their servants, agents or men, from in any manner, interfering with the ownership,

possession, administration or management of C.L.Baid Metha College of Pharmacy;

(c) to declare that C.L.Metha Sishya OMR School is an institution founded, owned, maintained and run by the first plaintiff herein;

(d) for permanent injunction restraining the second defendant, its servants, agents or men, from in any manner, interfering with the ownership, possession, administration or management of C.L.Metha Sishya OMR School;

(e) to declare that the first defendant is defunct and the first plaintiff is the successor-in-interest of all its assets, liabilities and activities;

(f) for permanent injunction restraining the second to seventh defendants, their servants, agents or men, from in any manner, interfering with any activity of the first plaintiff in pursuing the objects of the first defendant,

(g) and for costs of the suit.

4. This application has been filed seeking leave of this Court under Clause 12 of the Letters Patent for the reason that the first respondent/first

defendant-Tamil Nadu Chemists and Druggists Trust and the respondents 3, 4 and 7/defendants 3, 4 and 7, are located outside the jurisdiction of this Court, though substantial part of cause of action for laying the suit arose within the jurisdiction of this Court.

5. The leave application is strongly opposed by the respondents/defendants.

6. Mr.V.Lakshmi Narayanan, learned counsel representing Mr.Avinash Krishnan Ravi, for the applicants/plaintiffs, at the outset, referred to different prayers sought in the suit. With reference to the prayers made in the plaint, the learned counsel drew reference to the sale deed dated 27.07.1960 between one R.Rajagopal Pillay and two others, in favour of C.Manickchand Jain and C.Lakshmichand Mehta, the latter being the father of the second applicant herein and the Founder and Managing Trustee of the first applicant-Trust. The third applicant is also son of the latter. The properties of an extent of 33.47 acres situated at Oggiam Thoraipakkam Village, Chengalpet District. According to the learned counsel for the

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applicants/plaintiffs, the sale transaction in which the property(ies) had been purchased, took place at Purasawalkam in the then Madras.

7. The learned counsel for the applicants/plaintiffs referred to the subsequent sale executed on 09.04.1975 in the then Madras by the above said C.Lakshmichand Mehta and others, in favour of the Tamil Nadu Educational and Medical Trust, with regard to the same extent of property at No.148, Oggiam Thorapakkam Village, Saidapet Sub-Registration District, Chingleput Registration District.

8. The learned counsel for the applicants/plaintiffs further referred to College of Pharmacy Trust Deed, created on 07.03.1980 executed by C.M.Metha and others, in which the father of the applicants 2 and 3/plaintiffs 2 and 3, was a Trustee, and the said Trust Deed was also executed in Chennai.

9. The learned counsel for the applicants/plaintiffs also drew reference of this Court to the City Civil Court's proceedings, dated

30.06.2006 in O.S.No.12747 of 1996, wherein compromise was arrived at between C.L.Baid Metha College of Pharmacy College Committee, which is presently known as the first applicant/first plaintiff. In the said Compromise Memo, one of the clauses state that the President and Secretary of the Tamil Nadu Chemists and Druggist Association shall be the Special Invitee for the College Committee meetings.

10. The learned counsel for the applicants/plaintiffs, proceeded to refer to the meeting of the first respondent/Tamil Nadu Chemists and Druggists Educational Trust, dated 03.01.2005, which was held at No.62, Burkit Road, T.Nagar, Chennai. In the said meeting, it was decided to expand the educational activities and infrastructure in the field of basic schooling, arts and science, medicine and para-medical, pharmacy, engineering, management science and humanities and a decision was taken for formation of an independent Trust in the name of C.L.Metha Educational Trust, the first applicant/first plaintiff herein.

11. The learned counsel for the applicants/plaintiffs further referred to

the Resolution of the Meeting of the Tamil Nadu Chemists and Druggists Educational Trust held on 16.03.2005, transferring the property measuring about 4.87 acres with the building to the newly formed Trust, namely Dr.C.L.Metha Education Trust, with basic similar objectives of this Trust. Thereafter, another Trust Deed was executed on 29.06.2005 by the second applicant declaring that the Trust shall hence-forth be called as C.L.Baid Metha College of Pharmacy, located at Old No.62, New No.20, Burkit Road, T.Nagar, Chennai-600 017.

12. A General Power of Attorney was also executed on 14.11.2005 in regard to the management of the properties at No.148, Oggiam Thorappakkam Village, Saidapet Taluk, Kanchipuram District (formerly known as Chinglepet District), by the Trustees. The applicant/Dr.C.L.Metha Educational Trust (first plaintiff)'s Trust meeting was also held only at their office at No.62, Burkit Road, T.Nagar, Chennai-600 017, which was evidenced by the Minutes of the meeting recorded on 10.12.2009. In the said meeting, it was decided that, on the basis of the proposal of the third respondent/third defendant for starting a premier School called "Shishya"

and the School Committee was also formed for the said purpose, in which the second applicant was appointed as Secretary and Correspondent and the third applicant was appointed as Committee Member and the third respondent/R.Srinivasan was appointed as Vice-Chairman.

