

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION NO. 997 OF 2015
IN
SUIT NO. 529 OF 2015
WITH
NOTICE OF MOTION NO. 1589 OF 2015
IN
SUIT NO. 529 OF 2015**

Satish (Vicky) K. Ostwal ...Applicant

In the matter between

Satish (Vicky) K. Ostwal ...Plaintiff

vs.

Narendra Vishwanath Patil ...Defendant

Ms.Kausar Banatwala - Counsel a/w Ms.Paluck Bengali i/b.
Mr.Tushar Goradia - Advocates for Plaintiff-Applicant in Notice
of Motion No. 997 of 2015.

Ms.Yogita Deshmukh-Chitnis - Advocate for Original Defendant
- Applicant in Notice of Motion No.1589 of 2015.

CORAM : S. M. MODAK, J.

DATE : 3rd OCTOBER 2023

P. C. :-

NOTICE OF MOTION NO. 1589 OF 2015

1. This Court as per the order dated 27th November, 2015 after hearing the respective Counsels for both the parties was pleased to frame a preliminary issue under Section 9-A of the Code of Civil Procedure, 1908 ["CPC"]. It reads thus :-

“Whether this Court has jurisdiction to try and entertain the present Suit”?

This issue is framed on the basis of Notice of Motion filed by the sole Defendant. The pleadings are over.

2. Today, when the Notice of Motion is placed before me, both the learned Counsels submitted that they do not want to adduce oral evidence. In view of that, I have heard learned Advocate for the Defendant-Applicant and learned Advocate for the Respondent-Plaintiff.

3. There is relationship of purchaser and vendor in between the Plaintiff and Defendant. As per the Memorandum of Understanding [“MoU”] dated 24th August, 2012, admittedly executed in Mumbai, the Defendant has agreed to sell an agricultural land situated at Village:Shirgaon, Taluka:Palghar, District:Thane. The consideration was Rs.1,62,00,000/- (Rupees One Crore Sixty Two Lakhs Only). It was to be paid in three installments. They are as follows :-

- (a) Rs.11,00,000/- (Rupees Eleven Lakhs Only) to be paid at the time of execution of MoU which is paid. There is no dispute.
- (b) Rs.39,00,000/- (Rupees Thirty Nine Lakhs) to be paid on sale-deed registration and power of attorney.
- (c) Balance consideration of Rs.1,12,00,000/- (Rupees

One Crore Twelve Lakhs Only) to be paid at the time of execution of Conveyance Deed.

The relevant clause is Clause No.2 of MoU. The period for paying second installment is 30 days from the MoU. Whereas, the period is 120 days from MoU for paying the last installment. There was a notice issued by the Defendant through his Advocate dated 15th December, 2014 thereby terminating the the MoU. Accordingly, the present Suit came to be filed.

4. The main reliefs are as follows :-

- (a) To declare that purported termination of MoU vide letter dated 15th December, 2014 is illegal, contrary to MoU and it is not affect any of the rights of the Plaintiff as per MoU ;
- (b) Direct Defendant to specifically perform his obligations under the MoU ;
- (c) There is alternate prayer for awarding damages of Rs.50,00,000/- (Rupees Fifty Lakhs Only) ;

5. After appearance, the Defendant has challenged the territorial jurisdiction of this Court. He has not filed written statement. On one hand, the Plaintiff contends that :- entire cause of action has occurred within the territorial limits of this Court and hence, this Court is having jurisdiction.

6. Whereas, Defendant contends that in fact :-

- (a) It is not cause of action which is material but it is the averments in the Complaint and prayer sought are relevant.
- (b) In addition to that contention, Defendant also relied upon compilation of documents to show that there exists dispute about title with the Plaintiff, so also, amongst other parties who are not before this Court.
- (c) There is also contention raised that there is also a dispute about possession.

That is why, there is a submission that if the contentions raised in Motion and accompanying documents, the Suit will be “Suit for Land” and as land is situated at Palghar, this Court is not having jurisdiction.

