



IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	<i>14.06.2023</i>
<i>Pronounced on</i>	<i>29.08.2023</i>

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

A.Nos.4846 & 4847 of 2021

in C.S.No.496 of 2017

E.Penchalaswamy

...Applicant in both applications

vs.

1. E.Penchalaiah

2. Lakshamma

3. Penchala Rattamma

... Respondents in both applications

Application in **A.No.4846/2021** is filed under Order XIV Rule 8 of the Original Side Rules read with Order VI Rule 17 of Civil Procedure Code to permit the applicant to amend the plaint filed in C.S.No.496 of 2017 by including the properties situated at Chengalpattu District and Nellore District of Andhra Pradesh, more fully described in the schedule.

Application in **A.No.4847/2021** is filed to grant leave to sue as against the properties situated at Chengalpattu District and Nellore District of Andhra Pradesh, more fully described in the schedule as required under Clause 12 of Letters Patent.



For applicant : Mr.R.Thiagarajan

For respondents : Mr.S.Elambharathi

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COMMON ORDER

A.No.4846/2021 is filed to permit the applicant to amend the plaint filed in C.S.No.496 of 2017 by including the properties situated at Chengalpattu District and Nellore District of Andhra Pradesh, more fully described in the schedule.

A.No.4847/2021 is filed to grant leave to sue against the properties situated at Chengalpattu District and Nellore District of Andhra Pradesh, more fully described in the schedule as required under Clause 12 of Letters Patent.

2. The applicant is the plaintiff and the respondents are the defendants in the suit in C.S.No.496 of 2017. The plaintiff has filed a suit for partition and separate possession of suit scheduled properties 'A' to 'E' and also for declaratory relief and for the relief of permanent injunction. At the time of filing the suit the plaintiff has included the property situated at Triplicane, Alandur, Ullagaram, Kolathur and Valasaravakkam. The applicant believed that he can include only those properties which are situated at Chennai.

With the said belief he omitted to include other properties which have



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been jointly purchased by the plaintiff, his father and the first defendant and they are located at Chengalpattu and Nellore District at Andhra Pradesh. After coming to know that if the properties situated at the aforesaid places are not included in the suit filed by him, he has filed this amendment application for seeking permission to include the property situated at Chengalpattu and Nellore District as schedule 'F', 'G', 'H' & 'I' along with an application seeking permission under Clause 12 of Letters Patent Act.

3. The above applications were resisted by the respondents and a detailed counter has been filed. It is contended by the respondents that the applicant / plaintiff does not have any right in the above said properties and hence the applicant / plaintiff is not entitled to seek any relief against the properties at Nellore and Chengalpattu. The rest of the averments stated in the counter do not speak about the jurisdictional point but they are mere denial of the entitlement of the plaintiff to those properties.

Discussion:

4. The Plaintiff has filed the suit for partition. The Court which shall have the jurisdiction to entertain the suits of this nature will be the Courts



in whose jurisdiction the properties are situated. The applicant / plaintiff has filed the application by stating that some of the properties for which he is entitled to get the relief of partition and other reliefs situated in some other places like Chengalpattu and Nellore District and they were omitted to be included in the plaint and hence he has filed these applications seeking to amend the plaint and to leave to sue as against those properties also in this suit.

5. As per Section 120 C.P.C. for the High Court to exercise its Original Jurisdiction sec.16, 17 and 20 C.P.C are not applicable. The Original Jurisdiction of the Court is governed under clause 12 of the Letter Patent for High Court of Madras. To enunciate the above position, Rule 12 of the Letters Patent Act, High Court, Madras is extracted hereunder:

Clause 12 of the Letters Patent Act:

“ The High Court of Judicature at Madras, in exercise of its ordinary original civil jurisdiction, shall be empowered to receive, try and determine suits of every description if, in the case of suits for land or other immovable property shall be situated, or, in all other cases, if the cause of action shall have arisen, either wholly, or, in case the leave of the Court shall have been first obtained, on part, within the local limits of the ordinary original jurisdiction of the said High Court, 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; except that the said High Court shall not have such original jurisdiction in cases falling within the jurisdiction of the



Small Cause Court at Madats, in which the debt or damage, or value of the property sued for does not exceed one hundred rupees.”

