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A.No.5013 of 2022
and C.S.(Comm. Div.) SR.No.101355 of 2022 (Filing Number)

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C.S.(Comm. Div.) SR.No.101355 of 2022
(Filing Number)

M.SUNDAR, J

Captioned application has been taken out with 'Leave to Sue' ['LTS' for the sake of brevity] prayer.

2. When the captioned application was listed before this Commercial Division on 18.11.2022, proceedings were made and a scanned reproduction of the same is as follows :

A.No.5013 of 2022
in
C.S.(Comm. Div.) (D)No.101355 of 2022
(Filing Number)

M.SUNDAR, J.,

Captioned application (A.No.5013 of 2022) has been filed *inter alia* under Clause 12 of Letters Patent with 'Leave to Sue' ['LTS' for the sake of convenience and clarity] prayer.

2. In these proceedings, from hereon and henceforth, parties shall be referred to by their respective ranks in the intended plaint (accompanying the LTS application) for the sake of convenience and clarity.

3. Mr.Ramesh Ganapathy along with Mr.Hansika.N, Ms.Mary Santo, Disha, Ms.Preethika JA, Mr.Vijay.N, Mr.Ethunandhan.S of M/s.Mission Legal (Law Firm) for the plaintiff is before this Commercial Division.

4. Learned counsel submits that intended main suit is a composite suit seeking reliefs qua "infringement of trademark, infringement of copyright and passing off. To be noted, while two are statutory remedies, the other is a common law remedy. Learned counsel submits that the suit is predicated on a registered trademark in Class 25 (said to be Class

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25 of Nice Classification) i.e., *inter alia* Readymade garments, hosiery etc., and the mark is 'AQJ's M&M' [hereinafter 'said mark' for the sake of convenience and clarity]. Another trademark registration application with 'Everyday Fashion' forming part of the device is pending is learned counsel's say. Adverting to the support affidavit, learned counsel submits that products with the alleged infringing marks are sold in Chennai specifically by the second defendant and therefore, part of cause of action has arisen within the territorial jurisdiction of this Commercial Division is learned counsel's further say.

5. This takes this Commercial Division to the question as to whether the second defendant is situate within the territorial jurisdiction of this Commercial Division within the meaning of 'The Madras High Court (Jurisdictional Limits) Act (IV of 1927)' and 'The Madras High Court (Jurisdictional Limits) Extension Act, 1985 (Act No.42 of 1985)' [hereinafter 'Jurisdictional Limits Act' and 'Jurisdictional Limits Extension Act' respectively].

6. Faced with the above situation, learned counsel for plaintiff sought for a short accommodation to examine the position and revert to this Commercial Division.

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7. Be that as it may, it is made clear that Section 12A of 'The Commercial Courts Act, 2015 (4 of 2016)' [hereinafter 'CCA' for the sake of brevity] will also be examined in the next listing.

List in the 'MOTION LIST' on Tuesday i.e., 22.11.2022.

18.11.2022



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3. Aforementioned proceedings shall now be read as an integral part and parcel of this order. This means that the short forms and abbreviations used in the aforementioned earlier proceedings will continue to be used in the instant order also for the sake of brevity, convenience and clarity.

4. As jurisdiction is inherent, 'when this Commercial Division has jurisdiction over a part of cause of action, the question is whether this Commercial Division would exercise jurisdiction over the entire suit?' is the neat question that falls for consideration in any LTS application. To be noted, it is settled law that jurisdiction is inherent and grant of leave is only an expression of the Court's intention to exercise jurisdiction over the entire suit when it has jurisdiction over a part of cause of action. In the case on hand, as regards reliefs qua infringement of trademark and infringement of copyright (i.e., first and second limbs of prayer) are concerned, Section 134(2) of 'The Trade Marks Act, 1999 (47 of 1999)' [hereinafter 'TM Act' for the sake of brevity and convenience] and Section 66(2) of 'The Copyright Act, 1957 (14 of 1957)' [hereinafter 'CR Act' for the sake of brevity and convenience] do not come to the aid of the plaintiff, as the plaintiff is carrying on business outside the territorial jurisdiction of



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this Commercial Division. As regards relief qua passing off (i.e., third limb of prayer), it is a common law action / remedy, but Section 20 of 'The Code of Civil Procedure, 1908 (5 of 1908)' [hereinafter 'CPC' for the sake of convenience, clarity and brevity] is not applicable to this Commercial Court in the light of Section 120 'CPC'. This means that when the case of the plaintiff is that, a part of cause of action has arisen within the territorial jurisdiction of this Commercial Division, the plea has to be pivoted and predicated only on Clause 12 of Letters Patent. It is in this context, aforementioned proceedings dated 18.11.2022 was made.

