

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 372 OF 2022

Bagmane Developers Pvt Ltd
(Formerly known as Bagmane Constructions Pvt
Ltd) .. Applicant

Versus

Future Sector Land Developers LLP & Ors. .. Respondents

-
- Mr. Darius J. Khambata, Senior Advocate a/w Mr. Karan Sukhana and Mr. Shravanth Arya Tandara i/by Mr. Aditya S. Targe & Ms. Sneha G. Sanap for Applicant
 - Mr. Janak Dwarkadas, Senior Advocate a/w Mr. Sonam Mhatre and Ms. Saloni Sulakhe i/by Dhaval Vussonji & Associates for Respondent Nos. 1 and 2
 - Mr. Vijay B. Dhingreja a/w Mr. Chetan Yadav and Mr. Ranish Mishra i/by VJ Juris for Respondent No. 139

WITH
CIVIL REVISION APPLICATION NO. 5 OF 2023
WITH
INTERIM APPLICATION (ST) NO. 1998 OF 2023

Lalitha R. Solanki .. Applicant

Versus

Future Sector Land Developers LLP & Ors. .. Respondents

-
- Mr. Y.K. Tiwari a/w. Mr. Yash Tiwari i/by K.P. Tiwari & Co. for Applicant
 - Mr. Janak Dwarkadas, Senior Advocate a/w Mr. Sonam Mhatre and Ms. Saloni Sulakhe i/by Dhaval Vussonji & Associates for Respondent Nos. 1 and 2
-

CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 23, 2023

JUDGMENT:

1. Heard Mr. Khambata, learned Senior Advocate for Applicant

in CRA No.372 of 2022 and Mr. Y.K. Tiwari, learned Advocate for Applicant in CRA No. 5 of 2023; Mr. Dwarkadas, learned Advocate for Respondent Nos. 1 and 2 and Mr. Dhingreja, learned Advocate for Respondent No. 139.

2. Applicants have challenged the common order dated 22.04.2022 passed by the learned Trial Court rejecting their Applications to return the plaint to the Plaintiff for filing before the appropriate Court.

3. For convenience, facts in CRA No. 372 of 2022 shall be referred to. By the present Civil Revision Application, Applicants have prayed for the following relief:-

“(a) This Hon’ble Court may be pleased to call for the record of Spl. Civil Suit No. 921/2021 before the Ld. Jt. Civil Judge, Senior Division, Pune and after verifying the correctness, legality, genuineness, authenticity and propriety of the Impugned Order dated 22.04.2022 passed therein, be pleased to quash and set aside the Order dated 22.04.2022.”

4. The impugned order dated 22.04.2022 is a common order passed below Exh. 75, 77, 82 and 377 filed by Defendant Nos. 66, 67, 139 and 117 respectively under Order 7, Rule 10 of the Code of Civil Procedure, 1908 (for short “CPC”) for a prayer to return the plaint to the Plaintiff for filing the same before the appropriate Court.

5. By the impugned order, Application Exh. below 75, 77, 82 and 377 have been rejected by the learned Trial Court.

6. The brief facts are set out as hereunder:-

7. Respondent Nos. 1 and 2 are original Plaintiffs who have filed Special Civil Suit No. 921 of 2021 before the Jt. Civil Judge Senior Division, Pune for declaration, permanent injunction and recovery of damages against 142 Defendants in respect of suit properties situate at Bangalore.

7.1. Perusal of averments and prayers in the plaint reveal that Respondent Nos. 1 and 2 have filed the Suit and sought reliefs against Respondent Nos. 3 to 142 for declaration, permanent injunction and other reliefs in respect of immovable properties, namely bearing Survey No. 42/4, 51, 52, 53, 55, 57 64, 65 and 66 situated in Doddanekkundi Village, Varthur Hobli, Bangalore (E), Taluk, Bangalore Urban District and Survey Nos. 100, 101/1-2-3, 108, 109, 98/1 and 2 and 99, all situated at Mahadevapura Village, K.R. Puram Hobli, Bangalore (E), Taluk, Bangalore Urban District (for short “**the suit properties**”). Admittedly, the suit properties are all situated at Bengaluru and the Civil Suit has been filed by Respondent Nos. 1 and 2 before the learned Jt. Civil Judge Senior Division, Pune.

7.2. Applicant in CRA No. 372 of 2022 is a Company incorporated under the Companies Act having its registered office at Bengaluru. It is in the business of property development and one of the leading real estate developers in the city of Bengaluru. Applicant

is having substantial subsisting rights and interests in the suit properties by virtue of two Memoranda of Understanding (for short “MOU”) executed by it with one Bangalore Gorakshana Shala Society (Goshala) arrayed as Defendant No. 137 in the suit proceeding and with the legal heirs of one late Shri. Giridharlal arrayed as Defendant Nos. 1 to 136 therein. These rights pertain to joint development of lands admeasuring about 97 acres 16 guntas out of the suit properties. That apart, Defendant No. 137 i.e. Goshala has entered into two MOUs dated 30.08.2006 and 31.08.2006 with the Applicant for joint development of an area admeasuring 17 acres and 19 guntas out of the suit properties and have paid Rs. 11 crores to the Goshala and suit proceedings are pending in the Civil Court at Bengaluru. Applicant also claims to have executed a Joint Development Agreement dated 28.05.2007 with some of the legal heirs of Shri. Giridharlal and one Mr. Sathyanarayana for joint development of an area admeasuring 27 acres out of the suit properties.

7.3. Admittedly, some of the legal heirs of Shri. Giridharlal have filed a Civil Suit bearing O.S. No. 8230/2007 before the VII Addl. Civil & Sessions Judge, Bengaluru for partition and separate possession of lands comprised in the suit properties against the other legal heirs, the Goshala and the Applicant. On 04.08.2015, the learned Additional Civil & Sessions Judge, Bengaluru directed the parties not

to change the nature of the suit properties till the disposal of the suit. However being aggrieved, the Goshala and the Applicant have filed statutory appeals against the said order in MFA No. 6210 of 2015 and MFA No. 6443 of 2015 which are currently pending hearing and decision before the Karnataka High Court.