13. The learned counsel for the applicants/plaintiffs further drew the attention of this Court to the amendment of the Trust Deed, dated 07.03.1980 (Document bearing No.297/1980), in which also, the first respondent/The Tamil Nadu Chemists and Druggists Educational Trust, is shown to be represented by the second applicant being the Executive Trustee, the second applicant herein, and shown as the resident of Burkit Road, T.Nagar, Chennai. The School is to be created under the auspices of the first applicant/first plaintiff.

14. The learned counsel for the applicants/plaintiffs also referred to the General Power of Attorney, dated 31.10.2011 executed by the first respondent/first defendant (Tamil Nadu Chemists and Druggists Educational Trust) constituting Dr.C.L.Metha Educational Trust,

represented by the Trustee and Secretary and Correspondent of Dr.C.L.Metha Sishya School being the third respondent herein, in respect of the management of the properties at Okkiam Thoraipakkam Village and while executing the Power of Attorney, the first respondent-Tamil Nadu Chemists and Druggists Educational Trust was having its office only at No.62, Burkit Road, T.Nagar, Chennai.

15. The learned counsel for the applicants/plaintiffs further referred to another General Power of Attorney which was executed on the same date (31.10.2011) by the first respondent/first defendant (Tamil Nadu Chemists and Druggists Educational Trust) constituting Dr.C.L.Metha Educational Trust, represented by the Trustee and Secretary and Correspondent of Dr.C.L.Metha Sishya School being the third respondent herein with similar description of address in respect of B-schedule property described therein at the same place, i.e. Okiam Thoraipakkam Village, Sholinganallur Taluk, Kancheepuram District.

16. The learned counsel for the applicants/plaintiffs also drew

reference to the Bank Accounts maintained by Dr.C.L.Metha Educational Trust (the first applicant/first plaintiff) in Chennai, wherein the communication of the Bank is addressed to the third applicant/third plaintiff at Nungambakkam High Road, Chennai-600 034.

17. The learned counsel for the applicants/plaintiffs referred to various decisions of this Court in support of the applicants' prayer for grant of leave. He relied on an earliest decision of this Court, dated 16.01.1935 in C.R.P.No.1096 of 1934 (M.Ar.Rm.M.Annamalai Chettiar and others Vs. Al.A.C.T.Solaiyappa Chettiar and another), reported in MANU/TN/0035/1935 = AIR 1935 Madras 983 = 1935 (42) LW 505 = 1935 (69) MLJ 274. He would refer to paragraph-15 therein, which is extracted hereunder:

"15. To sum up, the debt in question has two local situations: (1) Where the debtors reside, namely Pallathur within the jurisdiction of the Ramnad District Court, and (2) Where the debt can be enforced on the ground that a part of the cause of action arises there, i.e. Vedaranyam (within the jurisdiction of the Sub-Court of Tiruvarur) where the trusts are to be executed; the cause of action arises there in part on a further ground, namely that there is an implied promise on the part of the debtor to pay where the creditor resides. At the plaintiff's option the suit could

have been filed in either of the two Courts mentioned above. I must therefore hold that this suit, so far as the first endowment is concerned, has been properly instituted in the Sub-Court of Tiruvarur. But under Section 92 of the Civil Procedure Code, both the Sub-Court and the District Court to which it is subordinate have concurrent jurisdiction, and for reasons which will hereafter appear, I direct the transfer of this suit from the Sub-Court of Tiruvarur (which I have held, has jurisdiction) to the District Court of East Tanjore (to which that Court is subordinate) which also possesses jurisdiction."

18. The learned counsel for the applicants/plaintiffs then referred to another decision of a Division Bench of this Court, dated 05.04.2005 in O.S.A.Nos.31 and 32 to 34 of 2005, dated 05.04.2005, reported in MANU/TN/0411/2005 = 2005 (2) CTC 368 = 2005 (2) LW 495 = 2005 (2) MLJ 502 = AIR 2005 Madras 392 (Mazdoor Welfare Trust and others Vs. The Southern Railway Mazdoor Union and others), and paragraph 6 therein reads as follows:

"6. In view of the limited question involved in these appeals, it is unnecessary for this Court to go into all the factual details as referred to by both parties. However, in view of the objection raised by the appellants herein/contesting defendants, we perused the plaint averments, particularly the information given in the cause of action paragraph (para 4). It is specifically stated in that paragraph that the first respondent Trust was established by

registration of a Deed of Trust in Chennai within the jurisdiction of this Court. It is also stated that the Trust developed in status on account of donations received from Railwaymen through the office bearers of plaintiff Union at Chennai, in 1994-95. On verification of the above details and other pleadings, we are satisfied that there is a public Trust and two persons who have an interest in the said Trust joined together and laid the present suit. Further, they have to obtain leave of the Court and whole or any part of the subject matter of the Trust is to be situated within the local limits of the Court in which such suit is filed. The plaint must also state the relief mentioned in Section 92 C.P.C. As said earlier, we are satisfied that the plaintiffs have substantial interest in the Trust. Apart from the specific averments regarding donations/contributions by various members of the Union, Mr.Krishnamurthy, learned senior counsel for the contesting respondents, has brought to our notice the details annexed in the form of separate type-set. The perusal of those details would amply show that several donations by way of contributions from various Mazdoor Unions have been sent to the Trust and those amounts were credited in the bank account at Chennai. As rightly observed by the learned Single Judge, Trust property means money belonging to the trust and it was established that on the day when the suit was filed, the Trust was having a bank account in Chennai within the jurisdiction of this Court."

