

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

Present :
THE HON'BLE JUSTICE ARINDAM MUKHERJEE

IA NO. GA 1 OF 2022
IN
CS 233 OF 2022
LOTUS HOMES LIMITED
VS.
CONCEPT APARTMENTS PRIVATE LIMITED & ORS.

IA NO. GA 2 OF 2022
IN
CS 233 OF 2022
LOTUS HOMES LIMITED
VS.
CONCEPT APARTMENTS PRIVATE LIMITED & ORS.

IA NO. GA 3 OF 2022
IN
CS 233 OF 2022
LOTUS HOMES LIMITED
VS.
CONCEPT APARTMENTS PRIVATE LIMITED & ORS.

IA No. GA/5/2023
In
CS/233/2022
LOTUS HOMES LIMITED
VS.
CONCEPT APARTMENTS PRIVATE LIMITED AND ORS.

For the Plaintiff : Mr. Mainak Bose,
Mr. Ranjit Kumar Basu,
Mr. Rishabh Karnani,
Mr. Shayak Mitra
..... Advocates

For the Defendant Nos.1 : Mr. Abhrajit Mitra, Sr. Adv.
& No.3 Mr. Sarvapriya Mukherjee,
..... Advocates

Heard on : 09.11.2022, 23.11.2022, 02.01.2023,
11.01.2023, 17.01.2023, 31.01.2023,
23.02.2023, 09.06.2023, 15.06.2023,
20.06.2023, 23.06.2023 & 03.07.2023.

Judgment on : 11th July, 2023.

Arindam Mukherjee, J:

Three applications have been filed in the suit. The first application in order of time is the plaintiff's injunction application being IA No. GA 1 of 2022. IA No.GA 2 of 2022 is defendants' application for vacating the order of injunction passed in the plaintiff's application. The third application being IA No.GA No.3 of 2022 is defendants' application for rejection of plaint. This application by the defendant nos. 1 and 3 inter alia for rejection of plaint and in the alternative for return of the plaint to the appropriate court is taken up first as the decision in the same will have a significant impact on the other two applications. These two applications will be dealt in the later part of this judgment. A fourth application of 2023 has been filed by the

plaintiff subsequent to the hearing of the three applications inter alia for amendment of the plaint due to developments post hearing.

In the suit the plaintiff, a company within the meaning of the Companies Act, 2013 has claimed the following relief(s):

- “a) Declaration that the purported Deed of Conveyance dated 31st may, 2022 is invalid, ineffective, not binding upon the parties, of no effect, unenforceable and null and void ab initio;*
- b) Decree for delivery up and cancellation of the purported Deed of Conveyance dated 31st may, 2022;*
- c) Decree for perpetual injunction restraining the Defendant No.1 from exercising any right in respect of the subject property by virtue of the Deed of Conveyance dated 31st may, 2022;*
- d) Decree for perpetual injunction restraining the Defendant No.1 and its men, agents and assigns from acting on the basis of or in furtherance of or by giving any effect to or in terms of the Deed of Conveyance dated 31st may, 2022;*
- e) Decree for perpetual injunction restraining the Defendant No.1 and its men, agents and assigns from transferring, selling, alienating, encumbering, charging, changing or howsoever, otherwise deal with the subject property in any manner whatsoever;*
- f) Injunction;*
- g) Receiver;*
- h) Attachment;*
- i) Costs;*
- j) Such further or other reliefs.”*

Facts of the Case:-

On a perusal of the plaint it appears that the plaintiff company claims to be the owner of a land measuring about 121.75 decimals (equivalent to 73.875 cottahs) comprised of RS/LR Dag nos.978, 1037, 1036, 1042, 1043, 1044,903 953, 961, 1047, 1061, 1062, 959, 1041, 1060, 1096, 1097, 1098, 1100, 1103, 1110, 1178, 1195 and 1198 recorded in LR Khatian nos. 2164 and 2085 Mouza Mohammadpur, JL no.32 under P.S. Rajarhat- 742121 (hereinafter referred to as the subject property). The plaintiff also claims

that its name is recorded in the municipal records of Rajarhat-Gopalpur Municipality in respect of the subject property.