7.4. In the above background, some of the legal heirs of Shri. Giridharlal, parties to the above proceeding approached the Goshala and Applicant being desirous of recording a compromise and entered into MOUs with them agreeing to release and relinquish their respective rights, if any, in the suit properties in favour of the Goshala in consideration of payment of certain amounts. Going further, the legal heirs executed registered Deeds of Confirmation in favour of the Goshala, confirming that the Goshala is the absolute owner of the suit properties.

7.5. In the meanwhile, some of the other legal heirs of Shri. Giridharlal executed a MOU dated 19.02.2019 with Respondent Nos. 1 and 2 for sale of the suit properties. On 21.06.2019, these legal heirs have also granted power of attorney to Respondent No. 1 which has been subsequently cancelled on 11.06.2021. In this background, on 05.07.2021, Respondent Nos. 1 and 2 filed the present suit before the learned Trial Court for various reliefs against the legal heirs of Shri. Giridharlal, the Goshala and Applicant, *inter alia*, contending that the

Confirmation Deeds and cancellation of the Power of Attorney are in violation of the MOU dated 19.02.2019 entered into by Respondent Nos. 1 and 2 with some of the legal heirs of Shri. Giridharlal and are liable to be cancelled and set aside. In effect, Respondent Nos. 1 and 2 have sought specific performance of the agreement i.e. MOU date 19.02.2019 in the present suit.

7.6. In the meanwhile, the learned Trial Court on 06.07.2021 passed an exparte interim order in the said suit restraining the Applicant, the Goshala and the legal heirs of Shri. Giridharlal (Defendants in the suit) from executing Deed of Confirmation, Sale Deed, agreement or entering into any agreement with the Applicant. The ad-interim order has been extended and is currently subsisting. The Applicant filed Writ Petition No. 4690 of 2021 to challenge the above order dated 06.07.2021 which is pending hearing and decision. In the meanwhile, some of the legal heirs of Shri. Giridharlal filed Suit bearing O.S. No. 3988/2021 before the City Civil Court at Bengaluru on 02.08.2021 wherein notices have been issued by the Court to the Defendants.

7.7. On 22.11.2021 Applicant filed application below Exh. 377 (erroneously mentioned in the impugned order as having been filed by Defendant No. 117) before the learned Trial Court under Order 7 Rule 10 of CPC for return of plaint on the ground that the learned Trial

Court lacked territorial jurisdiction to entertain the said suit in terms of Section 16 of the CPC. Respondent No. 1 filed its reply and resisted the Application. Identical applications were filed by Defendant Nos. 66, 67, 139 and 117. By the common impugned order, the learned Trial Court rejected the Applications for return of plaint holding that the relief sought by Respondent Nos. 1 and 2 (Plaintiffs) is not for specific performance of the MOU / agreement and seeking direction to Defendants to execute the sale deed in their favour and to deliver possession to them but only to prohibit them from committing a breach of their personal obligations under the MOU and hence, the suit is not covered by clause (d) of Section 16 of the CPC. However, in the same breath, the learned Trial Court holds that the suit is maintainable under the proviso to Section 16.

7.8. This order is under challenge before me.

8. Mr. Khambata, learned Senior Advocate appearing on behalf of the Applicant has drawn my attention to the suit plaint and provisions of Section 16 of the CPC at the outset and made the following submissions:-

- (i) Plain reading of the prayers in the suit plaint shows that the Plaintiffs seek reliefs in the nature of declarations and permanent injunctions against Defendants with respect to the suit properties situated

in Bengaluru, Karnataka; hence it is a suit for determination of rights pertaining to immovable property situated in a state in which the Civil Court in Pune does not have jurisdiction. He has placed reliance on the following averments in the plaint in support of the above proposition:-

- (a) At paragraph No. 2 of the plaint, it is averred that “the said properties are the subject matter of the present suit....”;
- (b) At paragraph No. 24 of the plaint, it is averred that “The Plaintiffs further state, Plaintiffs have the charge on the suit properties.”;
- (c) At paragraph No. 35 of the plaint, it is averred that:

“....The owner Defendants have also not informed the details about the steps taken to perform the obligations. As such the Plaintiffs are not aware of the fact as to how many obligations are performed and as to how many obligations the owner Defendants are unable to perform. Hence it will take sometime to file substantive suit for specific performance. The Plaintiffs therefore are filing the present suit, for the limited relief of declaration and permanent injunction and the Plaintiffs have reserved their right to claim the relief of specific performance and also the relief of possession by filing the separate application under the provisions of Order 2 Rule 2 of CPC”.

- (d) At paragraph 36 of the plaint, it is averred that:-

“The Plaintiffs state that until filing of the substantive suit for specific performance and possession, the owner Defendants are not entitled to cause any prejudice to the rights and benefits of the Plaintiffs, arising of the aforesaid agreement and therefore not entitled to commit the breach of the aforesaid agreement dated

19.02.2019, by taking any steps contrary to the terms and conditions. The Plaintiffs state that, considering the facts on record, the Plaintiffs are entitled for relief of injunction, from this Court against the owner Defendants, thereby restraining them from entering into any document, agreement or arrangement with Bagmane Construction Pvt Ltd. Bangalore Gorakshan Shala Society, Mr. Yeiram Reddy and others with respect to the suit property thereby causing prejudice to the interest of the Plaintiffs with respect to the suit property (emphasis supplied).

(e) At paragraph No. 38 of the Plaint, it is averred that:

“The Plaintiffs state that in fact as per the representations made by the owner Defendants and also as per the documents on record, it is crystal clear that the Bangalore Gorakshan Shala Society and also Bagmane Construction Pvt Ltd have no right, title and interest with respect to the suit properties and therefore even otherwise, such deeds of confirmation, executed by the owners Defendants in their favour has no value in the eyes of law and same are ineffective and will not create any right in favour of the Bangalore Gorakshan Shala Society or Bagmane Constructions Pvt Ltd. Hence the Plaintiffs are entitled for the appropriate relief of declarations as well as injunction”.