19. The learned counsel for the applicants/plaintiffs further referred to another decision of a Division Bench of this Court dated 15.09.2020 in O.S.A.Nos.213 to 215 of 2019 in C.S.No.194 of 2019, reported in MANU/TN/5070/2020 = 2021 (1) CTC 595 = 2020 (5) LW 124 = 2020 (7) MLJ 305 = 2021 (2) MWN 67 (G.I.Retail Private Limited Vs. Goomo Orbit

Corporate & Leisure Travels (I) Private Limited and others), and more particularly, he drew reference to paragraphs 51 and 52 therein, which reads as follows:

"51. In this case, part of cause of action, as already stated, arose at Chennai for the following reasons:

(i) The situs of sale of 1st defendant's shares by the plaintiff/appellant to the 3rd defendant is at Chennai.

(ii) The 1st defendant company, the sale of whose shares forms the basis of the 2nd defendant's net publication dated 27.10.2015 and the present suit, was located at Chennai, in 2015, within the territorial jurisdiction of this Court as per Clause 12 of the Letters Patent.

(iii) The flow of funds regarding sale of shares of the first defendant took place in Chennai.

(iv) The 2nd defendant alleged through net statement on 27.10.2015 as if it acquired the shares of the 1st defendant company located at Chennai from the plaintiff directly at the first instance and plaintiff made huge profit suggesting without role of third defendant, contrary to the facts.

(v) The effect of the malicious press statements of the 2nd defendant dated 27.10.2015 regarding the above sale of shares has been felt in Chennai as the plaintiff/appellant company is located in Chennai.

(vi) The Bankers of the plaintiff/appellant, located in Chennai, restricted the financial assistance.

(vii) The plaintiff company is located at Chennai.

(viii) The email correspondence dated 04.06.2018, 27.06.2018 and 01.12.2018 emanated in Chennai.

In view of the above reasons, the cause of action arises in Chennai and the suit is maintainable. Hence, the contentions made by the learned counsel for the defendants are rejected.

52. While considering the revocation of leave, the statements made in the application and the pleading in the plaint alone have to be taken into consideration and not the defence taken by the defendants whereas in this case, the learned Judge considered the matter on merits and made unnecessary observations which are liable to be set aside. The Honourable Supreme Court in Abdullah Bin Ali and othets Vs. Galappa and others reported in MANU/SC/0307/1985 : 1985 (2) SCC 54 held that the jurisdiction does not depend upon the defence taken by the defendants in the written statement."

20. The above decision of the Division Bench of this Court, had been relied on by the learned counsel for the applicants/plaintiffs to emphasise his argument that, on the basis of the part of cause of action arising within the jurisdiction of this Court, the suit can be entertained. Further, this Court may not unnecessarily go into all the factual details on the competing claims of the parties. What is stated in the plaint alone, is sufficient, while granting leave to the parties to the suit. The Division Bench in the said decision further held that, while considering the leave application, the submissions made in the application for leave and the pleadings made in the plaint,

alone, have to be taken into consideration and not the defence taken by the defendants.

21. Therefore, the learned counsel for the applicants/plaintiffs submitted that, there are enough materials shown before this Court including the pleadings in the plaint as well as in the affidavit filed in support of the leave application, demonstrating that substantial cause of action had arisen within the jurisdiction of this Court, and hence, the leave may be granted to the plaintiffs to file the suit.

22. Per contra, Mr.Om Prakash, learned Senior Counsel appearing for the first defendant-Trust, at the outset, referred to the prayers as sought in the suit from (a) to (f) in the prayer column of the plaint. All the prayers in respect of the College properties and the direction sought against the first defendant-Trust, are all in respect of the properties situated in Oggiam Thoraipakkam, which falls within the Kancheepuram/Chengalpet District.

23. According to the learned Senior Counsel for the first defendant-

Trust, the applicants/plaintiffs are only Donors of the land and money to the first respondent/Trust, and the respondents have been included in the Trust only on that consideration. The first defendant/Trust has also purchased some of the properties which have nothing to do with the first plaintiff-Trust.

24. The learned Senior Counsel also referred to certain averments made in the affidavit filed in support of the leave application that, in pursuance of the Resolutions, dated 03.01.2005 and 16.03.2005, the plaintiff-Trust has become the successor-Trust of the first defendant/Trust, which cannot be correct and it is utter falsehood. When the said Resolutions are passed, the first applicant/plaintiff-Trust was not in existence, as it was registered only on 29.06.2005.

25. The learned Senior Counsel further submitted that the character of the prayer made in the plaint is like "suit for land" and as such, the suit cannot be laid on the original Jurisdiction of this Court. In a case for suit for land, the land should be situated within the Original Jurisdiction of this

Court. The lands are located in Oggiam Thoraipakkam Village, which falls outside the Original Jurisdiction of this Court.

26. The learned Senior Counsel further submitted that, from the pleadings and the prayer as contained in the plaint, it is clear that leave has to be sought only under Section 92 of the Civil Procedure Code (for short, CPC) and the judgments referred to by the learned counsel for the applicants/plaintiffs, in fact, pertain only to Section 92 CPC . Therefore, the present leave sought under Clause 12 of the Letters Patent, is not maintainable. The learned Senior Counsel also referred to several averments made in the affidavit filed in support of the leave application stating as to how this Court has no jurisdiction to entertain the plaint.