The plaintiff further says that on 5th August, 2020 the plaintiff received a notice dated 27th July, 2020 from the office of the Block Land & Land Reforms Officer (in short BL & LRO) Rajarhat, 24 Parganas (North) wherefrom it transpired to the plaintiff that the defendant no. 1 has applied for mutating its name in respect of the subject property. The plaintiff was called for a hearing in respect of such application on 10th August, 2022 and on an enquiry the plaintiff came to know that on or about 2016 the Defendant nos.2 and 3 and the wife of Defendant no.3 as shareholders of the plaintiff company filed a proceeding for oppression and mismanagement under Section 241 and 242 of the Companies Act, 2013 before the National Company Law Tribunal (NCLT), Kolkata Bench being CP no.27 of 2016 against the plaintiff, one Sanjay Bhagat and others. The NCLT by an order dated 20th November, 2016 directed the parties to maintain the status-quo regarding the shareholding pattern and immovable properties. The order of injunction according to the plaintiff is in subsistence. The plaintiff says that the Defendant no.1 is the closely held family company of the Defendant no.3 namely, Sajan Kumar Bhagat. The said Sajan Kumar Bhagat is the brother of Sanjay Kumar Bhagat and both are the sons of Late Pannalal Bhagat. The Defendant no.4 namely, Akshat Bhuwalka is the son-in-law of the Defendant no.2. The Defendant No.2 is a close associate of the Defendant no.3 and a part of the Defendant no.1. The plaintiff also alleges that the subject property was purchased by the plaintiff company in the year 2004 by six separate deeds of conveyance. The subject property, therefore, being

a property of the plaintiff was within the scope of an ambit of the order of injunction 20th November, 2016.

Submission of the Plaintiff:-

1. In the instant case it is also the contention of the plaintiff that the suit is for declaration, delivering up and cancellation of a document relating to an immovable property admittedly outside the Ordinary Original Civil jurisdiction of this Court but, it is not a suit for land as the parties being within jurisdiction coupled with the execution of the document, the cancellation whereof is sought for having been executed within, the suit is not one for land and as such no leave under Clause 12 of Letters Patent, 1865 is required to institute the suit in this Court. The defendants on the other hand contend that adjudication of the issues involved in the suit is directly interconnected with the adjudication of the right, title and interest of the immovable property admittedly outside the jurisdiction and as such the same is suit for land.
2. It is also contended by the learned counsel for the plaintiffs that although, prima facie, it may appear to be a suit for land, really it is a suit for the cancellation of impugned deed of conveyance. It is submitted by him that in deciding whether the suit is a suit for land or for the cancellation of the deed of conveyance, the Court should try to ascertain what the dominant or primary object of the suit is. If the primary object is to establish title to land or for possession or control of land, then it would be a suit for land. If, on the other hand, the Court comes to the conclusion that the primary object is something else, it

will not be a suit for land notwithstanding the fact that it may affect title to or possession of land situate outside the Ordinary Original Civil jurisdiction of this Court. The plaintiff in support of its contention has relied upon the following judgments:-

- i. 2001 (7) SCC 698 [Adcon Electronics (P) Ltd. v. Daulat and Another]
- ii. 2016 SCCOnLine Bom 8884 [Shri. Prakash Gobindram Ahuja Adult v. Ganesh Pandharinath Dhonde Adult and Others]
- iii. 1994(2) SCC 266[Satyabrata Biswas v. Kalyan Kumar Kisku]
- iv. AIR 1960 Cal 626 [Debendra Nath Chowdhury v. Southern Bank Ltd]

Submission of the Defendants:-

3. On the other hand, the defendants contended that the primary or dominant object of the suit is adjudication of right, title and interest of an immovable property situated admittedly outside the jurisdiction of this Court. The sale deed of which cancellation is sought for has already conferred a right in respect of an immovable property outside the jurisdiction to a third party and as such the cancellation thereof would take away the right already vested in the purchaser. This will lead to adjudication of right, title and interest in respect of an immovable property admittedly outside the jurisdiction for which the suit can be nothing but a suit for land. The defendants in support of their contention has relied upon the following judgments:-

- i) AIR 1983 Cal 420 [Tridandeeswami Bhakti Kusum Sraman Maharaj and others v. Mayapore Sree Chaitanya Math and others]
- ii) AIR 2011 Cal 148 [Rashmoy Das v. Rajashree Enclave Pvt. Ltd. & Ors.]
- iii) 2017 SCC Online Cal 15337[Kirti Vinimay Pvt. Ltd. v. Chemtex Speciality Ltd. & Ors.]