(f) At paragraph No. 48 of the plaint, jurisdiction is invoked on the following basis:

“As per the terms and conditions of the agreement dated 19.02.2019, the parties have specifically agreed that the courts at Pune shall have exclusive jurisdiction to decide dispute between the parties arising out of the said agreement dated 19.02.2019 and hence this Court has got jurisdiction to entertain and try the present suit. Moreover, the part of cause of action has arisen within the jurisdiction of this Court. Hence this Court has got jurisdiction to entertain and try the present suit.”

(ii) That Section 16(d) of the CPC would squarely apply to the present case in view of the above specific averments. It provides “Subject to the pecuniary or other limitations prescribed by any law, suits - (d) for the determination of any other right to or interest in immovable property,.... Shall be instituted in the Court

within the local limits of whose jurisdiction the property is situate.”. That in the present case, considering that the suit properties are situated in Karnataka and that the suit involves determination of rights and interests of the parties in those properties, to comply with Section 16(d) of CPC, Plaintiffs ought to have been filed the suit before the appropriate Civil Court in Bengaluru, Karnataka and not before the Civil Court in Pune, as it lacks jurisdiction.

(iii) In the decision in the case of **Harshad Chiman Lal Modi Vs. DLF Universal**¹ in paragraph No. 16, the Supreme Court has held that:

- (i) Section 16 “recognises a well-established principle that actions against *res* or property should be brought in the forum where such *res* is situate. A court within whose territorial jurisdiction the property is not situate has no power to deal with and decide the rights or interests in such property.
- (ii) Section 20 of the CPC is a residuary provision and “... covers those cases not falling within the limitation of Section 15 to 19”

¹ (2005) 7 SCC 791

(iv) According to him, Section 16(d) of the CPC applies to the present case in view of the following:-

(a) the Plaint proceeds on the premise that the suit properties “...are the subject matter of the present suit....”

(b) the Plaintiffs contend, at paragraph No. 24 of the plaint that they have a charge on the suit properties; put differently, they claim a right in respect of the immovable properties;

(c) At paragraph No. 36 of the plaint, the Plaintiffs categorically aver that the reliefs prayed for in the suit are necessary to protect “interest of the Plaintiffs with respect to the suit property”, once again confirming that the suit pertains to the parties’ interest in the suit properties;

(d) At paragraph No. 38 of the plaint, Plaintiffs contend that Applicant and the Goshala “have no right, title and interest with respect to the suit properties” thereby raising an issue pertaining to the right, title and interest of the (Defendants) parties, which, this Court will have to determine

before granting any reliefs; and

- (e) that consistent with the above averments, read as a whole, the prayers clearly pertain to and rest upon a determination of rights or interests in the suit properties;
- (f) In particular, prayer (d) seeks declarations to negate the entitlement of Defendant Nos. 137 and 138 to ownership and other rights in the suit properties; prayer (g) seeks an injunction against the execution by the Defendants of documents “with respect to the suit properties”; prayer (h) seeks an injunction against the Defendants from transferring, alienating or creating rights “with respect to the suit properties”; prayer (l) seeks an injunction against handing over possession of the suit properties to third parties and / or Defendant Nos.137 and 138.
- (g) that at paragraph No. 40 of the impugned order, the learned Judge holds “Secondly, in the present suit Plaintiff is not claiming ownership right or possession of the suit property, that they are only claiming to protect some interest as and in respect

of the suit property” which stands clearly disproved in view of the aforementioned averements in the plaint; Consequently, it is the Civil court in Karnataka within whose jurisdiction the suit properties are situated and not the civil court in Pune that will have jurisdiction to hear and decide the suit.

(v) that proviso to Section 16 does not apply on a plain reading of paragraph Nos. 27 and 48 of the suit plaint; that in fact it is not the Plaintiffs’ case that proviso to Section 16(d) would apply as pleaded. Plaintiffs’ case on jurisdiction rests on the premise that supposedly a part of the cause of action has arisen in Pune and (b) the exclusive jurisdiction clause agreed upon by the parties in the MOU to vest the jurisdiction in Pune Court.

(vi) that on plain reading of the reliefs prayed for in the suit, it is clear that they can only be granted after determining the rights of the parties in respect of the suit properties i.e. they are admittedly consequential reliefs. Such reliefs cannot be obtained “entirely” through the personal

obedience of the Defendants.

8.1. He has referred to and relied upon the following decisions of the Supreme Court in support of his submissions:-

- (i) **Om Prakash Vs. Amar Singh**²;
- (ii) **Splendor Landbase Ltd Vs. Mirage Infra Ltd.**³

8.2. In view of the above, he has submitted that the proviso to Section 16 of the CPC would not apply independently in the facts and circumstances of the present case and the suit filed by Respondent Nos. 1 and 2 is squarely covered under the provisions of Section 16(d) of CPC and the impugned order is therefore bad in law and deserves to be set aside and the Application for return of plaint be allowed by this Court.

9. ***PER CONTRA***, Mr. Dwarkadas, learned Senior Advocate appearing for Respondent Nos. 1 and 2 (Plaintiffs) has drawn my attention to the suit plaint and has made the following submissions:-

- (i) he submitted that the salient features of the said MOU dated 19.02.2019 are as under:- (a) that it has been executed at Pune; (b) that the stamp paper used for execution has been purchased in Pune in the name of the Plaintiff no.2; (c) that the Plaintiffs have paid a sum of Rs.14,12,82,369/- (Rupees Fourteen Crores

² 1973 SCC Online All 31

³ 2010 SCC Online Del 1455

Twelve Lakhs Eighty Two Thousand Three Hundred and Sixty Nine only) towards part consideration under the said MOU; (d) that Defendant Nos.69, 70, 71, 111, 112, 113, 114, 115, 116 and 133 reside in Pune; and the other Defendants are residing in various parts of India namely, Madhya Pradesh, Gujarat, Jharkhand, Assam, Rajasthan, Delhi, Maharashtra, Chennai, Tamil Nadu and Karnataka;

(ii) that reliefs sought in the suit and in particular prayer clauses d, h, i, j, and l are in personam and not in rem having regard to the following:-

(a) that there is no claim or prayer for possession of the properties;

(b) that the reliefs sought are only in the context of enforcement of a negative covenant and having regard to the documents executed contrary thereto, a declaratory relief that the said Deeds of Confirmation are contrary to the MOU, and consequential reliefs of cancellation of the documents;

