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A.No.4694 of 2022 in C.S.No.281 of 2004

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in

C.S.No.281 of 2004

Reserved on 17.11.2022	Pronounced on 15.12.2022
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G.CHANDRASEKHARAN, J.

A.No.4694 of 2022 is filed to transfer the suit in C.S.No.281 of 2004 from the file of this Court to the file of the learned Principal District Judge, Kancheepuram, due to the enhancement of pecuniary jurisdiction of this Court and on the basis of the decision made in the case of M/s.Harsha Foundations reported in 2018(4) CTC page 721.

2.The learned counsel for the applicant submitted that he filed the suit for the relief of specific performance of the agreement dated 04.11.1991 and for permanent injunction restraining the defendants from alienating the suit property. The recording of evidence in this case is over and the case is pending for arguments. Earlier, he filed O.A.No.1234 of 2004 in C.S.D.No.6118 of 2004, praying leave of the Court to sue the defendants before this Court by invoking clause 12 of Letters Patent Act



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as applicable to the Chartered High Courts in India. That application was allowed and leave was granted vide order dated 18.03.2004. The reasons for obtaining leave to sue in this Court are that (i) suit property is located outside the territorial limits of this Court, but the parties to the suit, especially, the defendants are residing within the territorial limits of this Court. (ii) The agreement dated 04.11.1991 was executed at Chennai.

3.This Court in *M/s.Harsha Estate vs. Dr.P.Kalyana Chakravarthy and others* reported in *2018 (4) CTC page 721* held that the suit for the relief of specific performance of agreements entered into in respect of the property falling outside the ordinary territorial limits of this Court cannot be filed here and such suits are required to be transferred before the competent Court having territorial jurisdiction as per Section 16 C.P.C.

4.The pecuniary limits of the City Civil Court has been enhanced from Rs.10 lakhs to One Crore. The said amendment was published in the Tamil Nadu Government Official Gazette on 09.07.2018. In the light



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of the amendment, several cases were transferred. However, the defendants are opposing the transfer of this Suit. In such circumstances, this application is filed.

5.In support of his submissions, he pressed into service the judgment in ***Harsha Estates Vs. Dr.P.Kalyana Chakravarthy*** reported in **2018 (4) CTC 721**. It is observed in paragraph 10 of the judgment as follows:

10.An analysis of all the above judgments brings out the following principles of law to decide whether a suit is for “suit for land”.

(i)In a suit the reliefs claimed, if granted, would directly affect title to or possession of the land it will be “suit for land”.

(ii)If the object of the suit is something different , but involves the consideration of the question of title to land indirectly, it will also be “suit for land”.



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(iii) *A suit where the claim is for recovery of possession or control of land, it will be “suit for land”.*

(iv) *In a suit where determination of any right or interest over an immovable property is involved, it will be “suit for land”.*

(v) *A suit for bare injunction restraining the defendant from interfering with the possession and enjoyment of the property by the plaintiff, will be “suit for land”.*

(vi) *In a suit for bare injunction where the plaintiff seeks to restrain the defendant from dealing with the suit property by creating a charge or alienating or encumbering the property, will also fall within the ambit of a “suit for land”. This Court in M/s.Raja Holdings, Financiers and Merchants, Partnership Firm represented by its Partner Lalitha Raja in O.S.A.N0.2/2018, dated 10.07.2018 has considered this issue in detail.*

(vi) (a) *In a suit for Specific Performance of an agreement of sale wherein the relief of delivery of possession of the suit property has been specifically claimed, it will be “suit for land”.*



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(vi) (b) In a suit for Specific Performance where the suit is only for enforcement of the agreement simpliciter without seeking for any other relief, the same will also fall within the ambit of “suit for land” since the relief of possession is inherent in the relief of Specific Performance.

(vi) (c) In a suit for Specific Performance, where the suit is only for enforcement of the agreement simpliciter and the plaintiff specifically claims to be in possession of the suit property and there is no denial of the said fact by the defendant, the said suit will not come within the ambit of “suit for land”.

(vi) (d) In a suit for Specific Performance where the plaintiff apart from seeking to enforce the agreement also seeks a relief of injunction against the defendant, not to interfere with his possession and enjoyment or not to create any charge or encumbrance or not to alienate the suit property, such suits will also come within the ambit of “suit for land”.

6.In reply, the learned counsel for the respondents submitted that this application is filed when the suit is pending for arguments. This suit



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was instituted in this Court by the applicant/plaintiff after obtaining leave to sue in this Court despite the fact that the property is situated outside the territorial jurisdiction of this Court. It is admitted in the plaint and proof affidavit that the cause of action for filing the suit had also arisen within the jurisdiction of this Court. Applicant had already filed an application for transferring the suit to the learned Principal District Judge, Chengalpet in A.No.3935 of 2018 and it was dismissed as withdrawn on 25.06.2018. Therefore, he is precluded from filing this fresh application. In the judgment in *Harsha Estates Vs. Dr.P.Kalyana Chakravarthy* reported in **2018 (4) CTC 721**, there was an application filed for revocation of leave granted and no such application was filed in this case. The suit is filed for specific performance simpliciter and therefore, it can be considered as a suit for land. When the leave was obtained under clause 12 of Letters Patent Act, transfer cannot be ordered on the basis of the Government Order dated 09.07.2018 on the ground of enhancement of jurisdiction. In support of his submissions, he relied on the judgment in *Central Bank of India Vs. Joseph and 20 others* reported in **1997 (II) CTC 1**. It is observed in paragraph nos. 5 to 9 of the judgment as



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follows:

5. No doubt, this Court, while the said suits were pending on its file, by granting leave spoken to in Clause 12 of the Letters Patent, secured to itself such jurisdiction to try them, presumably on the footing that the cause of action has arisen partly within the local limits of the ordinary original jurisdiction of this Court.