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6. As per Clause 12 of the Letters Patent Act if the relief sought is a suit for land in respect of any immovable property, the suit can be instituted in whose jurisdiction the property is situated. No doubt, the suit for partition is a suit for land. The plaintiff's right of share and entitlement to the immovable properties is the main issue involved in this suit and hence there cannot be any much ado on the point whether this suit is for land or not.

7. The interpretation of the Clause 12 of Letters Patent Act has been well settled through the various decisions of this court, so far it relates to the suits involving immovable properties are concerned. If the suit is filed without any other relief excepting the relief revolving the land, obviously the suit has to be filed within the jurisdiction where the properties are situated. However if any other relief is claimed by founding its cause of action rooted within the jurisdiction of this Court, then such suits can be filed.

8. In this context it is relevant to refer the judgment of the Hon'ble Division Bench of this Court rendered in the case of ***K.Paranthaman,***



Proprietor, American Organic Food Products Inc Vs.C.Padmanabhan

and others reported in **2019 (3) CTC 228**, wherein it is held that in a suit for specific performance if the relief sought is without possession then such suits have to be considered as a suit for enforcing a contract and if the cause of action has arisen within the jurisdiction of this Court those suits can be entertained. On the other hand, if the relief sought in the suit is for specific performance which includes possession, then the point for determination would be in respect of right and control over the land. Even though suit for specific performance inherently includes the right for possession, such relief cannot be granted in view of lack of territorial jurisdiction.

9. However a different interpretation has been given with regard to the suit for partition. A suit for partition in respect of the properties partly situated within the jurisdiction of this court and within the jurisdiction of Chengalpattu was brought before the jurisdiction of this Court. Their Lordships ***M.N.Chandurkar, C.J. and Srinivasan, J*** (as they then were) who comprised the Division Bench of this Court have gone extensively into the issue in the case of ***A.Giridhar & another Vs. A.Suresh & others*** reported in ***1988-2-L.W.308*** by referring experiences of the other High Courts like Calcutta and Bombay which have the Original jurisdiction and



held that if the property or part of the property is situated within the jurisdiction of this court then the cause of action or part cause of action has also arisen within this jurisdiction. By accepting the above logic, it is held that if the leave has been first obtained in the High Court, the Court can entertain the suit for partition which has part of the properties situated within its jurisdiction and part of the properties situated outside the jurisdiction of the Court. For the sake of clarity the operative portions of the said judgment is extracted as under:

“9.

it thus appears to us that while there can be no controversy that as regards suits for land or immovable property where the whole of land or immovable property is situated within the ordinary original jurisdiction of the High Court. The High Court can take cognizance of such suits, it is also well established that even though a part of the land or immovable property is situated within such limits and part outside the limits, if leave has been first obtained, a suit for such land or immovable property can be entertained by the High Court in its ordinary original civil jurisdiction. The construction placed before the Division Bench of this Court in the Bank of Madras's case is clearly in consonance with the construction placed on Clause 12 of the Letters Patent in the decisions of the two other chartered high Courts, which have been followed now for more than fifty years. We respectfully agree with the view taken in the Bank of Madurai's case. It does not therefore appear to us necessary that the scope of Cl.12 of the Letters Patent needs to be reconsidered afresh. We are inclined to observe that if the decision in the Bank of Madurai's case, had been placed before the learned Judge, probably the occasion for making a reference to the Division Bench would not have arisen. Having regard to the scope of Cl.12 as construed by the Division Bench in Bank of Madurai Ltd Vs. Balaramdas and Bros. The plaintiffs are clearly entitled to leave to file the present suit. We may also make it clear that the plaintiffs are also entitled to leave notwithstanding the fact that some of the defendants reside outside the jurisdiction of this Court as the suit expressly falls within the first part of Cl 12 as analyzed by the Division Bench. Accordingly, this petition for leave is allowed.”



10. It is also relevant to refer the judgment of ***Bank Of Madurai Ltd. Vs Balaramadass & Brothers And Ors.***, in view of the reference so made in the above extract. An another Hon'ble Division Bench of this Madras High Court in ***Bank Of Madurai Ltd. Vs Balaramadass & Brothers And Ors.*** traced out the history of conferring the original jurisdiction upon the Courts of then Madras during the British era. The historical reasons for the deliberate departure from the universal principle of *forum-lousy* in respect of suits of immovables has been vividly analyzed by tracing its origin which reads as under:

“8. In the early period the British were having only settlements and restricted rights. It is in the course of time that they have progressively expanded their power over the country. The first courts created by them were mainly for the British and other Europeans and also for those residing within the limits of their settlements. When Courts were later created in the mofussil in the beginning of the 19th Century, the original distinction continued to survive as they were very keen to afford a justice of their own to the British subjects not only in respect of law and procedure applied but also in respect of persons administering justice. This is the reason why the Court established in Madras under various names was having powers, prerogatives and jurisdiction different from the courts Established in mofussil. The position is the same in respect of courts in Calcutta, Bombay and Rangoon. On the contrary the High Courts of Patna, Allahabad and Lahore where, there was no important British population do not have any ordinary original civil jurisdiction at all.