27. In support of his two legal contentions, namely (i) the present suit is "suit for land" and (ii) Section 92 CPC will get attracted, the following decisions have been relied upon by the learned Senior Counsel :

(i) Suit for land:

(i) AIR 1985 Madras 1 = 1984 (Vol.97) LW 485 (Bank of

Madurai Vs. M/s.Balaramadass and brothers):(Division Bench of Madras High Court):

"5. It is seen that in the first two parts, the jurisdiction is determined with reference to the subject-matter, whereas in the third part the jurisdiction is indicated with reference to the parties to the suit independently from the first two parts. So, the expression 'in all other cases' found in the sentence does not take within its ambit the case when the defendants reside within the territorial jurisdiction of this Court. It has application only when the third clause is not pressed into service. This clause 12 of the Letters Patent, 1865, makes an exception to the universal principle of granting jurisdiction in respect of immovable property to the Court within the jurisdiction of which the immovable property is situate. The rule of *forum loci* has been deliberately omitted in respect of the High Court. This has been confirmed by the provisions of S. 120 of the C P. C. stating that the provisions of Ss. 16, 17 and 20 shall not apply to the High Court in the exercise of its original civil jurisdiction.

6. No provision decision of this Court or of another chartered High Court was produced before us in respect of this question. The only judgment which was brought to our notice is one in *Seshagiri Rao v. Rama Rao* ((1896) ILR 19 Madras 448) wherein though the *defendants are said to reside in Madras* (emphasis supplied) the question of jurisdiction was not at all considered from that angle. But, we are comforted in our view after the perusal of Cl. 12 of the Lester Patent, 1862, which is quite different, from Cl. 12 of the Letters Patent, 1865, and which runs thus—

“And we do further ordain that the said High Court of

Judicature at Madras, in the 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, or the defendant at the time of commencement of the suit shall dwell, or carry on business, or personally work for gain, within the local limits of the ordinary original jurisdiction of the said High Court, except that it 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.”

The way in which this clause was drafted, especially the fact that the phrase ‘within the local limits of the ordinary original jurisdiction of the said High Court’ is found only once at the end of the sentence, shows clearly that as per this clause there was on one side suits for land and on another side all other suits including those in which the defendants reside within the territorial jurisdiction. In this clause, the phrase ‘in all other cases, encompasses the case of the defendant residing within the jurisdiction. It is interesting to note that this clause contains the same provision as the one contained in S. 5 of the first Code of Civil Procedure, dated 22-3-1859. The universal rule of *forum loci* adopted in the Code of Civil Procedure was also made applicable to the High Court in 1882. This is made clear in paragraph 17 of the Despatch from the Secretary of State, dated 14-5-1862 accompanying the Letters Patent of

1862. The relevant extract of paragraph 17 is given below:

“The terms of Cl. 12, defining the original jurisdiction of the High Court as to suits, are nearly similar to those employed in S. 5 of the C.P.C., (Act 8 of 1859), and are intended to include every description of case over which the Mofussil Courts have jurisdiction.... It has, therefore been sought to invest the High Court, in the exercise of its original civil jurisdiction with as ample powers in receiving and determining cases Of every description, and in applying a remedy to every wrong as are exercised by the Courts not established by Royal Charter, and thus to place the Courts of first instance in the Presidency Towns and in the interior of the country in this respect, as nearly as may be, on the same footing.”

This solution however, was not found suitable, so there was a substantial modification in the subsequent Letters Patent, 1865: which is now in force; and where an exception is made in respect of the High Court to the rule of *forum loci* in respect of suits on immovables. It is for this reason that in all the subsequent Civil Procedure Codes, right from the Code 1877, a clause is inserted to the effect that Sees. 16, 17 and 20 of the the Code of Civil Procedure would not apply to High Courts. Those sections precisely, for the purpose of jurisdiction, make a fundamental distinction between suits on immovables and all other suits. In this connection it has to be remembered that the Letters Patent of (862 were provisional in nature and were to be modified within three years in the light of the experienced gained."

"10. It is thus clear that this Court has jurisdiction, whatever be

the nature of the suit in case the defendants reside within its territorial jurisdiction. This results out of a careful reading of Cl. 12 of the Letters Patent of 1865 and the justification for this extraordinary rule is supplied by the historical process. One may say that the reasons which militated for endowing the High Court in Madras with a jurisdiction different from that in the mofussil do no longer exist and that the universal rule of *forum loci* in respect of immovables should apply also to the High Court of Judicature at Madras. In fact, that would be a step in the right direction and that would alleviate the burden of the original jurisdiction of this Court. But, that step has to be achieved through a legislative process. Pending such a legislative action, the law as it is has to be applied and that law, as stated earlier, is to the effect that this Court has full jurisdiction to hear a suit when the defendants reside within its territorial jurisdiction, irrespective of the place of immovable property."