Issue involved:-

- 4. The main question which falls for consideration in the instant case, therefor, is whether the suit is one for land or simply for the cancellation of the impugned deed.

Findings:-

- 5. On the basis of the arguments advanced on behalf of the parties, the Court is now required to decide whether the suit as originally framed is a suit for land under Clause 12 of the Letters Patent, 1865 as the plaintiff contends that the suit is for cancellation of document and as such not one for land while the defendants say that the cancellation of document will automatically attract the adjudication of right, title, interest of an immovable property situated admittedly outside the jurisdiction of this Court and as such a suit for land.

Suits which can be instituted in this Court on the basis of its territorial jurisdiction by keeping aside for the present, the pecuniary jurisdiction of this Court can be divided broadly into two classes — (1) suits for land

or other immoveable property and (2) other suits. In the case of suits for land or other immoveable property, with which we are concerned at the present, this Court will have jurisdiction to try such suits, if such land or immoveable property is situate wholly within the local limits of the ordinary original jurisdiction of the High Court. Where the land or immovable properties are situated partly within the local limits and partly outside such limits, such suit e.g. Partition Suit can be instituted in this High Court only after first obtaining leave of the High Court under Clause 12 of Letters Patent, 1865 subject to satisfying the pecuniary value. In the case of other suits, such suits can be instituted in the High Court if the cause-of-action arises wholly within the local limits of the ordinary original jurisdiction of the High Court or if the defendant resides or carries on business or works for gain within such limits. Where, however, the cause of action arises partly within such limits e.g. where defendant(s) are outside or transactions have partly taken place outside, the suit can be instituted after first obtaining leave of the Court under Clause 12, Letters Patent, 1865. Thus leave under Clause 12, Letters Patent, 1865 is required to be taken in the case of a suit for land or other immoveable property, if a part of such land or other immoveable property being the subject matter of the suit is situate partly within the local limits of the ordinary original jurisdiction of the High Court and partly outside. In the case of other suits, if a part of the cause of action arises within such limits, the suit can be instituted after obtaining leave under Clause 12 of the Letters Patent, 1865 subject to its pecuniary limits.

6. On the issue as to whether the instant suit is a suit for land or a suit within the meaning of “other suits”, the Court is required to find out the dominant purpose from the plaint itself. If the primary object and dominant feature of the plaint is an adjudication of a right, title or interest in an immovable property situated outside the jurisdiction of this Court, this Court has no jurisdiction to entertain the said suit.
7. The first of the notable decisions on this issue is that of the Federal Court in *Moolji Jaitha and Co. vs. Khandesh Spg. And Wvg. Mills Co. Ltd.* reported at AIR 1950 FC 83. In the said judgment it was held that a suit for specific performance in equity jurisdiction where at any rate the only relief sought is the execution of a document of transfer and nothing else then the suit is one not for land within the meaning of Clause 12 of the Letters Patent, 1865.

The definitions of suit for land as laid down by the judges in the aforesaid judgment were summarised as follows in a more recent judgment of the Supreme Court reported in **2001 (7) SCC 698 [Adcon Electronics Pvt. Ltd. Vs. Daulat & Anr.]**:

Per Kania, C.J. and Patanjali Sastri, J. (Mahajan and Mukherjea, JJ. dissenting) that the suit was not a "suit for land or other immoveable property" within the meaning of cl. 12 of the Letters Patent of the Bombay High Court and the Bombay High Court had jurisdiction to try the suit. Held : Also, per Kania, C.J., Mahajan and Mukherjea, JJ. that the last part of cl. 12 of the Letters Patent, namely, "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" applies only to the expression "in all other cases" and does not apply to "suit for land or other immoveable property" and the Bombay High

Court in its Original Side has no jurisdiction to try a suit for land or other immoveable property situated outside the local limits of the ordinary original jurisdiction of the High Court even though the defendant dwells or carries on business or personally works for gain within such limits at the commencement of the suit.