5. As regards grant of leave and territorial jurisdiction, a larger Bench of this Court [***S.Annapoorni*** case being ***S.Annapoorni vs. K.Vijay*** reported in ***2022 SCC Online Mad 4367***] while deciding a reference regarding jurisdiction under the Guardians and Wards Act, had summed up the trajectory of legal history and territoriality in one paragraph and one significant paragraph in this regard is paragraph No.316, which reads as follows :

'316. Mr.Arvind P. Datar, learned senior counsel made a fervent plea that concurrent jurisdiction is being exercised for more than three and a half decades, i.e., 35 years now and therefore, it has attained the character and sanctity of a



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convention. It may be appropriate to not to disturb, derail or dislodge such a convention. Mr.N.Jothi, learned counsel besides legal submissions made a poignant but pertinent plea that this Court should not shut the doors on helpless and hapless minor children. These fervent and poignant pleas appeal to my judicial conscience and it synchronizes with legal literature, which if I were to sum up and state in one sequence of fourteen short sentences not as a Sonnet of sorts but in prosaic prose, it runs like this: (a) chronicle is, the Supreme Court of Madras (replacing Records Court at Madras) is of the year 1800; (b) Supreme Court of Madras was abolished by the Indian High Courts Act, 1861; (c) the High Court of Madras succeeded to all the powers and jurisdiction; (d) a new Letters Patent was issued for the High Court of Judicature at Madras on 26.06.1862; (e) on 28.12.1865, this 1862 Letters Patent was replaced with a new Letters Patent dated 28.12.1865; (f) Constitution of India which was adopted by the Constituent Assembly on 26.11.1949 came into force on 26.01.1950; (g) Constitution vide Articles 225 and 372 kept the 1865 Letters Patent intact and it is operating; (h) therefore, it will suffice if the obtaining 1865 Letters Patent more particularly Clause 17 thereat and the question whether there is ouster in the light of Sections 7 and 8 of Family Courts Act is tested without delving into the legal history; (i) in terms of legal history, it will suffice to note that the only difference between 1862 and 1865 Letters Patents is while the 1862 Letters Patent uses the expression 'whether within or without the Presidency of Madras', the 1865 Letters Patent uses the expression 'within the Presidency of Madras', this difference also pales into insignificance as the Tamil



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Nadu Adaptation of Laws Order, 1970 makes it clear that there is no difficulty in reading 'Presidency of Madras' as 'State of Tamil Nadu' as rightly pointed out with surgical precision and specificity by learned counsel Ms.B.Poongkhulali and as brother Hon'ble Mr.Justice R.Mahadevan has delved into and dealt with this aspect of the matter in detail, I refrain from dilating on the same to avoid duplication; (j) therefore, we are now concerned with the obtaining Letters Patent, i.e., 1865 Letters Patent; (k) Clause 17 of Letters Patent is a specific provision and exercise of jurisdiction under this provision cannot be compared with exercise of using inherent jurisdiction as a omnibus provision; (l) in 2002, by 86th Amendment to the Constitution, which came into force on and from 01.04.2010, clause (k) was added to Article 51-A which is an adumbration of fundamental duties and this clause (k) makes it a fundamental duty of every parent or guardian to provide an opportunity for education to his child aged between 6 and 14 years; (m) though this clause talks about opportunity for education, the role of parents or guardian qua a ward is a constitutional duty and is therefore sanctus; and (n) when it is so sanctus, it is a certain duty of a Constitutional Court to come to the aid of a child when there is a need and therefore, it would serve no purpose to say that the High Court, a constitutional court, is denuded of such powers.'