(c) that Defendant nos.137-141 are impleaded as persons claiming through and under Defendant nos.1-136 i.e. the legal heirs of Giridharlal; that no title dispute is

raised which is sought to be adjudicated by the learned Trial Court;

(iii) that the suit is filed for seeking enforcement of a negative covenant under Section 42 of the Specific Relief Act, 1963 in the context of clause 8.1(b) of the MOU. That having regard to the fact that a Deed of Confirmation had already been executed prior to filing of the suit on 05.07.2021, the Plaintiffs have impleaded Defendant Nos.137-141 in the array of parties and sought declaratory reliefs that the said Deeds of Confirmation have been executed contrary to the negative covenant contained in the suit MOU. That Defendant Nos.137-141 claim through and under Defendant Nos.1-136 by virtue of the said Deeds of Confirmation and hence the Plaintiffs have also sought a relief of cancellation of the said Deeds of Confirmation as a consequential relief as having been executed in the teeth of the negative covenant;

(iv) that the suit is maintainable in Pune having regard to the following:-

(a) that Defendant Nos.69, 70, 71, 111, 112, 113, 114, 115, 116 and 133 are residing in Pune;

- (b) that the MOU dated 19.02.2019 is executed in Pune and payments thereunder are made in Pune and as such part cause of action has arisen in Pune. Hence, by virtue of clause 13.8 of the MOU parties have elected to make Courts in Pune have exclusive jurisdiction and such a clause is valid as held in the case of Harshad Chimanlal Modi (supra); that the jurisdiction clause bearing No.13.8 in the MOU provides for exclusive jurisdiction to the Courts at Pune and where two or more Courts have jurisdiction to entertain a suit, parties may by agreement submit to the exclusive jurisdiction of one of the Courts to the exclusion of the others;
- (c) that proviso to Section 16(d) contemplates a situation where Courts could grant reliefs in suits in respect of immovable property situated abroad provided reliefs sought are in personam. Further, Courts can grant relief in suits respecting immovable property situate abroad by enforcing their judgments by process in personam i.e. by arrest of the Defendant or by attachment of property as contemplated under Order XXI Rule 32 of CPC; that similarly a decree for specific

performance and injunction can both be executed;

- (d) that suit which falls under the proviso to Section 3 attracts the provisions of Section 20 of CPC. Section 20(b) of CPC provides that a suit shall be instituted within the local limits of whose jurisdiction any one of the Defendants, in case there are many Defendants, resides or voluntarily carried on business or personally works for gain. Section 20(c) provides that Court will have jurisdiction where part of cause of action or whole thereof arises. Thus, on applicability of above provisions, Court at Pune has jurisdiction to try and entertain the present suit; hence in view of the above provisions and the fact that Defendant Nos.69, 70 71, 111, 112, 113, 114, 115, 116 and 133 reside within the jurisdiction of the Hon'ble Court at Pune, the Court at Pune has jurisdiction;
- (v) that following averments in the plaint indicate that the suit is for enforcement of the negative covenant in the MoU and that it is not a suit for land :

“22. The Plaintiffs state that, thus, the performance of the Plaintiffs as per the said agreement was always subject to the performance of the terms, conditions and the obligations by the Owner Defendants, which were specifically stated in the said agreement including the para no. 8.1 of the said agreement. As such, the Plaintiffs are always ready and willing to perform their

part of the agreement, subject to performance of the terms and conditions by the Owner Defendants, which are specifically stated in the entire agreement including clause no. 8.1.

35.The Owner Defendants, as per Clause No. 8.1 (b), has specifically agreed not to enter into or deal with the suit properties. The Owner Defendants, have also undertaken various obligations as per said Clause. The Owner Defendants, have also not informed the details, about the steps taken to perform the obligations. As such the Plaintiffs are not aware of the fact as to how many obligations are performed and as to how many obligations, the Owner Defendants are unable to perform. Hence it will taken some time to file substantive suit for specific performance. The Plaintiffs therefore are filing the present suit, for the limited relief of declaration and permanent injunction and the Plaintiffs have reserved their right to claim the relief of specific performance and also the relief of possession, by filing the separate application under the provisions of Order 2 Rule 2 of CPC...

36. The Plaintiffs submit that until finding of the substantive suit for specific performance and possession, the Owner Defendants are not entitled to cause any prejudice to the rights and benefits of the Plaintiffs, arising of the aforesaid agreement and therefore not entitled to commit the breach of the aforesaid agreement dated 19.02.2019, by taking any steps contrary to the terms and conditions. The Plaintiffs state that, considering the facts on record, the Plaintiffs are entitled for relief of injunction from this Hon'ble Court against the owner defendants, thereby restraining them from entering into any document, agreement and arrangement with Bagmane Construction Pvt. Ltd., Bangalore Gorakshan Shala Society, Mr. Yeiram Reddy and others with respect to the suit property thereby causing prejudice to the interest of the plaintiffs with respect to the property...

37. It is submitted that, as the aforesaid alleged document of deeds of confirmation as stated herein above are executed after the execution of the aforesaid agreement dated 19.02.2019 and after receipt of the substantial part of consideration of an amount of Rs. 14,12,82,369/- and also after execution of the registered power of attorneys in favour of Plaintiff No. 2, those documents of deed of confirmation are illegal, null and void and not bindings on the present Plaintiffs with respect to the suit properties.....”

(vi) that Plaintiffs have however sought declaration in the context of the negative covenant contained in the MOU and such relief is not an independent relief, but is a consequential to the main substantive relief of enforcement of the said negative covenant.

(vii) Mr. Dwarkadas has referred to and relied upon the following decisions in support of his aforesaid propositions:-

- (i) **Adcon Electronics P Ltd Vs. Daulat & Anr.⁴;**
- (ii) **Deccan Paper Mills Company Ltd Vs. Regency Mahavir Properties & Ors.⁵;**
- (iii) **Miraj Dyrmix Pvt Ltd & Anr. Vs. Snowcem Paints Pvt Ltd & Ors.⁶;**
- (iv) **Harshad Chiman Lal Modi Vs. DLF Universal Ltd & Anr.⁷**

Thus according to him there is no dispute in respect of the suit properties and hence, the impugned order deserved to be upheld as being rightly passed.