Per KANIA, C.J., FAZL ALI, PATANJALI SASTRI, MAHAJAN and MUKHERJEA, JJ.—The expression “suit for land” in cl. 12 of the Letters Patent is not confined to suits for possession of land.

Per KANIA, C.J.—The test for determining whether a suit is a “suit for land” within cl. 12 of the Letters Patent is whether taking the suit as a whole, it is for the purpose of obtaining a direction for possession or a decision on title to land or the object of the suit is something different but involves the consideration of the question of title to land indirectly.

Per Patanjali Sastri, J.- The expression "suits for land" besides obviously covering claims for recovery of possession or control of land is apt to connote also suits which primarily and substantially seek an adjudication upon title to immoveable property or a determination of any right or interest therein. The meaning of the expression in the Letters Patent should not be made to depend on what used to be regarded as actions in rem or local actions in England prior to the Judicature Acts. The main and substantial relief sought in the plaint in the present case was the execution of a deed of transfer and not the prayer for declaration of title which was not only unnecessary but a relief which could not strictly be granted until the title was conveyed, and the suit was not therefore, a "suit for land" within cl. 12 of the Letters Patent.

Per MAHAJAN, J, All suits of the kind mentioned in cls. (a) to (e) of s. 16 of the Code of Civil Procedure are covered by the expression “suit for land”.

Where the nature of the suit is such that in substance it involves a controversy about land or immoveable property and the Court is called upon to decide conflicting claims to such property and a decree or order is prayed for which will bring about a change in the title to it, that suit can be said to be in respect of land or immoveable property, but where incidentally in a suit, the

main purpose of which or the primary object of which is quite different, some relief has to be given about land, the title to it not being in dispute in the real sense of the term, then such a suit cannot fall within the four corners of this expression.

Per MUKHERJEA, J., The expression suit for land “in cl. 12 means a suit which is instituted with the object of establishing title to land or any interest in the same, or for possession or control thereof. Even if possession is not claimed, if title to any immoveable property is to be directly affected by the result of the decision, the suit would be a suit for land. Reading the plaint as a whole the suit was not in substance one for accounts by a principal against an ex-agent, but a suit in which a claim of title to land is made and a declaration of title is sought for and the suit was consequently a suit for land.

Per Fazl Ali, J., (Mahajan, J. dissenting).- Inasmuch as the order appealed from did not finally dispose of the rights of the parties but was only an order remanding the suit to the trial court for a decision on the merits it was not a “final order” within the meaning of S. 110 of the Civil Procedure Code, and even though in the application for leave to appeal as amended there was a prayer under cl. (c) of S. 109 of the Civil Procedure Code, the certificate of the High Court granting leave to appeal was in form as well as in substance a certificate under S. 110 and not one under S. 109(c), and the appeal to the Federal Court was therefore, incompetent and liable to be dismissed on this preliminary ground. [Principles relating to the granting and effect of certificates under Ss. 109(c) and 110, CPC, stated].

Debendra (supra) again fell for consideration in Adcon (supra). The Hon'ble Supreme Court in Adcon (supra) in paragraph 15 thereof held that

“15. From the above discussion it follows that a “suit for land” is a suit in which the relief claimed relates to title to or delivery of possession of land or immovable property. Whether a suit is a “suit for land” or not has to be determined on the averments in the plaint with reference to the reliefs claimed therein; where the relief relates to adjudication of title to land or immovable property or delivery of possession of the land or immovable property, it will be

a “suit for land”. We are in respectful agreement with the view expressed by Mahajan, J. in *Moolji Jaitha* case.”