7. So, this Court has to decide the following issues :-

- (a) whether the entire cause of action has occurred within the limits of this Court ;
- (b) whether this is a Suit really falling under the category of “*Suit for Land*” and as such, as the land is situated outside the Ordinary Original Jurisdiction of this Court and hence, the Suit is not maintainable ;

Scope of inquiry under Section 9-A of CPC

8. It is true that in Para No.29, the Plaintiff has pleaded the following facts :-

- (a) The parties are residing in Mumbai ;
- (b) There is a clause in the MoU which bestows the jurisdiction on this Court by consent of parties ;
- (c) The MoU was executed at Mumbai ;
- (d) Notice of termination was communicated to the Plaintiff at Mumbai ;

9. It is true that this Court is dealing with the issue of jurisdiction as contemplated under Section 9-A of CPC. It is a settled law that parties can adduce evidence in support of their contentions. As such, the issue cannot be decided simply on the basis of averments in the Plaint, but the contention of Defendant also needs to be considered. It is also true that in some of the judgments, the issue was about revocation of leave already granted. There is difference in between revocation of leave and deciding a preliminary issue framed under Section 9-A of CPC.

10. If these parameters are considered, we will gather an impression that Suit is perfectly filed before this Court. If there is an application under the provisions of Order VII, Rule 11 of CPC, we could have decided it on the basis of averments in the Plaint. But, if it is not so, contention of Defendant is if the Suit will be tried, then Court is required to go to issue of title and possession and hence, Suit will not be Suit for

execution of conveyance and its registration but much beyond that.

11. Before going to the facts, it will be relevant to consider the observations made in the judgments relied upon by both the sides. Few of the judgments are common.

12. The Defendant relied upon the following judgments :-

- (a) Jolly Elevators pvt. Ltd., Plaintiff v/s. J.M. Yagnik and Others, Defendants¹
- (b) Adcon Electronics Pvt. Ltd. v/s. Daulat²
- (c) Excel Dealcomm Private Limited v/s. Asset Reconstruction Company (India) Limited & Ors.³
- (d) Sumer Builders Pvt Ltd V/s. Narendra Gorani, son of Ram Gorani⁴
- (e) Deccan Chronicle Holdings Ltd. v/s. Deccan Chronicle Holdings Ltd.⁵
- (f) Purshottam S. Talreja and another v/s. Coover Phiroze Bharucha and others⁶

13. Whereas, learned Advocate for the Plaintiff relied upon the following judgments :-

- (a) Abdulla Bin Ali and Others v/s. Galappa and Others⁷

¹ AIR 2001 BOMBAY 68

² 2003 (Sup) BCR 286

³ Civil Appeal No.3272 of 2015 : 1st April, 2015 : Supreme Court of India

⁴ Appeal No.572 of 2013 in Chamber Summons No.720 of 2013 : 10th March, 2015 : Bombay High Court

⁵ 2013(4) BCR 171

⁶ 2008(2) Mh.L.J. 173

⁷ (1985) 2 Supreme Court Cases 54

- (b) Excel Dealcomm Private Limited v/s. Asset Reconstruction Company (India) Limited and Others⁸
- (c) Debendra Nath Chowdhury v/s. Southren Bank Ltd.⁹
- (d) Bhawna Seth v/s. DLF Universal Limited & Anr.¹⁰
- (e) Adcon Electronics Pvt. Ltd. v/s. Daulat and Another¹¹

14. Few of the judgments are relied upon to buttress her submission that the provisions of Sections, 16, 17 and 20 of the CPC are not applicable to the Suits filed on the Original Side. It is on the basis of provisions of Section 120 of CPC. Those judgments are as follows :-

- (a) Food Corporation of India v/s. Evdomen Corporation¹²
- (b) Jindal Vijaynagar Steel (JSW Steel Ltd.) v/s. Jindal Praxair Oxygen Co. Ltd.¹³

Scope of Clause XII

15. It is true that as per Clause XII of the Letters Patent, this Court is having jurisdiction in following contingencies :-

- (a) when the land or immovable property is situated ;

⁸ (2015) 8 Supreme Court Cases 219

⁹ AIR 1960 Cal 626

¹⁰ 2007 SCC OnLine Del 1973

¹¹ (2001) 7 Supreme Court Cases 698

¹² (1999) 2 Supreme Court Cases 446

¹³ (2006) 11 Supreme Court Cases 521

- (b) if entire cause of action has occurred within the limits of this Court ;
- (c) when Defendant resides, carries on business, works for gain within the limits of this Court ;

In these contingencies, leave is not required. Leave is required only when part of cause of action has occurred within the territorial limits of this Court. Admittedly, leave is not sought by the Plaintiff and it is for the reason that entire cause of action has occurred in Mumbai.