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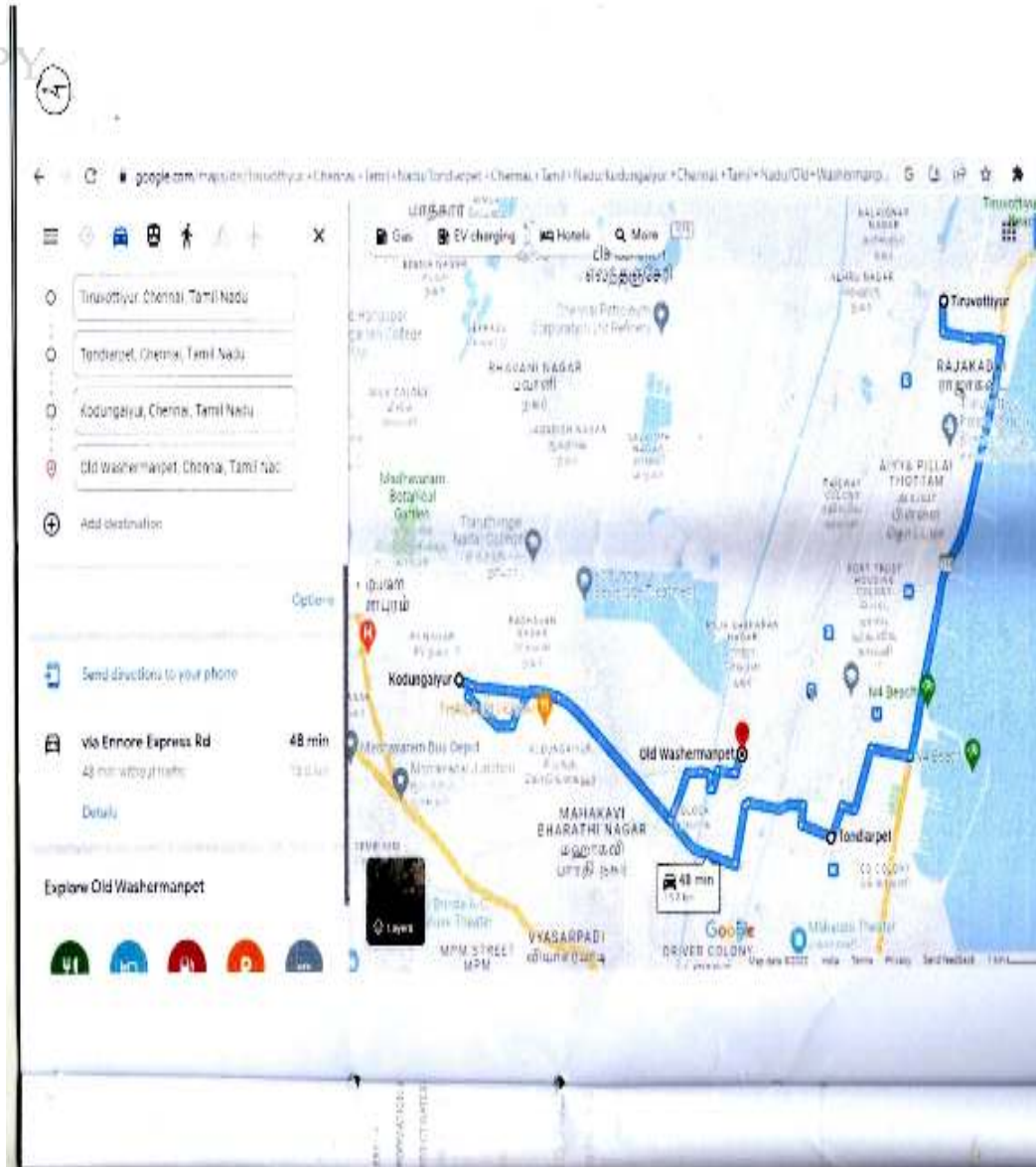
6. Therefore grant of leave now hinges on whether the second defendant is carrying on business within the territorial jurisdiction of this Commercial Division.