8. The tests laid down in *Moolji Jathia* (supra) were applied in *Debendra Nath Chowdhury* (supra) wherein the suit was one for specific performance. In paragraph 23 thereof the following was held after considering many other authorities;

23. *The foundation for this Court holding that a suit for specific performance, where the only relief claimed is a decree for execution of a document of transfer and nothing else is not a suit for land, is the first principle that it is a suit for enforcing a contract where the court is required to act only in personam; secondly, the cause of action for such specific performance is not the cause of action for the recovery of land as such or recovery of possession of land as such and the fact that such will or may be the consequence is immaterial for the purpose; the cause of action for specific performance of a contract is the breach of that contract and not the cause of action for a titular or possessory claim for land; and thirdly, the context of clause 12 of the Letters Patent in providing three basic tests for suits—(i) for land, (ii) cause of action and (iii) place of residence or business of the defendant, —clearly indicates that where Courts are intended to act in equitable jurisdiction in personam it is the second or third test which has to be applied. The; fact that a decree for specific performance will result in ultimate possession being given or obtained, does not convert it into a suit for land, for in that case the suit for land would not have been grouped as a class by itself apart from the class governed by the test of the cause of action or the test of the place of residence or place of business of the defendant in Clause 12 of the Letters Patent.*

9. *Moolji Jathia* (supra) and *Debendra* (supra) as also *Adcon* (supra) fell for consideration before the Division Bench of this Court in ***Smt. Saroj Agarwal v. Mohanlal Seal*** reported in **2003 (2) WBLR (Cal) 42**. The said decision has clearly stated that if from the plaint itself it becomes clear that the primary object of the suit is to establish title to the land and the natural consequence of granting reliefs as prayed for in the

plaint is to seek possession of the property in question, such shall be treated as a suit for land.

10. It is, therefore, clear from these authorities that on reading of the plaint, the Court is to ascertain, if the suit is for the purpose of obtaining any direction for possession or a decision on title to land or the object of the suit is something different and involves the consideration of the question of title to land indirectly. A suit for land is a suit in which the relief claimed relates to the title or delivery of possession of land or immovable property as held in *Adcon* (supra). Further, it is an established rule that to determine whether it is a suit for land, the court will look into barely the plaint and no other evidence as held in ***(Indian Mineral & Chemicals Co. v. Deutsche Bank [2004 (12) SCC 376]***.

11. It is, therefore, necessary to see whether out of several reliefs in the plaint, the claim for the grant of a particular relief which does not relate to title to, or possession, control or management of land or building or other immoveable property, is the primary object of the suit or not. It has to be ascertained by applying the tests laid down, whether such relief claimed to be the primary object of the suit, can be granted to the plaintiffs without the necessity of any adjudication on the question of title to any land or building or other immoveable property, or possession, control or management thereof. If the relief stands the test, the suit will not be a suit for land or other immoveable property within the meaning of Clause 12 of the Letter Patent, 1865 although; the grant

of such relief may indirectly affect land or other immoveable property. If, however, by applying the test it is found that such relief cannot be granted without deciding the question of title to, or possession, control or management of land or other immoveable property, the claim for the grant of such relief cannot be the primary object of the suit and, in that case, the suit will be a suit for land or other immoveable property within the meaning of Clause 12 of the Letters Patent, 1865.

12. Now applying these tests to the fact of the instant case it is apparent that the plaintiff seeks cancellation of a sale deed said to have been executed within the Ordinary Original Civil jurisdiction of this Court and that the defendants are also all within such jurisdiction. The plaintiff, therefore, says that the suit falls within the category of other suits where adjudication of right, title and interest is not required to grant the reliefs claimed. However, to cancel a sale deed the right, if any created or extinguished by such deed will take place. The obvious conclusion will be that the same will lead to adjudication of title of an immovable property admittedly situate outside the territorial jurisdiction of this Court. The cancellation of the sale deed will mean that the purchaser loses its title, if any, to the subject immovable property. At the same time, the title of the vendors in the said sale deed is required to be also adjudicated to find out as to whether the records had any valid right, title or interest to transfer. If the vendors have a title then they are entitled to transfer the same. So going by any way the title of the immovable property will fall for consideration and without the same decree for cancellation of the document cannot be

granted. Similar facts fell for consideration before a Learned Single Judge of this Court in *Rashmoy Das (supra)* wherein it was held that the suit was a suit for land. I have no reasons to differ with such view in the given facts of the instant case for the discussions hereinabove.