16. So far as the entire cause of action occurred in Mumbai is concerned, there is no dispute raised on behalf of the Defendant as it is clarified by learned Advocate during arguments. So, whether really Suit will fall within the category “Suit for Land” needs to be decided. When I have perused the judgments relied upon by both the sides, some of the principles which emerges are as follows :-

- (a) Whether adjudication of title is required or whether this is a Suit simplicitor for issuing direction to execute a sale-deed and register it ;
- (b) Whether there are disputes as to title and whether there are dispute as to possession which the Court is required to consider ;
- (c) Even though the immovable property is involved, what are the prayer sought. That is to say, whether

it is only prayer for refund of money ;

- (d) Whether the averments in the Plaint only need to be considered or whether the defences of Defendant can also be considered ;

17. It is true that in case of **Abdulla Bin Ali** as referred above, there was an objection taken by the defendant under Section 9 of CPC. Hon'ble Supreme Court has observed that *"the averments in the plaint only decides the forum"*.

It is true that as per Section 9 of CPC, the Civil Court is having jurisdiction to decide every dispute of a civil nature unless and until the jurisdiction expressly or impliedly barred. It is no doubt true that in the said judgment, there was no occasion to consider the provisions of Section 9-A of CPC. It is Maharashtra amendment. It was incorporated only for the purpose of avoiding delay in conduct of trial and thereby deciding the preliminary issue of jurisdiction at the beginning. It is settled law that such an issue can be decided on the basis of evidence adduced by both the parties. As such, this observation is not useful to the Plaintiff.

18. It is true that in case of **Excel Dealcomm Private Limited** (Supra), leave was granted by the High Court Calcutta and there was prayer for revocation of leave. While deciding

such request, limited enquiry is contemplated. Whereas, it is settled law that scope of enquiry while deciding the preliminary issue is wider.

19. It is true that in all these judgments, it is observed that if relief of possession in specific performance suit is not asked for, and if, the entire cause of action has occurred within the limits of the Court, such suits are maintainable and they do not fall within the purview of “Suit for Land”.

20. It is true that principle laid down in **Adcon Electronics Pvt. Ltd.** (Supra) was reiterated in a judgment in case of **Excel Dealcomm Private Limited** (Supra). Sometimes it happen that in a Suit for specific performance, further relief is not sought. Learned Advocate for the Plaintiff invited my attention to the provisions of Section 22 of Specific Relief Act, 1963. It is true that in addition to the specific performance relief, Plaintiff can seek further reliefs about possession, partition etc. However, there is a bar for granting other reliefs which are not claimed by the Plaintiff. There is a submission made that the Plaintiff has not asked for possession of the land and my attention is invited to clause No.(6) and clause No.(10) of MoU. They are as follows :-

(a) Clause No.(6) empowers the purchaser to take

possession only when he will pay entire consideration.

- (b) Whereas, Clause No.(10) says about bestowing the jurisdiction on this Court.

It is submitted on behalf of the Plaintiff that in the present set of facts, relief can be bifurcated as follows :-

- (a) Relief of only specific performance without possession ;
- (b) Possession can be claimed subsequently in appropriate proceeding if the Plaintiff will succeed in the present Suit ;

No doubt, it is the choice of the Plaintiff whether to seek for possession or not.

21. Whereas, in case of ***Debendra Nath Chowdhury*** (Supra), a Division Bench of Calcutta High Court has also bifurcated the cause of action for different reliefs. It is as follows :-

- (a) It is the breach of contract which gives rise to cause of action for specific performance ;
 - (b) This does not give rise to cause of action to issue for title or possession ;
- AND
- (c) Clause 12 of the Letters Patent lays down three tests wherein Court can act in equitable jurisdiction in personam ;

It is further observed that if a decree for possession will ultimately results into handing over possession, it will not convert such Suit in a "*Suit for Land*". (Para 23).

22. Whereas, in case of **Bhawna Seth** (Supra), entire cause of action has occurred at Delhi and the property was situated at Gurgaon. There was no relief of possession sought.