10. Mr. Tiwari, learned Advocate appearing for Applicant in CRA 5/2023 has adopted the submissions made by Mr. Khambata.

11. I have heard the submissions advanced by the learned Senior Advocates appearing for the respective parties and perused the record and pleadings of the case with their able assistance.

12. Before I advert to the submissions made on behalf of the parties, it would be apposite to note certain facts which are revealed on plain reading of the plaint, which is necessitated for deciding the

4 (2001) 7 SCC 698

5 (2021) 4 SCC 786

6 (2022) SCC Online Bom 2078

7 (2005) 7 SCC 791

Application under Order VII, Rule 10 of CPC:-

- (i) perusal of plaint admittedly reveals that the suit properties are situated in Bengaluru ;
- (ii) perusal of cause title of the plaint reveals that 10 out of 141 Defendants are residents of Pune. The other Defendants admittedly are residents of Ahmednagar (1), Assam (2), Aurangabad (17), Bengaluru (8), Chennai (6), Delhi (6), Dhule (1), Guwahati (25), Indore (2), Jalgaon (7), Jalna (1), Jharkhand (3), Karnataka (26), Mumbai (1), Nandurbar (3), Nashik (3), Panvel (1), Pune (10), Rajasthan (14), Gujarat (1), Telangana (2) and Thane (1);
- (iii) An amount of Rs. 11 Crore has been deposited in the City Civil Court at Bengaluru by the Goshala i.e. Defendant No. 137 which is the subject matter of MOU dated 30.08.2006. A further amount of Rs. 6 Crore received by Defendant No. 96 from Defendant No. 138 under the joint development agreement dated 28.05.2007 is deposited in the City Civil Court at Bengaluru by the said Defendant. That apart under the MOU dated 19.02.2019 in the present suit an amount of Rs. 14,12,82,386/- out of the total consideration of

Rs. 357 Crore has been paid by Respondent Nos. 1 and 2 (Plaintiffs) to some of the legal heirs of Shri. Giridharlal;

(iv) The aforesaid position is the admitted position.

13. Perusal of the impugned order dated 22.04.2022 has concluded in paragraph Nos. 41 and 42 as under:-

“41. At the next instance, it is to note that while deciding the nature of the Civil Suit particularly whether the suit is relating to immovable property or not, one as to look into the terms and conditions of the MOU as mentioned in the suit. On close perusal of the terms, it will reflect that some terms are not relating to immovable property, those are in the nature of personal obligations undertaken by the defendant no. 1 to 136. So, one of the personal obligations is in the form of negative covenant i.e. not to create third party interest and to ensure the clear title. As stated in earlier paras, few of the defendants, have executed the deed of confirmation in respect of suit property and thereby it is alleged by the plaintiff that they thereby committed breach of their negative covenant which is nothing to do with actual terms relating to immovable property. The defendant no. 1 to 136 have voluntarily undertaken the negative covenant and therefore, an independent of contract for sale, such negative covenant are independently enforceable against the defendant. If such negative covenant is enforced, no any right is going to create in favour of plaintiff. Moreover, the plaintiff is already reserved the right to claim for the decree of specific performance and possession in respect of suit property. So, whatever order sought from this Court can be enforced by personal obedience of the parties like by attachment and arrest. As mentioned in above paras that some of the defendants are residing within the local jurisdiction of this court, as per the residuary Sec. 20 of CPC parties can choose the forum. Accordingly parties have agreed for the forum of Pune and have voluntarily signed the agreement and have never disputed the MOU on any ground.

42. Thus, it is to be noted that on decreeing the suit as prayed for, no any rights are going to be created in favour of the present plaintiff with respect to the suit property. None of the defendants are coming with the case that by granting the final prayers will result into creating rights in the immovable property. At the cost of repetition, it is submitted that the MOU contemplates that various intervening stages to reach the final stage of execution of the sale deed. The same MOU also contemplates that the plaintiffs are entitled to rescind the MOU on failure to comply with the obligations by the owner defendants. Thus, the matter is at very primitive stage and we cannot assume that it will reach at the final

stage. The owner defendants therefore have even not passed the first stage and therefore, the plaintiffs have every right to seek injunction to protect its interest arising from MOU, which has no direct nexus with immovable property. At the most, it can be set to be the suit to prohibit the defendants from committing the breach of their personal obligations and responsibilities which they have voluntarily agreed and undertaken, prior to reaching the final stage. In the instant case, the proviso to Sec. 16 of the Code has applied. The Relief sought by the plaintiff is for not specific performance of agreement receipt immovable property by directing the defendant to execute the sale deed in favour of the plaintiff and to deliver possession to him. Therefore the suit is not covered by clause (d) of Section 16 of the Code and the proviso has application here. Consequently, I answer the point no. 1 accordingly and pass the following order.

ORDER

1. Application Exh. 75,77,82,377 are rejected.
2. Cost in cause.
3. Parties to take note.”

14. The learned Trial Court has further concluded that the suit filed by Respondent Nos. 1 and 2 is governed by the proviso under Section 16 independently and *dehors* the provisions of Section 16, and in any case not clause (d) of Section 16. In effect, what the learned Trial Court has held is that the suit as filed can be determined by the learned Trial Court under the proviso to Section 16 and the reliefs sought for can be entirely obtained through the personnel obedience of the Defendants in Pune. In effect, this means that the learned Trial Court has determined the maintainability of the suit within the territorial jurisdiction of Pune on the ground that the proviso to Section 16 applies *dehors* the substantive provision contained therein.

15. The substantive provisions i.e. Section 16(d) along with proviso reads thus:-

“16. Suits to be instituted where subject-matter situate – subject to the pecuniary or other limitations prescribed by any law, suits -

(a) ...

(b) ...

(c) ...

(d) for the determination of any other right to or interest in immediately property,

(e) ...

(f) ...,

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

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.”