13. There has been no departure from these principles even after *Adcon (supra)* as will appear from the more recent judgment of the Supreme Court in ***Excel Dealcomm (P) Ltd. v. Asset Reconstruction Co. (India) Ltd., 2015 (8) SCC 219.***
14. The argument advanced by the plaintiff relying upon *Satyabrata Biswas (supra)* that the sale deed itself executed in the teeth of a subsisting order of injunction passed by the NCLT is a void document and as such no right, title, interest can pass on to the purchaser and a prayer for cancellation of the same does not transform the suit in hand into one as suit for land is untenable at this stage. Even if the document is void, although, Courts have held this kind of documents and transactions to be voidable, a competent Civil Court has to declare the same to be void with an order for delivering up and cancellation. This is a point on the merits of the matter and does not clothe this Court with the territorial jurisdiction to receive, try and determine the suit when the immovable property in connection with which the sale deed has been executed, is admittedly outside the jurisdiction. The moment a declaration as to cancellation of such document, assuming without admitting the same to be void is made, the issue as to adjudication of title in respect of an

immovable property situate outside the jurisdiction will come in the forefront, which will again make the suit one for land.

15. The inevitable conclusion in the instant case is that the same is a suit for land as a consequence whereof this Court has not territorial jurisdiction to receive, try and determine the above suit.
16. The question now arises whether the plaint is to be rejected or returned for being filed in the competent Court of jurisdiction under the provisions of Order VII Rule 11 of CPC. The argument, in this regard normally stems from the applicability of the provisions of Order VII Rule 10 of CPC to a Chartered High Court in view of the provisions of Order 49 of the Code. Order 49 clearly eliminates the application of Order VII Rule 10 that is return of the plaint in respect of a Chartered High Court like this Court and as such it is often argued that the plaint has to be rejected and cannot be returned. In this context, I wish to refer to the notification referred to in 1997 (2) CLT 21 [UCO Bank vs. Ratni Devi Jain]. By the said notification an amendment dated 14th May, 1974 was published on the Calcutta Gazette (part I) on 1st August, 1974 of the Original Side Rules of this Court the provisions contained in Order 49 Rule 3 sub-rule (1) were deleted as a consequence whereof the provision of Order 7 Rule 10 of CPC is applicable to this Court.

Since return of plaint is permissible, after I have formed an opinion that this Court does not have the territorial jurisdiction to receive, try and determine the suit, an opportunity was given to the plaintiff to specify the appropriate Civil Court under the provisions of Order VII Rule 10A

of CPC on 23rd February, 2023. The interim order was extended till 31st March, 2023 and the matter was made returnable on 22nd March, 2023. However, when the matter appeared subsequently, no substantive order could be passed as the parties wanted to make further arguments. Inadvertently, the interim order was not extended beyond 31st March, 2023. The plaintiff accordingly provided particulars of the appropriate Civil Court where the plaintiff propose to present the plaint after the return. Before the order in terms of the provisions of Order VII Rule 10A of CPC could be made, the interim order passed in the suit stood vacated by efflux of time on the expiry of 31st March, 2023. Subsequently, the plaintiff brought to the notice of this Court that the defendant No.1 through defendant No.3 have entered into an agreement to transfer the suit property. The matter was brought to the list on 9th June, 2023 when it transpires that a development agreement has been executed by the defendant no.1 with regard to the suit property with one Divya Estate Pvt. Ltd. having its office at 9/A, Lord Sinha Road, P.S-Shakespeare Sarani, P.O-Middleton Row within jurisdiction of this Court. The defendants, however, to avoid the rigours of having entered into an agreement for development when this Court was in seisin of the matter volunteered to file undertaking on behalf of the defendant No.1. Subsequent to such filing of undertaking as recorded in the order dated 15th June, 2023, on 20th June, 2023 an affidavit of undertaking was given by the Divya Estate Private Limited through one of its Director, namely, Mukesh Kumar Sharma. Further undertakings have been given by the defendant No.1 and Divya Estate Pvt. Ltd. that they will

not take any steps in terms of the development agreement executed on 23rd April, 2023 and registered on 24th April, 2023.