*9. As far as Madras is concerned, the first court created by Charter dt. 30-1216~7 under the name of Mayor's Court had power to try and adjudge all cases, whatsoever. Criminal and civil, they shall be brought before that. The jurisdiction of the Court was thus left to the option of the parties. By Charter dt. 24-9-1726, the Mayor's Court was authorised to try, hear determine all civil disputes that shall arise or may arise or happen within the said town of Madras or within any of the **Factories** subject or subordinate unto Fort St. George aforesaid. By Charter dt. 8-11753, the*



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provision as stated above is reiterated with the following addition : 'except such suits or actions shall be between the Indian natives of Madras patna only, in which case we will that the same be determined among themselves, unless both parties shall by consent submit the same to the determination of the said Mayors Court'. This addition takes into account the large population of the Indian. natives who had gathered at the time at 'Madras. Later, Letters Patent dt. 20-24798 was issued when the power of the British got firmly established and a Recorder's Court was created in the place of Mayo's Court. The relevant portion of that Charter is as follows -

"And we do further direct, ordain and appoint that the jurisdiction, powers and authorities of the said Court of the Recorder of Madras, shall extend to all British subjects, who shall reside within any of the factories, subject to, or dependent upon the Government of Madras; and that the said Court shall be competent and effectual, and shall have full power and authority to hear and determine all suits and actions, whatsoever, against any of our said subjects, arising in territories subject to, or dependent upon, or which hereafter shall be subject, to, or dependent upon the said Government or within any of the Dominions of the Native Princes of India, in alliance with the said Government, or against any person or persons who, at the time when the cause of action shall have arisen, shall have been employed by, or shall, have been, directly or indirectly, in the service of the said united company, or any of the said subjects of us, our heirs, or successors. And we do hereby further direct and ordain, that the said Court of the Recorder of Madras shall. According to the said recited Act of Parliament of the Twenty- seventh Year of our Reign. have full power to hear and determine all suits and actions, that may be brought against the inhabitants of Madras."

It is this last provision that has been reproduced in the Charter of 1800 establishing the Supreme Court of Judicature at Madras and in a different forum in the Letters Patent of 1865 after an eclipse of 3 years following the Letters Patent, 1862.

10. 'It is thus clear, that this Court has jurisdiction, whatever be the nature of the suit, in case the defendants reside within its territorial jurisdiction. This results out of a careful reading of Cl. 12 of the Letters Patent of 1865 and the jurisdiction for this extraordinary rule is supplied by the historical process. One may say that the reasons which militated for endowing the High Court in Madras with a jurisdiction different from that in the mofussil do no longer exist and that the universal rule of forum loci in respect of immovables should apply also to the High Court of Judicature at Madras. In fact, that would be step in the right direction and that would alleviate the burden of the original jurisdiction of this Court. But that step has to be achieved through a legislative process. Pending such a legislative action, the law as it is has to be applied and the law, as stated earlier, is to the effect that this Court has full jurisdiction to hear a suit when the



defendants reside within its territorial jurisdiction, irrespective of the place of the immovable property.

11. 'Since, admittedly in the present suit, all the defendants reside within the territorial jurisdiction of this Court, this Court has clear jurisdiction to entertain the suit and for the same reason the question referred to us, as to whether the suit is one for immovable or not does not arise and the same need not be gone into this case. The reference is answered accordingly.'

11. By applying the logic given and the settlement of legal point on jurisdiction, I feel leave should be granted for the applicant to include his properties which is situated outside the jurisdiction also in a suit for partition. Since the applicant / plaintiff had stated that those properties were omitted to include earlier, he should be allowed to amend the plaint accordingly.

12. In the result these two applications stand allowed.

29.08.2023

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Index:Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No



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R.N.MANJULA, J.

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