(ii) 2006 (1) CTC 270 = 2006 (1) MLJ 357 (Thamiraparani Investments Pvt. Ltd. Vs. Meta Films Pvt. Ltd): (Division Bench of Madras High Court):

"8. In M/s.Moolji Jaitha and Company Vs. The Khandesh Spining and Weaving Mills Company Ltd, AIR 1950 Federal Court 83, the Court noted that the first prayer in the plaint was that it may be declared that the lands belonged to and are the properties of the plaintiff company and the defendants have no beneficial interest therein. In the said judgment, the Court held that in order to consider

whether a suit is covered by the expression 'suit for land' in Clause 12 of the Letters Patent, one has to consider whether it is for the purpose of obtaining a decree for possession, or a decision in title to land, or is something different, but involves the consideration of the question of title to the land indirectly. The expression "suit for land" covers three classes of suits (i) suits for determination of title to land; (ii) suits for possession of land; and (iii) other suits in which the reliefs claimed if granted would directly affect title to, or possession of the land. The words 'suits for land or other immovable property' in Clause 12, besides obviously covering claims for recovery of possession or control of land, or apt to connote also suits, which are primarily and substantially seeking an adjudication upon title to immovable property or a determination of any right or interest therein. The words "suit for land" means establishing title to land or any interest in the same, or for possession or control thereof, and the decree sought for must be intended *proprio vigore* to be enforceable against and binding on the land itself.

In the said judgment, it is also stated that the nature of the suit and its purpose have to be determined by reading the plaint as a whole. The inclusion or absence of a prayer is not decisive of the nature of the suit, nor is the order in which the prayers are arrayed in the plaint. The substance or object of the suit has to be gathered from the averments made in the plaint on which the reliefs sought for in the

prayers are based. In the case on hand, undoubtedly, looking to the averments made in the plaint as a whole, and the relevant relief sought for, the suit is clearly, substantially, and mainly for land.

9. A reference may also be made to the decision of the Supreme Court in *Adcon Electronics Pvt. Ltd. Vs. Daulate and another*, 2001 (4) CTC 39. In that case, the Supreme Court considered a suit for specific performance and an application for leave filed under Clause 12 of the Letters Patent before the High Court of Judicature at Bombay. The said Clause is in *pari materia* to Clause 12 of the Letters Patent of the High Court of Judicature at Madras. While considering the said Clause, the Supreme Court held that if a suit is for determination of title to land, or suit for possession of land, or other suits in which the reliefs claimed, if granted, would directly affect the title of possession of land, the suit could be filed only in the Court in which jurisdiction the land is situate.

10. In *Southern Petrochemical Industries Corporation Ltd. Vs. Durga Iron Works and 3 others*, 1995 (2) CTC 602, a Division Bench of this Court has held that a suit involving determination of title and interest of land for recovery of possession and control of land would be a "Suit for land".

(iii) 2011 (6) CTC 835 (Timothy Bowen Vs. Clenergen Corporation):

(Division Bench of Madras High Court):

"17. Of course, the Plaint prayer (c) is regarding transfer of shares of the 2nd and 3rd Respondents. As pointed out earlier, the Bridge Loan Agreement is governed by the substantive law of United Kingdom. The Suit has been filed mainly for declaration that the Plaintiffs are having the 1st charge over the said 1.5 MW Power Generation Plant near Salem and a Permanent Injunction restraining the Respondents from alienating, encumbering or any manner creating any charge on the said Plant. Even though it is termed as Plant, it is a Power Generation Plant embedded to earth - immovable Property. As per Section 3 of Transfer of Property Act i.e. Interpretation clause, "immovable property" does not include standing timber, growing crops or grass. As per General Clauses Act, Section 3(26), Immovable property shall include land, benefits arising out of land and things attached to the earth or permanently fastened and anything attached to the earth. The Transfer of Property Act defines the phrase, "attached to the earth" and gives no definition of immovable property and exclude standing timber, creating crops and grass. In P.Ramanath Aiyer's *Law Lexicon*, meaning of "immovable property" is *inter alia* stated as "Real or immovable property consists of (1) land; (2) that which is affixed to land; (3) that which is incidental or appurtenant to land; (4) that which is immovable by law.

18. In the present case, 1.5 MW anaerobic digestion

plant near Salem, India is embedded to the earth, where it is erected. When the Plant is embedded in the earth and being used for the beneficial enjoyment of the land, the Plant is the "immovable property". By seeking for declaration that the Appellant is having first charge over the said Plant and also seeking for permanent injunction restraining the Respondents from alienating, encumbering and creating charge would certainly amount to adjudication of right to the immovable property and it will be a Suit for land. The interest of mortgagee in the property over which charge is created is evidently a "benefit to arise out of land" and therefore, it is immovable property."

(iv) 2018 (4) CTC 855 (Government of Tamil Nadu Vs. Singapore Reality Pvt. Ltd):

"21. It is well settled that if any relief in respect of immovable property situate outside the jurisdiction of this Court is sought, directly affect the title or possession. Then such Suit would be only for land. Therefore, as per Clause 12 of the Letters Patent, leave cannot be granted. The suit is filed to grant leave to sue in respect of the title of property and also for direction to reconvey the property. The relief in the Suit itself clearly indicate that it has a control over the immovable property not only title but also possession. Hence, the Suit filed before this Court is not maintainable. I

have also considered the Judgment cited by the learned Counsel appearing for the Respondent in this regard. The prayer in the Suit is not only for title but also reconveyance of the property i.e. for delivery of possession. Therefore, I am of the view that the Suit instituted is only for land."