16. At the outset it needs to be stated that as held by the Supreme Court in the case of Harshad Chiman Lal Modi (first supra) which has been referred to and relied by both the learned Senior Advocates, it is settled position in law that the proviso to Section 16 only applies if the suit falls within anyone of the categories specified in the main part of Section 16 i.e. under 16(a) to section 16(e) and the reliefs claimed could entirely be obtained by the personal obedience of the Defendants. Though Mr. Khambata would argue that the word mentioned in the proviso is “defendant”, Mr. Dwarkadas would argue to the contrary that it could be more than one Defendant. It needs to be stated that on plain reading of the aforesaid provision even though the immovable property may not be situated within the jurisdiction of

a Court, a suit may lie at the option of the Plaintiff in that court if the Defendant or his personal property is within its jurisdiction and the reliefs asked for can be entirely obtained only through Defendants' personal obedience. However, for that, the suit plaintiff needs to be read. The learned Trial Court has in paragraph 15 of the impugned order held thus:-

"15. As stated earlier, it is clear here that the relevant facts which need to be looked into for deciding application under Order 7 Rule 10 of CPC are the averments in the plaint. So, before inferring in any manner as to whether this Court is having jurisdiction to try the present suit or not, it would be proper to take a cursory view of the averment of the plaintiff in the plaint.

17. In the present case as seen above, save and except 12 Defendants, rest of the Defendants are residing outside Pune and mostly spread all over India. Under the above salutary provision, question of drifting to the proviso under Section 16 would arise only in exclusion of the choice given under Section 16(a) to (f), if the decree can in a given case be executed by arrest of the Defendant or by attachment of his personal property within the jurisdiction of that Court. For this, the pleadings and averment need to be seen. The pleadings in the present plaint as enumerated and argued by Mr. Khambata would clearly show that the reliefs are in consequence and for specific performance of the MOU dated 19.02.2019, declarartion, injunction and recovery and in that view of the matter, provisions of Section 16 would directly apply and the proviso cannot be read *dehors* the substantive provisions under Section 16(d).

18. That apart the averments in the plaint in paragraph No. 2, 24, 35, 36, 38, 48 alluded to herein above clearly reveal that the plaint proceeds on the premise that the suit properties are the subject matter of the present suit; that Respondent Nos. 1 and 2 i.e. Plaintiffs have a charge on the suit properties which directly coincides and stands covered within the ambit of Section 16(d); that it is the Plaintiffs' case that reliefs prayed for in the suit are necessary to protect their interest with respect to the suit properties (emphasis supplied); that an assertion is made in the plaint that Defendant Nos. 137 and 138 i.e. Applicant and the Goshala have no right, title and interest with respect to the suit properties, thereby raising a *lis* pertaining to right, title and interest of these parties to the suit properties which will have to be determined by the Trial Court for grant of the declaratory and injunctive reliefs prayed for; that prayer clause (b) of suit plaint specifically seeks a declaration to negate the right and entitlement of the Applicant and Goshala's ownership and rights in the suit properties; that prayer clause (g) specifically seeks an injunction against execution by the Defendants of any further document with respect to the suit properties; that prayer (h) seeks an injunction against Defendants from transferring, alienating or creating rights with respect to the suit properties and prayer (l) seeks injunction against handing over possession of the suit properties to third parties and / or the Applicant and the Goshala. Hence, for grant of such reliefs and

the supportive averments made in the plaint, which are alluded to herein above, the suit plaint clearly invites the jurisdiction of the Court wherein the suit properties are situated. That apart, the findings returned by the learned trial court that the Plaintiff is not claiming ownership right or possession of the suit property and is only claiming to protect some interest in respect of the suit property stands completely diluted and negated in view of the aforementioned prayer clauses and averments in the suit plaint and the nature and manner in which the said reliefs are moulded by the Plaintiffs.

19. To put it plainly, there are 14 reliefs prayed for in the suit plaint as under:-

- (i) prayer clause (a) is a formal relief;
- (ii) prayer clauses (b) to (e) are declaratory reliefs against Defendants;
- (iii) prayer clause (f) is for cancellation of the Power of Attorney dated 11.06.2021 with further direction to the Registrar to record the cancellation;
- (iv) prayer clauses (g) to (j) are seeking permanent injunction against Defendants;
- (v) prayer clause (k) is for injunction against Defendants from taking any steps contrary to the MOU dated 19.02.2019;

- (vi) prayer clause (l) is for permanent injunction against Defendant Nos. 1 to 136 from handing over possession to any third party and / or Defendant Nos.137 to 141;
- (vii) prayer clause (m) is for temporary injunction;
- (viii)prayer clause (n) is for any other just relief in the interest of justice.

It is also the case of the Plaintiff that some part of the cause of action has arisen in Pune and to that effect, the only averment found in the plaint is in paragraph No. 9 wherein it is stated that various meetings have taken place between Plaintiff No. 2 and the owner Defendants (Defendant Nos. 1 to 136) through their authorized representatives which includes some of the Defendants at the registered office of Plaintiff No. 2 at Pune. Save and except this there is no averment in the entire plaint to show that any cause of action has arisen in Pune. Mr. Dwarkadas would contend that the amount of approximately Rs. 14 Crore has been paid over by the Plaintiffs in Pune to some of the Defendants and that also is a material cause of action. The plaint states that as per the MOU dated 19.02.2019, parties have agreed that the Court at Pune shall have exclusive jurisdiction to decide the dispute between the parties arising out of the said agreement and hence, Civil Court in Pune has jurisdiction to entertain and try the present suit. It is further stated that moreover the part of cause of action has arisen within the jurisdiction of Pune

Court and hence, it has got jurisdiction to entertain and try the present suit. These averments are found in paragraph No. 48 of the suit plaint under the jurisdiction clause. On *Prima facie* reading of the said clause, it is stated that this proposition deserves to be rejected in *limine* as it is settled principle that parties cannot confer jurisdiction of the court unto itself / themselves and any arrangement conferring such jurisdiction on the Court not having jurisdiction is not only void but opposed to public policy. I need not dilate on this issue any further.

