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A.No.1195 of 2022
in C.S.D.No.2263 of 2022

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P.VELMURUGAN, J.,

In a suit filed for partition and separate possession, this application has been filed, seeking leave to sue in respect of Item No.III (2) and (3) of 'A' Schedule properties and also against the 4th defendant.

2.The learned counsel for the applicant/plaintiff submitted that the defendants 1 to 3 are residing within the jurisdiction of this Court and the 4th defendant is residing at Kanyakumari, which is outside the jurisdiction of this Court. Further, out of the three items mentioned in the schedule of the plaint, Item No.III (2) & (3) are situated at Kanyakumari District, which is situated outside the jurisdiction of this Court. Hence, the applicant/ plaintiff has filed this application for grant of leave to file a suit for partition with regard to the subject property.

3.The learned counsel for the respondents without filing the counter submitted that some of the properties have been sold, and hence, it is not liable for partition. Therefore, leave cannot be granted.



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4. Heard both sides and perused the materials available on record.

5. The contention raised by the learned counsel for the respondents is touching upon the merits of the case and the same can be decided at the time of trial, but not at this stage. Now the only question is that the whereabouts of the 4th defendant and some of the properties, which are situated at the outside the jurisdiction of this Court, can be sued.

6. As per Clause 12 of Latters Patent Act, if the part of cause of action has arisen within the jurisdiction of this Court, a suit can be filed. In the case on hand, some of the properties are situated outside the jurisdiction of this Court and one of the defendant is residing outside the jurisdiction of this Court. Hence, it is the duty of the plaintiff to get leave from the Court to file the suit to bring all the properties in the suit.

7. On perusal of the plaint averments reveals that a part of cause of action has arisen within the jurisdiction of this Court and hence, the plaintiff is entitled to get the relief as prayed for. Accordingly, this application is allowed.



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8. Registry is directed to take the suit on file, if it is otherwise in order and place the same before the Assistant Registrar (Original Side) for service of summons.

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