(v) AIR 1925 Madras 1084 = 1925 (Vol.XXII) The Law Weekly 160
(Krishnadoss Vithaldoss Vs. Ghanshamdoss and Narayan Doss and others)
(Division Bench of Madras High Court):

"Srinivasa Aiyangar, J:-- The expression "suit for land", it seems to me, must be construed as an action, the primary object of which is to establish claims regarding the title to property or possession of property and no suit can be described as a "suit for land", as the result of the decision, in which the title to, or possession of immovable property will not in any manner or measure be directly affected. Further, the preposition "for" in the expression "suit for land" would seem to indicate that the title to or possession of immovable property must be the primary object of the action. A office is a well-known form of action. This is a suit merely for an account of the management of a trust and for the administration of a trust. The decision of this Court, confirmed by the Privy Council, in the case of *Srinivasa Moorthy Vs. Venkata Varada Aiyangar* (L.L.R. 34 Mad. 257),

is that an action for administration of an estate is not a suit for land, even though the whole of the immoveable property, belonging to the estate, may be outside the local limits of the Court. I do not see how on principle the present suit differs from an administration action. This being a suit for an account of the management of a trust by the 1st and 2nd defendants and really a suit for the administration of a trust referred to in the plaint, it seems to me that the same principle applies and it cannot possibly be described as "suit for land" and therefore, excluded from the jurisdiction of this Court. The learned Judge was right in that decision. I may also add that the original application made on behalf of the 1st defendant to the learned Judge was to revoke the leave to sue, granted by the Court. Leave to sue was applied for and obtained in this case, because all the defendants did not reside within the jurisdiction and part of the cause of action may be said to have arisen, beyond the jurisdiction of this Court. That leave to sue was granted in the first instance *ex-parte*. To revoke that leave would not be to confer or take away any jurisdiction, possessed by the Court in respect of the suit, if it was a suit for land. Even if the order of the learned Judge, refusing to revoke the leave to sue, be set aside, the question would still remain, whether this Court had jurisdiction in respect of the suit. But Mr. Grant, on behalf of the respondent, intimated that this appeal might be dealt with, as though it was an appeal from a decision, on a preliminary question, whether the Court had jurisdiction to try the action, and by consent of both the appellant and the respondents, the

appeal was so treated. The result of our decision, therefore, is that the Court has jurisdiction, in this particular case, having regard to the nature of the suit. I agree that the appeal should be dismissed with costs."

(ii) Attraction of Section 92 CPC:

(i) 1967 (2) SCR 618 : AIR 1967 SC 1044 (Bishwanath and another Vs. Sri Thakur Radha Ballabhji and others):

"7. It is settled law that to invoke Section 92 of the Code of Civil Procedure, 3 conditions have to be satisfied, namely, (i) the trust is created for public purposes of a charitable or religious nature; (ii) there was a breach of trust or a direction of court is necessary in the administration of such a trust; and (iii) the relief claimed is one or other of the reliefs enumerated therein. If any of the 3 conditions is not satisfied, the suit falls outside the scope of the said section. A suit by an idol for a declaration of its title to property and for possession of the same from the defendant, who is in possession thereof under a void alienation, is not one of the reliefs found in Section 92 of the Code of Civil Procedure. That a suit for declaration that a property belongs to a trust is held to fall outside the scope of Section 92 of the Code of Civil Procedure by the Privy Council in *Abdur Rahim Vs.*

Barkat Ali [(1928) LP 55 IA 96] , and by this Court in *Mahant Pragdasji Guru Bhagwandasji Vs. Patel Ishwarlalbhai Narsi-bhai* [(1952) SCR 513] on the ground that a relief for declaration is not one of the reliefs enumerated in Section 92 of the Code of Civil Procedure. So too, for the same reason a suit for a declaration that certain properties belong to a trust and for possession thereof from the alienee has also been held to be not covered by the provisions of Section 92 of the Code of Civil Procedure: See *Mukhda Mannudas Bairagi Vs. Chagan Kisan Bhawasar* [ILR 1957 Bom, 809] . Other decisions have reached the same result on a different ground, namely, that such a suit is one for the enforcement of a private right. It was held that a suit by an idol as a juristic person against persons who interfered unlawfully with the property of the idol was a suit for enforcement of its private right and was, therefore, not a suit to which Section 92 of the Code of Civil Procedure applied: see *(Darshan Lal Vs. Shibji Maharai Birajman* [(1922) ILR 45 All 215] and *Madhavrao Anandrao Raste Vs. Shri Omkareshvar Ghat* [(1928) 31 Bom LR 192] .) The present suit is filed by the idol for possession of its property from the person who is in illegal possession thereof and, therefore, it is a suit by the idol to enforce its private right. The suit also is for a declaration of the plaintiff's title and for possession thereof and is, therefore, not a suit for one of the reliefs mentioned in Section 92 of the Code of Civil Procedure. In either view,

this is a suit outside the purview of Section 92 of the said Code and, therefore, the said section is not a bar to its maintainability."