20. Mr. Dwarkadas would submit that the provisions of Section 16 and applicability of the proviso in the present case as determined by the learned Trial Court needs to be considered from the perspective of the Specific Relief Act. He has referred to and relied upon Sections 31 to 34 and urged that in the event of execution of a decree if granted by the Court, the Plaintiffs would be within their rights to seek the declaratory as well as injunctive reliefs for redressal in the Court at Pune. He submitted that with that analogy, the principal relief sought by Plaintiffs in the present suit is in personam and not in rem, the enforceability of which can be exercised by the Civil Court in Pune. He submitted that this relief can only be enforced by the personal obedience of the Defendants as according to him all reliefs prayed for in the suit plaint are relatable to their obligations in the MOU and will

have to be enforced through their personal obedience. He submitted that the suit is not for land and the Plaintiff was not asking any decree which could not be enforced through their personal obedience. He has sought to rely upon the leave obtained by Plaintiffs under Order II, Rule 2 to contend that in view of the leave granted to the Plaintiffs, the suit was rightly filed. He would submit that all reliefs claimed by Plaintiffs in the suit before the Trial Court are not in *rem* but in *personam*. He submitted that averments in the plaint and reliefs prayed are to be construed from the perspective of Defendants to comply with their obligations under the MOU dated 19.02.2019. He submitted that Plaintiffs are ready and willing to perform their part and obligation of payment of the balance amount of approximately 343 Crore to the Defendants under the MOU and in that context have filed the substantive suit in Pune for compliance of the obligations by the Defendants under the MOU. Hence according to him even though the suit property is situated in Bengaluru, it is the choice of the Plaintiffs to maintain and file the suit at the place where the obligations of the Defendants can be complied with fully by making them personally liable to comply with the same. Hence he submitted that institution of the suit in Pune was justified under the proviso to section 16 of the CPC. The aforementioned submissions of Mr. Dwarkadas deserve to be dismissed for more than one reason. In fact, it is seen that his submissions are not in consonance with the

averments made in the plaint and the reliefs prayed for by the Plaintiffs which are alluded to and reproduced herein above. That apart it is an admitted position in law that maintainability of the suit under the proviso to Section 16 of the CPC has to be considered in consonance and in the context of applicability of any one of the substantive provisions i.e. 16(a) to 16 (f) of CPC. Further independent of the provisions of Section 16 of CPC, it is not permissible for the Plaintiffs to argue that the suit is filed under the provisions of section 20 of the CPC. Section 16 is the substantive provision and it would be rendered meaningless if the submissions advanced by Mr. Dwarkadas are to be accepted for maintainability of the present suit only under the proviso to section 16 of CPC. Admittedly, there is no privity of any contract between Plaintiffs and Defendant Nos. 137 to 141, despite which declaratory reliefs are sought against them. It is not answered as to how Defendant Nos. 137 to 141 can be brought within the ambit of the proviso for enforcing their personal obligations. In fact there are no such personal obligations of these Defendants qua the Plaintiffs. The finding by the learned Trial Court that Section 20 would apply to the present case to enable the parties to choose the forum is fallacious. Section 20 of the CPC, which allows a party to file a suit in a Court within whose jurisdiction a part of the cause of action has arisen, applies subject to Sections 15 to 19 of the CPC. This is evident from the plain language of the provision which begins with the

phrase “*subject to the limitations aforesaid*”. This has been further confirmed by the Hon’ble Supreme Court in **Harshad Modi** (*supra*) at paragraph 21 which held Section 20 to be a “*residuary provision and covers those cases not falling within the limitations of Sections 15 to 19*”. As such, Application of Section 16(d) precludes Application of the Section.

21. The decision of the Supreme Court in the case of **Begam Sahiba Sultan Vs. Mohd. Mansur Ali Khan**⁸ clearly covers the facts and circumstances of the present case. In the said case the Plaintiff had similarly styled the reliefs in the form of negative declarations to seek shelter under the proviso to Section 16(d). The Supreme Court saw through the plaint to agree with the Trial Court and the High Court that the reliefs for negative declarations were superfluous and the suit “*in substance ... was one relating to immovable property situate outside the jurisdiction of the trial court in Delhi and hence the plaint had been presented in a court having no jurisdiction to entertain the suit*”.

22. Further the decision of the Division Bench of Delhi High Court in the case of **Splendor Landbase Limited** (*third supra*) clearly distinguishes the ambit of Section 16, its proviso and Section 20 in paragraph No. 25 of the said decision which reads thus:

8 (2007) 4 SCC 343

“Having considered the decisions referred by the parties and on a plain reading of the plaint as a whole, it is clear as we have indicated above that the present suit is one which comes within the purview of Section 16(d) of the CPC and the proviso of Section 16 of CPC is not applicable under the circumstances as the proviso of Section 16 of CPC is an exception to the main part of the Section which cannot be construed to enlarge the scope of the main provision. If the suit comes within Section 16(d) of the CPC, it has been held by the Apex Court in Harshad Chiman Lal Modi's case (supra) that Section 20 of the Code would have no application in view of the opening words of Section 20 "subject to limitations aforesaid". The Apex Court has held that the proviso to Section 16 would apply only if the relief sought could entirely be obtained by personal obedience of the defendant. The proviso we feel will only apply if the suit falls within one of the categories specified in the main part of the Section. In the present case, although specifically the relief for possession of the property has not been claimed by the Appellant in the prayer for the purpose of development, however, it is settled law that by clever drafting a party cannot be permitted to come within different meaning of relief claimed. Hence, no benefit can be derived by the Appellant either from the proviso of Section 16 or Section 20 of the Code of Civil Procedure.”

(emphasis supplied)

22.1. Hence, the injunctive reliefs allegedly prayed for by Plaintiffs can only be granted after a Court determines the Plaintiffs’ right to hold and enjoy the suit properties. As such, the declaratory and injunctive reliefs prayed for by the Plaintiffs cannot be granted before first determining their interest in the suit properties.

22.2. In this context, the decision of the Supreme Court in the case of **Harshad Chiman Lal Modi** (*first supra*) is directly relevant.