The plaintiff after coming to know about the development agreement executed in favour of Divya Estate Pvt. Ltd. has made an application for adding the said Divya Estate Pvt. Ltd. as a party defendant in the suit.

In the aforesaid facts and circumstances, ordinary course of action would have been to return the plaint to the plaintiff for being filed in the specified Court and fixing a date of appearance of the plaintiff and the defendants before such Court on a particular date. However, subsequent events and/or developments have left this Court apprehensive as to the conduct of the defendants.

The suit being CS No. 233 of 2022 is, therefore, transferred to the Court of Civil Judge, Senior Division, 3rd Court at Barasat, under 24 Parganas (North) by applying the ratio laid down in the judgements reported in ***AIR 1981 Cal 307 [Hindustan Gas & Industries Ltd. and Anr. Vs. Adhish Chandra Sinha]*** and ***AIR 1986 Cal 57 [Bengal Glass & Silicate Works vs. Lalit Mohan Bijlani and Anr.]*** and a date is fixed for the appearance of the plaintiff and the defendants before the specified Court. The suit along with all pending application shall appear before the transferee Court on 25th July, 2023.

The sale deed, the cancellation whereof is sought for is dated 31st March, 2022 and as such there is no question of limitation that would arise even if the suit is filed on the date fixed for appearance. Thus,

there is no legal embargo in transferring the suit even if it is argued that filing of a suit on return of plaint amounts to filing of a fresh suit.

There are as such four applications filed in the suit at the present. The first in the order of time is the plaintiff's injunction application being G.A 1 of 2022. The second application being G.A 2 of 2022 is the defendant's application for rejection of the plaint and G.A 3 of 2022 is an application by the defendant for vacating the interim order initially passed on 20th September, 2022. G.A 5 of 2023 is an application inter alia for amendment of plaint and to add Divya Estate Pvt. Ltd as a party defendant.

After having held that this Court does not have the jurisdiction to receive, try and determine the suit, I dispose of the defendant's application for rejection of plaint being GA 2 of 2022, the application for vacating the interim order being G.A 3 of 2022 by recording the undertaking given by the defendant No.1 and 3 and Divya Estate Pvt. Ltd. through the affidavits which are on record that till 31st July, 2023. The said defendant No.1 and 3 and Divya shall not take any steps to deal with the suit property in terms of the development agreement dated 21st April, 2023 which is registered on 24th April, 2023. Defendant No.4 being a Director of defendant No.1 is bound by the undertaking given by the defendant No.1. Similarly, defendant No.2 if permitted to deal with the suit property, the same shall lead to multiplicity of judicial proceedings. There shall also be a restraint order on the defendant Nos.2 and 4. As the interim order has expired by

efflux of time on expiry of 31st March, 2023 and that this Court does not have the territorial jurisdiction to receive, try and determine the suit. I am not inclined to pass any other order in the vacating application except the interim protection as aforesaid. G.A 2 being the defendant's application for rejection of plaint is also disposed of in view of the order of the transfer of this suit being made herein.

G.A 1 of 2022 being plaintiff's injunction application stands transferred without any further order along with the suit to be tried by the Transferee Court.

G.A 5 being the plaintiff's application for addition of party is also transferred along with the plaint and injunction application being G.A 1 of 2022 to be heard by the Transferee Court on merits.

It is made clear that the Transferee Court shall be free to pass interim and ad-interim orders as may be necessary after adjudicating the matter on merits without being influenced by any of the observations made herein as the same were not on merits of the matter but only for the purpose of adjudicating the issue of territorial jurisdiction.

The Registry is directed to take expeditious steps to transfer the suit before 25th July, 2023.

Urgent photostat certified copy of this judgment and order, if applied for, be supplied to the parties on priority basis after compliance with all necessary formalities.

(ARINDAM MUKHERJEE, J.)