(ii) 2012 (1) SCC 369 (T.Varghese George Vs. Kora K.George):

"27. With respect to the orders being minority institutions obtained by three schools of the Trust under the Tamil Nadu Act, Shri Ganesh submitted that at the highest those orders will have to be read as obtained for the purposes of that statute, though in his submission the orders were obtained from an authority viz., the civil court which did not have the jurisdiction issue such orders. In any case, the orders could not be used for the purposes of restricting the objective of the Trust, and for making a submission that the Trust is a minority institution. The intention of the founder of the Trust must be correctly understood and given utmost importance, which is what the Court had done in this matter all throughout.

.. ..

32. Sub-section (2) of Section 92 lays down that a suit claiming any of the reliefs specified in sub-section (1) has to be instituted in conformity with the sub-section. Such suit having been filed, the trial Court gave a finding that it was a public trust and not a minority institution.

33. The appellant did not choose to initiate any proceedings with respect to the functioning of the Trust as required under Section 92. After the scheme was finalised,

although Smt Elizabeth filed an appeal, she withdrew the same. It was at this stage that the appellant filed the present appeal raising the issues that he has raised. The correct course of action for him ought to have been to file his suit under Section 92, if he deemed it fit."

28. The learned Senior Counsel after drawing support from the above decisions, referred to the Resolution of the meeting held on 16.03.2005, and which was in fact referred to by the learned counsel for the applicants/plaintiffs to show that the Resolution was passed at, Thoraipakkam, Chennai-97, which again falls outside the Original Jurisdiction of this Court.

29. The learned Senior Counsel therefore submitted that no part of cause of action had arisen within the Original Jurisdiction of this Court and the suit itself is not maintainable. Moreover, as the leave needs to be obtained only under Section 92 CPC and not under Clause 12 of the Letters Patent, the present leave application is to be held as not maintainable on that

ground as well. He lastly submitted that the suit being a suit for land and the lands are located outside the jurisdiction of this Court, the present suit is not maintainable. Therefore, the leave as prayed for is not maintainable under Clause 12 of the Letters Patent and this Court may reject the leave application.

30. By way of reply, the learned counsel for the applicants/plaintiffs would again refer to the meeting held on 03.01.2005 held at Burkit Road, T.Nagar, Chennai, for forming the applicants/plaintiffs-Trust.. The learned counsel further submitted that the amendment of the first applicant/Trust changing the name of the Trust from C.L.Metha College of Pharmacy into C.L.Metha Educational Trust bears the address at Burkit Road, T.Nagar, Chennai. The learned counsel also drew the attention of this Court to Income Tax Returns for the Financial year 2013-2014, in which the address of the first applicant/first plaintiff-Trust is shown as No.22, Burkit Road, T.Nagar, Chennai-17.

31. In regard to the second legal objections made by the learned

Senior Counsel appearing for the first respondents/Trust that the suit presently filed is a suit for land, the learned counsel for the applicants/plaintiffs submitted that what is prayed for is only right to manage the School and College and not with regard to the land as such.

32. In regard to the application of Section 92 CPC as raised by the learned Senior Counsel appearing for the first respondent/Trust, the learned counsel for the applicants/plaintiffs submitted that the same will have no application for this case, as the applicants/plaintiffs are not at all disputing the management of the Trust. They have also not raised any plea of complaining mal-administration or mis-management of the Trust. Hence, obligation regarding Section 92 CPC being attracted, is mis-conceived and without merits.

33. This Court considered the submissions of the learned counsel/Senior Counsel on either side, perused the materials and the pleadings placed on record.

34. The decisions relied on by the learned counsel appearing for the applicants/plaintiffs would point to the legal position that what is stated in the plaint, would alone matter, in deciding the application for leave, even though the decisions cited may pertain to Section 92 CPC, but the essence of the scope of grant of leave in such matters is that, when this Court finds that there are causes of action which had arisen under the jurisdiction of this Court, this Court may have no hesitation in granting leave in such matters.

35. In this case, on behalf of the applicants/plaintiffs, several documents have been shown like execution of the Trust Deed, dated 07.03.1980, execution of Sale Deed dated 09.04.1975, Exchange Deed, dated 15.04.2006, General Power of Attorney, dated 14.11.2005 and 31.10.2011, and almost every document, appears to have been executed in the then Madras or Chennai.

36. In fact, one of the Resolutions of the first applicant/first defendant-Trust, dated 03.01.2005, meeting was held at No.62, Burkit Road, T.Nagar, Chennai and in that meeting, a decision was taken for formation of

the first applicant/plaintiff-Trust for the purpose of expanding educational activities in the field of school, arts and science, medicine, para-medical pharmacy, engineering, etc.

37. From the various documents that are brought to the attention of this Court, both the first applicant/first plaintiff-Trust and the first defendant/Trust have been working in tandem with regard to the establishment of pharmacy college, "Shishya school" etc., with the common objectives. In the course of their relationship, several meetings have been held, the Resolutions have been passed, the decisions have been taken and many of the documents have been executed and in all these transactions, it could be seen that the causes of action have principally arisen within the Original Jurisdiction of this Court in Chennai.

38. On the other hand, the decisions cited on behalf of the first respondent/first defendant-Trust, under two broad legal contentions, namely that it is a suit for "land" and the attraction of Section 92 CPC, are not to be made applicable to the factual matrix of this case with reference to the scope

and essence of the prayers in the plaint.