Paragraph Nos. 15 to 21 of the said decision read thus:-

“15. Now, Sections 15 to 20 of the Code contain detailed provisions relating to jurisdiction of courts. They regulate forum for institution of suits. They deal with the matters of domestic concern and provide for the multitude of suits

which can be brought in different courts. Section 15 requires the suitor to institute a suit in the court of the lowest grade competent to try it. Section 16 enacts that the suits for recovery of immovable property, or for partition of immovable property, or for foreclosure, sale or redemption of mortgage property, or for determination of any other right or interest in immovable property, or for compensation for wrong to immovable property shall be instituted in the court within the local limits of whose jurisdiction the property is situate. The Proviso to Section 16 declares that where the relief sought can be obtained through the personal obedience of the defendant, the suit can be instituted either in the court within whose jurisdiction the property is situate or in the court where the defendant actually or voluntarily resides, or carries on business, or personally works for gain. Section 17 supplements Section 16 and is virtually another proviso to that section. It deals with those cases where immovable property is situate within the jurisdiction of different courts. Section 18 applies where local limits of jurisdiction of different courts are uncertain. Section 19 is a special provision and applies to suits for compensation for wrongs to a person or to movable property. Section 20 is a residuary section and covers all those cases not dealt with or covered by Sections 15 to 19.

16. *Section 16 thus recognizes a well established principle that actions against res or property should be brought in the forum where such res is situate. A court within whose territorial jurisdiction the property is not situate has no power to deal with and decide the rights or interests in such property. In other words, a court has no jurisdiction over a dispute in which it cannot give an effective judgment. The Proviso to Section 16, no doubt, states that though the court cannot, in case of immovable property situate beyond jurisdiction, grant a relief in rem still it can entertain a suit where relief sought can be obtained through the personal obedience of the defendant. The proviso is based on well known maxim "equity acts in personam, recognized by Chancery Courts in England. The Equity Courts had jurisdiction to entertain certain suits respecting immovable properties situated abroad through personal obedience of the defendant. The principle on which the maxim was based was that the courts could grant relief in suits respecting immovable property situate abroad by enforcing their judgments by process in personam, i.e. by arrest of defendant or by attachment of his property.*

17. *In Ewing v. Ewing, (1883) 9 AC 34 : 53 LJ Ch 435, Lord Selborne observed :*

"The Courts of Equity in England are, and always have been, courts of conscience operating in personam and not in rem; and in

the exercise of this personal jurisdiction they have always been accustomed to compel the performance of contracts in trusts as to subjects which were not either locally or ratione domicilli within their jurisdiction. They have done so, as to lands, in Scotland, in Ireland, in the Colonies, in foreign countries."

18. *The proviso is thus an exception to the main part of the section which in our considered opinion, cannot be interpreted or construed to enlarge the scope of the principal provision. It would apply only if the suit falls within one of the categories specified in the main part of the section and the relief sought could entirely be obtained by personal obedience of the defendant.*

19. *In the instant case, the proviso has no application. The relief sought by the plaintiff is for specific performance of agreement respecting immovable property by directing defendant No.1 to execute sale-deed in favour of the plaintiff and to deliver possession to him. The trial court was, therefore, right in holding that the suit was covered by clause (d) of Section 16 of the Code and the proviso had no application.*

20. *In our opinion, the submission of the learned counsel for the appellant that the parties had agreed that Delhi Court alone had jurisdiction in the matters arising out of the transaction also has no force. Such a provision, in our opinion, would apply to those cases where two or more courts have jurisdiction to entertain a suit and the parties have agreed to submit to the jurisdiction of one court.*

21. *A plain reading of Section 20 of the Code leaves no room for doubt that it is a residuary provision and covers those cases not falling within the limitations of Sections 15 to 19. The opening words of the section "Subject to the limitations aforesaid" are significant and make it abundantly clear that the section takes within its sweep all personal actions. A suit falling under Section 20 thus may be instituted in a court within whose jurisdiction the defendant resides, or carries on business, or personally works for gain or cause of action wholly or partly arises.*

22.3. The first three decisions referred to and relied upon by Mr. Dwarkadas does not help the Plaintiff's case are clearly distinguishable. The inclusion or absence of a prayer is not decisive of the true 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 and on which the reliefs asked in the prayers are based. A Plaintiff may ask for a relief which a Court of equity may not grant. That will be insisting on a form of pleading and not on the substance of the suit. In Perm. V. Lord Baltimore, 2 White & Tudor's Eq. case 4th Ed. 923, a claim for possession was made but the Court did not give that relief in its decree. But the Court did not dismiss the suit because such claim was made by the Plaintiff in the writ. The fourth decision of Harshad Modi (first supra) has already been discussed.

23. From the above observations, it is clearly derivated that once the suit is filed for declaration and injunctive reliefs on the basis of the MOU and the averments centered around the MOU, it would fall within the ambit of clause (d) of Section 16. In the present case, Plaintiffs have attempted to join several causes of action in a single suit against multiple Defendants on the basis of the MOU executed with only some of the Defendants. It is thus a suit for seeking specific performance of the MOU dated 19.02.2019 executed by the Plaintiffs with Defendant Nos. 1 to 136. However, substantive rights of Defendant Nos. 137 to 141, undoubtedly are trampled and distinctive reliefs are sought against them qua their documents. That apart, record indicates that some Defendants with whom the MOU has been

executed have resiled and returned the monies received from the Plaintiffs. There are substantive suit proceedings pending in respect of Applicant's and Goshala's right and entitlement in the Court at Bengaluru qua some of the very suit properties. Pleadings and reliefs in the plaint unerringly point out that the suit is not for simplicitor seeking performance of personal obedience of Defendants, but for declaratory, cancellation and permanent injunctive reliefs. Indirectly it is a suit for specific performance of the MOU dated 19.02.2019. Hence, the findings arrived at in paragraph Nos. 41 and 42 of the impugned order are wholly unsustainable and deserve to be quashed and set aside. The impugned order dated 22.04.2022 is quashed and set aside. The Application of the Applicants below Exh. 75, 77, 82 and 377 stands allowed. Plaintiffs are directed to present the suit plaint to the appropriate Civil Court at Bengaluru. Both Civil Revision Applications stand allowed. In view thereof, Interim Application, if any, also stands disposed.

24. At the request of Mr. Dwarkadas, the operation of this Judgment and Order is stayed for a period of 5 weeks to enable the Respondent Nos. 1 and 2 to approach the Supreme Court.

[MILIND N. JADHAV, J.]