7. Mr.Ramesh Ganapathy along with Mr.Vijay.N of M/s.Mission Legal [Law Firm] who is before this Commercial Division draws the attention of this Commercial Division to the additional typed set of papers which has since been filed on 24.11.2022 (albeit without a date). Learned counsel also draws the attention of this Commercial Division to the Google Map of North Chennai, an official map of Chennai Metropolitan Development Authority [CMDA], a Government Website which goes by the name 'BHARATMAPS'. A more detailed version of this 'BHARATMAPS', List of Firkas downloaded from the official website of Commissionerate of Revenue Administration and Disaster Management, are also enclosed in the additional typed set of papers and a scanned reproduction of the same is as follows :



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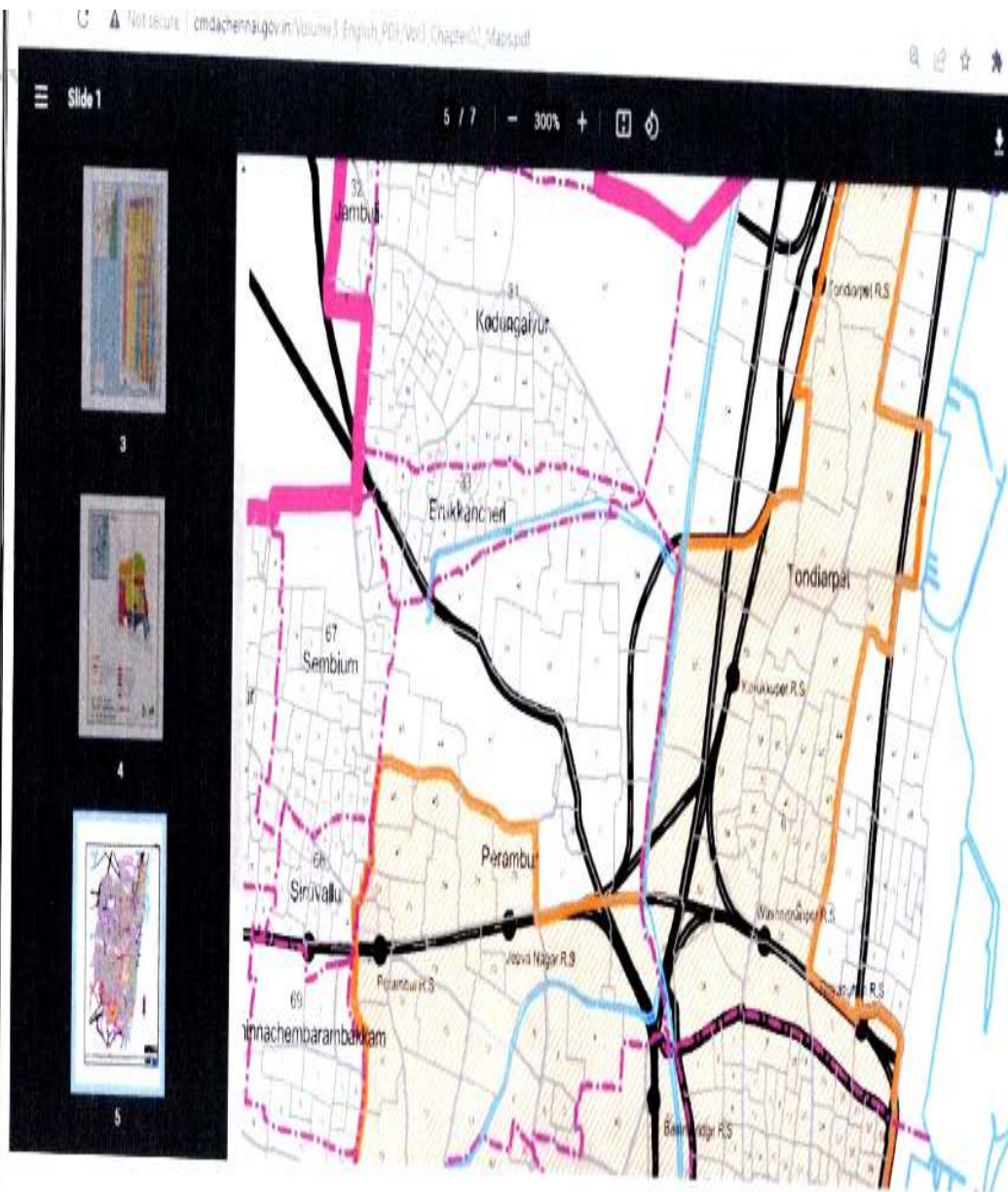
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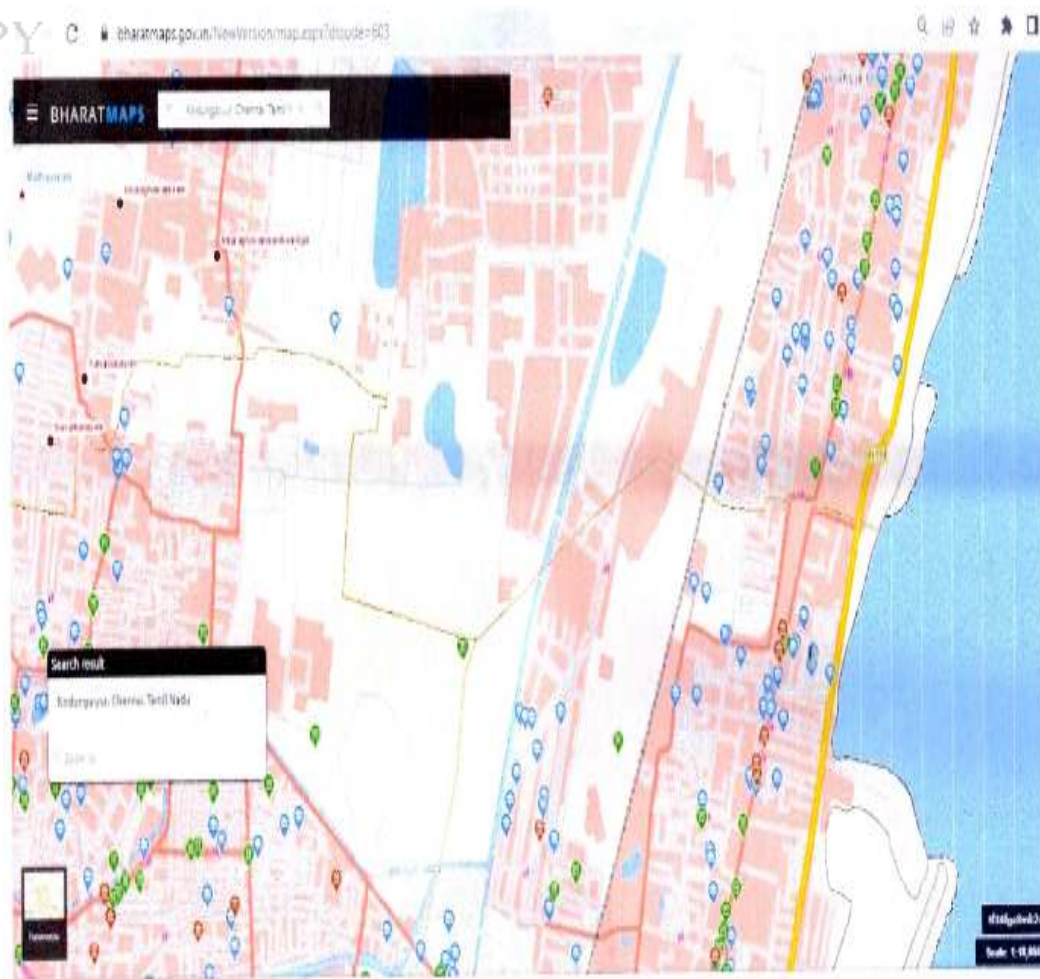
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Commissionerate of Revenue Administration and Disaster Management