6. The material portions of the said Clause 12 of the Letters Patent run as follows:

"... 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, such land or 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."



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7. *There is no such leave provision in Section 16, C.P.C., The material portions of Section 16, C.P.C. are as follows:-*

"Subject to the pecuniary or other limitations prescribed by any law, suits-

(a).....

(b).....

(c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property.

(d).....

(e).....

(f).....

shall be instituted in the Court within the local limits of whose jurisdiction the property is situate....."

So, when in the abovesaid mortgage actions, the property mortgaged is outside the jurisdiction of the City Civil Court, Chennai, that Court shall have no jurisdiction to try the same.

8. In Southern Petrochemical Industries Corporation Ltd. v. Durga Iron Works and 3 Ors., a Division Bench of this Court has also held that such



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mortgage suits cannot come under the term "suits for land or other immovable property" spoken to in Clause 12 of the Letters Patent.

9. In view of the abovesaid provisions, particularly in view of the expression, "Which would be within the cognizance of the Madras City Civil Court", in the above referred to Section 4(1), we have necessarily to agree with the contentions of learned Counsel for the applicants. Learned Counsel for the respondents also could not argue anything contra. Therefore, the above referred to suits have necessarily to be retransferred from the City Civil Court, Chennai to the Original Side of this Court, since the above referred to transfer of these suits from this Court to the City Civil Court, is not in accordance with the abovesaid Section 4(1) itself. For the above reasons, we are unable to subscribe to the view taken by Jagadeesan, J. in his above referred to order dated 19.3.1997.

7.Considered the rival submissions. The suit is filed seeking the relief of specific performance of the agreement dated 04.11.1991 and for permanent injunction restraining the defendants from alienating the suit



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property. Admittedly, the suit property is situated in No.193, Adhanur Village, Chengai, MGR District. It is the case of the applicant/plaintiff that the suit agreement, dated 04.11.1991, was duly entered into between the applicant/plaintiff and the husband of the deceased first defendant on 04.11.1991 in Chennai. The cause of action for filing the suit has arisen in Chennai and the property is situated outside the jurisdiction of this Court. The applicant/plaintiff filed A.No.1234 of 2004 under clause 12 of Letters Patent Act seeking leave to sue in this Court. The leave was granted and thus, the suit came to be filed in this Court. Now, the application for transfer is filed for the reason that this Court in the case of *M/s.Harsha Estate vs. Dr.P.Kalyana Chakravarthy and others* reported in **2018 (4) CTC page 721** observed that in a suit for specific performance, where the plaintiff apart from seeking to enforce the agreement also seeks the relief of injunction against the defendants not to interfere with his possession and enjoyment or not to create any charge or encumbrance or not to alienate the suit property, such suits will also come within the ambit of 'suit for land'.



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8. This suit is filed for the relief of specific performance with the consequential relief of permanent injunction. Therefore, this suit is a “suit for land”. No doubt that if it is a suit for land, this Court has no jurisdiction. However, it is the submission of the learned counsel for the respondents that in the judgment referred above, there was a leave granted to sue in this Court and when the leave was revoked by the Single Judge and the application was rejected, the appeal came to be filed and decided. However, in the case before hand, no such application to revoke the leave was filed.

9. The judgment reported in *Central Bank of India Vs. Joseph and 20 others* reported in *1997 (II) CTC 1*, relied by the learned counsel for the respondents, deals with the cases which were originally filed in the High Court and transferred to the City Civil Court in pursuance to the amendment made in Tamil Nadu City Civil Court and Madras City Civil Court (Amendment Act). The suits were mortgage suits. Considering the fact that the mortgage suits are not suits for land; that the leave to sue was obtained under clause 12 of Letters Patent Act and that properties



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situated outside the territorial jurisdiction of City Civil Court, Chennai, this Court ordered re-transfer of the suit from City Civil Court, Chennai to Original Side of this Court. In the case before hand, the main question now to be considered in the light of the judgment in ***M/s.Harsha Estate vs. Dr.P.Kalyana Chakravarthy and others*** reported in ***2018 (4) CTC page 721*** is that whether the suit filed for specific performance with a consequential relief of permanent injunction is a suit for land or not? We found from these judgments that a suit filed for specific performance with a consequential prayer for relief of permanent injunction not to encumber, alienate the suit property is a “suit for land”. Therefore, this Court is of the considered view that this Court has no jurisdiction to try the suit in view of the specific findings given in the judgment in ***M/s.Harsha Estate vs. Dr.P.Kalyana Chakravarthy and others*** reported in ***2018 (4) CTC page 721***.

10.In this view of the matter, this application is allowed. The suit is ordered to be transferred to the file of learned Principal District Judge, Chengalpet, Kancheepuram for disposal in accordance with law.



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11.Registry is directed to transfer the entire case records in C.S.No.281 of 2004 to the file of the learned Principal District Judge, Kancheepuram. On receipt of the case records, the learned Principal District Judge, Kancheepuram, is directed to issue notice to both parties for appearance on a particular day and proceed to dispose the case as early as possible, within a period of two months from the date of appearance of the parties before the Court.

12.Accordingly, this application is allowed.

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Pre-Delivery Order in
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