39. In regard to the decisions relied on, contending that the present suit is being one for land, and hence, not maintainable before this Court, as the land(s) are located outside the territorial jurisdiction of this Court, this Court is unable to countenance such objection, for the reason that, as rightly contended by the learned counsel for the applicants/plaintiffs,, this is not a suit for land.

40. The averments and the prayer in the suit, cannot be construed that the applicants/plaintiffs are claiming any right over the land owned by the first respondent-Trust. The first applicant/first plaintiff-Trust, as a matter of fact, seek only exercise of the right to manage the School and the College in terms of various agreements between the parties. This is not the suit where the plaintiffs are seeking to recover the land(s) from the respondent(s). It is a suit for exercise of right of management of the School(s) and College(s) and hence, the decisions relied on, based on the above said legal objections, are completely misplaced, and therefore, the same is to be rejected outright.

41. In regard to the other set of decisions relied on by the learned Senior Counsel appearing for the first respondent-Trust that leave ought to have been obtained under Section 92 CPC, as the dispute is with regard to the administration of the public Trust, this Court is once again unable to countenance such contention(s). Nowhere in the plaint or in the affidavit filed in support of the application, any dispute is raised regarding the mis-management or mal-administration of the Trust by the first respondent-Trust. All that the applicants/plaintiffs seek in this application is only to recognise the right to manage the School or College and their right is claimed under certain agreements between the parties, as demonstrated by the learned counsel for the applicant/plaintiff. The documents shown in respect of the "lis" substantially executed within the territorial jurisdiction of this Court. Therefore, the leave as prayed for under Clause 12 of the Letters Patent, does not suffer from any legal infirmity.

42. As averred in the affidavit by the applicants/plaintiffs that substantial cause of action had arisen within the jurisdiction of this Court

and the leave application is necessitated because of the location of the office of the first respondent-Trust, leave has been sought.

43. In the above facts and circumstances, this Court is fully convinced that substantial cause of action had arisen within the Original jurisdiction of this Court. On the other hand, on behalf of the respondents/defendants, misplaced and vexatious objections have been raised to resist the simple prayer of leave being sought by the applicants/plaintiffs. The objections that were raised, deserve to be rejected outright, as such unfounded objections cannot stand the test of judicial scrutiny even for a second. Therefore, the leave is granted. Accordingly, this application is allowed as prayed for. No costs.

सत्यमेव जयते

06.08.2021

Index: Yes

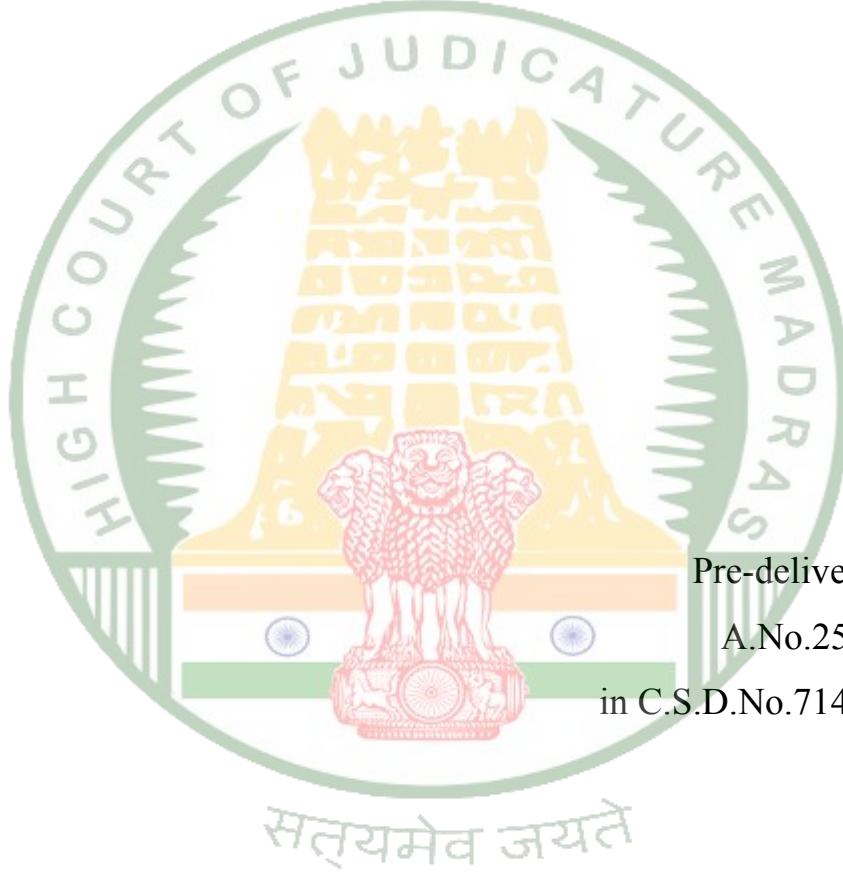
Speaking Order: Yes

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Appln.No.2590 of 2020
in C.S.D.No.71418 of 2020

V.PARTHIBAN, J

CS



Pre-delivery Order in
A.No.2590 of 2020
in C.S.D.No.71418 of 2020

WEB COPY Orders pronounced on 06.08.2021