வருவாய் திருவகம் மற்றும் பேரிடர் மேலாண்மை ஆணைககம்

List of the Firkas

District	Division	Taluk	Firka
Chengalpattu	Madurandugam	Madhurantakam	43 Oonampakkam
			44 Orathi
			45 Perumpakkam
			46 Vairiyur
			47 Pallavaram
	Tambaram	Pallavaram	48 Pammal
			49 Chullapakkam
		Tambaram	50 Madambakkam
			51 Medavakkam
			52 Tambaram
		Vandalur	53 Guduvancheri
			54 Mampakkam
			55 Vandalur
Chennai	Chennai Central	Ambattur	56 Ambattur
			57 Koorattur
			58 Anantjkarai
		Aminjikarai	59 Anna Nagar
			60 Koyambedu
			61 Villivakkam
		Ayanavaram	62 Ayanavaram
			63 Kolathur
			64 Koonur
		Egmore	65 Peravallur
			66 Egmore (Egmore South)
			67 Kilpauk (Egmore North)
		Nungambakkam	68 Nungambakkam
			69 Vadapalani
			70 Maduravoyal
		Porur	71 Porur
			72 Ashok Nagar
			73 Mambalam
		Saligramam	74 Saligramam
			75 Virugambakkam
	Chennai North	Madhavaram	76 Madhavaram
			77 Puzhal
			78 Erukanchery
		Kodangaiyur	79 Kodangaiyur
			80 Perambur
			81 Sembium
		Purasawalkam	82 Otteri (Purasawalkam West)
			83 Purasawalkam (East)
			84 V.O.C Nagar



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Commissionerate of Revenue Administration and Disaster Management

வருவாய் நிர்வாகம் மற்றும் பேரகலன மேலாண்மை ஆணைப்பகுதி

List of the Firkas

District	Division	Taluk	Firka
Chennai	Chennai North	Purasawalkam	85 Vepery
		Thiruvattiyar	86 Manali
			87 Thiruvattiyar
		Tondiarpet	88 Kerkupet
			89 Old Washermanpet
			90 Royapuram
			91 Tondiarpet
	Chennai South	Alandur	92 Alandur
		Chinty	93 Adyar
			94 Ekkamuthangal
			95 Kottur
			96 Thyagaraya Nagar
		Mylapore	97 Chintadripet
			98 Mylapore (South)
			99 Royapettah (Mylapore North)
			100 Triplicane
		Sholinganallur	101 Pallikarasi
Coimbatore	Coimbatore North		102 Sholinganallur
		Velachery	103 Besant Nagar
			104 Tharaman
			105 Thiruvanniyar
			106 Velachery
	Coimbatore North	Annur	107 Annur North
			108 Annur South
			109 Sarkar Samakulam
			110 Annur Palayam
			111 Ganapathy
			112 Perumalakkulam
			113 Saravanam Pattu
			114 Thudiyalur
		Mettupalayam	115 Karamadai
			116 Mettupalayam
	Coimbatore South	Coimbatore South	117 Coimbatore
			118 Singanailur
		Madukani	119 Kunchy
			120 Madakani
			121 Othakkalmandayam
			122 Thumalayampalayam
		Perur	123 Alanthurai
			124 Kunnamathur
			125 Madampatty
			126 Perur



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8. Adverting to pindrop in the Google Map, subsequent maps and the schedule under 'Jurisdictional Limits Act', learned counsel submits that the second defendant is carrying on business within the territorial jurisdiction of this Commercial Division. As regards 'Jurisdictional Limits Act' learned counsel draws the attention of this Commercial Division to the northern boundary set out thereunder and the relevant part reads as follows :

'North - Commencing from the point where the boundary line between Tiruvottiyur village and Tondiarpet village meets the sea, along the boundary line between Tondiarpet village and Tiruvottiyur and Sattankadu villages to the point where Sattankadu Kodungiyur and Tondiarpet villages meet: thence in a south-westerly direction along the boundary line between Kodungiyur ' .

9. To be noted, aforementioned Act is of the year 1927 and there is subsequent 'Jurisdictional Limits Extension Act' which is of the year 1985. In both these Acts, Section 2 is of relevance and the same reads as follows :

'THE MADRAS HIGH COURT (JURISDICTIONAL LIMITS) ACT (IV OF 1927)

***2. Limits of ordinary original civil jurisdiction of
Madras High Court - The ordinary original civil***



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jurisdiction of the High Court of Judicature at Madras shall be exercised within the limits set out in schedule :

Provided that nothing in this Act shall affect any suit or other legal proceeding pending in any Court at the date of the commencement of this Act.