23. Learned Advocate for the Defendant invited my attention to the observations in Para No.15 to Para No.17 of the judgment in case of **Adcon Electronics Pvt. Ltd.** (Supra). It is relied upon by both the sides. There are three categories laid down in Para No.15 wherein it can be said that it is "*Suit for Land*". They are as follows :-

- (a) when the reliefs relates to adjudication of title of land or immovable property ;
- (b) about delivery of possession of land of immovable property ;

Case of defendant

24. The contention is raised that on the basis of documents filed by the Defendant, there is a dispute as to title of the land. Following contentions are raised :-

- (a) As the scheme of consolidation was made applicable to the said village, gut numbers are given to the old survey numbers ;

- (b) There is a Suit filed by Amrut Nathan before the Civil Court - Palghar against one Bhalchandra Kashinath Edvane in which, present Defendant is also one of the Defendants. The present Defendant has purchased the land from Bhalchandra Edvane.
- (c) Whereas, said Nathan has filed a Suit for specific performance.
- (d) There is one more Suit for declaration as to ownership and possession filed by one Bhamini Umarale against Bhalchandra Edvane and others ;
- (e) My attention is invited to notice sent by Defendant Nos.2 and 3 i.e. members of Danani family thereby objecting to the measurement of the land. It is there in Para No.15 of that Plaint.
- (f) There is one more letter dated 17th October, 2012 written by present Plaintiff to the Defendant thereby informing that Mr.Danani adjoining flat owner has raised an objection before Palghar - TILR for survey of the land. (Page No.41).

25. It is on the basis of all these documents, it is submitted that there is a dispute as to title and possession and as such, Suit will be "*Suit for Land*". No doubt, the observations in case of ***Sumer Builders Pvt Ltd*** (Supra) by a Division Bench of this Court are in matter arising out of an Arbitration Petition. No doubt, leave under Clause XII is required even for filing such Arbitration Petition. Initially, leave

was granted but subsequently, it was revoked. My attention is invited to Para No.16 of the said judgment. A Division Bench of this Court in Para No.26 had an occasion to interpret the phrase "*Suit for Land*". The exercise which the Court requires to do is to read the Suit as a whole. After doing that exercise, if the Court finds that object of the Suit is something different and it was consideration of question of title to the land indirectly, the Suit will not fall within the expression "*Suit for Land*". Even a Suit simplicitor for specific performance will not fall within the expression "*Suit for Land*". Finally, it is observed in Para No.33 that after having holistic reading of the correspondence, it was found that there was serious dispute in between the parties relating to possession of land. The Development Agreement and MoU were executed at Indore. After analysis, it was found that the Suit is "*Suit for Land*" and accordingly, the Appeal was dismissed.

26. There is a serious objection on behalf of the Plaintiff to consider the documents which are referred by the Defendant. However, even if those documents are not considered, when I have read the Plaint, MoU and Annexures to the Plaint, what I find is that there is a dispute in between the parties about the measurement and title to the land. I am

saying so on the basis of following documents annexed to the
Plaint :-

- (a) Letter sent by the Plaintiff to Defendant on 8th November, 2012 (Page No.42). He has expressed concern about getting final TILR demarcation plan ;
- (b) There is similar letter dated 6th December, 2012 (Page No.43) ;
- (c) There is similar letter on Page No.44 dated 28th December, 2012 ;
- (d) There is letter dated 30th September, 2013 sent by the Plaintiff to the Defendant thereby expressing concern about dealing in registration of sale-deed ;

27. Even from the letter dated 17th October, 2012 sent by the Plaintiff to the Defendant, it is clear that one Mr.Danani has raised an objection to the survey and the survey conducted by TILR as invalid. If all this correspondence is considered, what I think that Suit is not simplicitor suit for specific performance, so to say, only execution and registration of sale-deed. There are material issues involved and if it is so, it will certainly fall within the phrase "*Suit for Land*". So, it cannot be said that the jurisdiction of this Court is resorted properly on the basis of entire cause of action occurred at Bombay.

28. Prayer clauses (a), (b) and (c) read thus :-

"a. That preliminary issue as regards to the jurisdiction

of the Honourable High Court be framed and decided first in view of Section 9-A of the Civil Procedure Code 1908;

- b. This Hon'ble Court be pleased to declare that this Hon'ble Court lacks the jurisdiction to try, determine and/or dispose of Suit No. 529 of 2015;
- c. This Hon'ble Court be pleased to returned the plaint filed in Suit No. 529 of 2015 for presentation in the appropriate Court;"

29. So, the preliminary issue is answered that this Court is not having territorial jurisdiction and this Court lacks jurisdiction. In view of that, Notice of Motion is allowed in terms of prayer clauses (b) and (c) of the Notice of Motion and Plaint is returned to the Plaintiff for presentation before the Appropriate Court.

[S. M. MODAK, J.]