THE SCHEDULE

(See section 2)

The limits within which the ordinary civil jurisdiction of the High Court shall be exercised are as follows :

East -

South -

West -

North - Commencing from the point where the boundary line between Tiruvottiyur village and Tondiarpet village meets the sea, along the boundary line between Tondiarpet village and Tiruvottiyur and Sattankadu villages to the point where Sattankadu Kodungiyur and Tondiarpet villages meet: thence in a south-westerly direction along the boundary line between Kodungiyur and Tondiarpet, so as to include the whole of Tondiarpet village; thence in a westerly direction along the boundary line between the villages of Perambur and Erukkanjeri to the point where Perambur, Erukkanjeri and Sembiam villages meet and proceeding west along the northern village boundary of 67 Sembiam and 66 Peravallur up to the trijunction point where 34 Madhavaram, 66



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Peravallur and 65 Kulathur villages meet and the western boundary ends, so as to include the whole of Sembiam and Peravallur. '

'THE MADRAS HIGH COURT (JURISDICTIONAL LIMITS) EXTENSION ACT, 1985 (ACT No.42 OF 1985)

2.Extension of ordinary original civil jurisdiction of Madras High Court - Notwithstanding anything contained in the Madras High Court (Jurisdictional Limits) Act, 1927 (Tamil Nadu Act IV of 1927) or any other law for the time being in force, the ordinary original civil jurisdiction of the High Court of Judicature at Madras shall also extend to the areas comprised in the revenue villages specified in the Schedule.

THE SCHEDULE

(See section 2)

District (1)	Taluk (2)	Revenue village (3)
Madras	(1) Fort-Tondiarpet.	(1) 30 Selaivayal (2) 31 Kodungaiyur (3) 32 Jambuli (4) 33 Erukkancheri
	(2) Purasawakkam-Perambur.	(1) 65 Kulathur (2) 71 Konnur- Malligaicheri (3) 73 Villivakkam
	(3) Egmore-Nungambakkam.	(1) 79 Thirumangalam (2) 106 Koyambdu (3) 110 Saligramam (4) 104 Sencheri I Bit (5) 105 Sencheri II Bit



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<i>District (1)</i>	<i>Taluk (2)</i>	<i>Revenue village (3)</i>
	<i>(4) Mambalam-Guindy.</i>	<i>(1) 104 Virugambakkam (2) 111 Kodambakkam (3) 103 Nesapakkam (4) 137 Velacheri (5) 138 Taramani</i>
	<i>(5) Mylapore-Tiruvalikkeni.</i>	<i>(1) 139 Kanagam (2) 140 Thiruvannamiyur</i>

(By order of the Governor.)'

10. This Commercial Division is informed that the Registry to test territorial jurisdiction, is going by the Postal Pincodes of Madras. This is clearly not in consonance with the statute. The Registry has to necessarily go by 'Jurisdictional Limits Act' and 'Jurisdictional Limits Extension Act'. It may be necessary to draw out the map. This Commercial Division is also informed that such a map was drawn earlier and the same was being followed but at somewhere down the line i.e., at some point of time that procedure was discontinued, is what this Commercial Division is further informed.

11. It may be necessary to revisit the above aspect of the matter. Registry to place a copy of this order before the Hon'ble The Acting Chief Justice and seek suitable orders.

12. Before concluding, it is noted that in the case on hand, the



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applicant has paid the entire Court fees along with intended plaint, though there is no compulsion for the applicant / intended plaintiff to do so qua an intended plaint. Therefore, this Commercial Division deems it appropriate to test Section 12A of 'CCA' post institution of the suit. It is made clear that issue of suit summons will be subject to intended plaintiff clearing the fence (to put it in equestrian terms) qua Section 12A of 'CCA'.

13. Leave granted. There shall be no order as to costs.

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M.SUNDAR, J
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