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C.M.A.No.497 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.No.497 of 2023

1.M/s.Rajasthani Marble,

2.A.K.A.Jayanthi

...Appellants/Claimants

Versus

1.Na.K.Kumar

Son of N.Kuppurathinam

Managing Partner,

M/s. Rajasthani Marble

Residing at No.5, Kamarajar Salai Extension

Karaikal – 609 602.

2.Na.K.Kumar

Son of N.Kupparathinam

Proprietor,

M/s.New Rajathani Marbles

No.40 A, Bharathiyar Road,

Kottucherry, Karaikal – 609 609.

...Respondents/Respondents

PRAYER : Civil Miscellaneous Appeal has been filed under Section 37 (2) (a) of the Arbitration and Conciliation Act, 1996, to set aside the order dated 28.01.2023 passed by the learned Sole Arbitrator in O.P.No.73 of 2021.



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For Appellants : Mr.Sharath Chandran
For Respondents : Mr.S.Rajendra Kumar

JUDGMENT

The above appeal has been filed challenging the order passed by the learned Sole Arbitrator in O.P.No.73 of 2021 dated 28.01.2023, holding that the Arbitral Tribunal lacks Jurisdiction to adjudicate the claim of the appellants/claimants.

2. The brief facts leading to the above appeal are as follows:

(a) The appellants/claimants in their claim petition had *inter alia* prayed for the following reliefs:

"...(iii) Pass an order Declaring the Item
1 Petition Schedule properties as the
2nd Petitioner's exclusive property,

(iv) Pass an order Declaring the Item 2
Petition Schedule properties as the 1st
Petitioner's Firm's property for due
apportionment amongst its partners and
consequently thereafter

(v) Direct an amount of Rs.69,92,000/-
be paid to the 2nd petitioner by the



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1st respondent as per Arrear details enumerated in the Item 3 of Petition Schedule, together with interest at 24% p.a. until date of discharge..."

(b)The respondents herein filed an objection under Section 16 of the Arbitration and Conciliation Act, 1996 *inter alia* stating that the Arbitral Tribunal cannot decide the title of the properties and that the declaration of title touching upon the title of property is an adjudication *in rem* and therefore, cannot be decided by the learned Sole Arbitrator. The respondents raised other objections as well.

(c) The learned Sole Arbitrator found that prayers - (iii), (iv) and (v) extracted above are claims made in furtherance of actions *in rem* and not *qua* the respondents alone and hence, it is not arbitrable. The learned Sole Arbitrator further found that these three prayers cannot severed from the other claims made by the claimants/appellants as they are inextricably linked with each other and hence, the claim is liable to be dismissed.

(d) The learned Arbitrator rejected the other objections which may not be necessary for adjudicating the present appeal.



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WEB COPY 3. Mr.Sharath Chandran, the learned counsel for the appellants submitted that the prayer for declaration of title cannot be said to be an action *in rem*. The learned counsel relied upon the Judgment of the Hon'ble Supreme Court in ***Deccan Paper Mills Company Limited Vs. Regency Mahavir Properties and others*** reported in ***(2021) 4 SCC 786*** and submitted that the prayer for declaration of title is an action inter parties and thus, is *in personam*. The learned counsel relied upon the Judgment of the Punjab and Haryana High Court in ***Ashok Kumar Malhotra and others Vs. Kasturi Lal Malhotra*** reported in ***2012 SCC Online P & H 2002*** in support of his submission that all disputes relating to rights *in personam* are amenable to arbitration. The learned counsel further submitted that this Court in ***K.Kasinathan and another Vs. N. Umasankar*** reported in ***2019 SCC Online Madras 36244*** held that a Decree for declaration of title is not one *in rem*. The learned counsel also pointed out Section 35 of the Specific Relief Act, 1963. The learned counsel therefore submitted that the prayers (iii) and (iv) which seek declaration of title is an action *in personam* and therefore, arbitrable.

4. Mr.S.Rajendra Kumar, the learned counsel for the respondents,



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per contra submitted that the Hon'ble Supreme Court in ***Vidya Drolia Vs.***

Durga Trading Corporation reported in ***(2021) 2 SCC 1*** had laid fourfold test to determine whether a dispute is arbitrable; that the Hon'ble Supreme Court held where cause of action relates to the action *in rem* or cause of action affects third party rights mutual adjudication would not be appropriate and hence, the same is not arbitrable. The learned counsel submitted that the declaration sought for by the claimants would affect the easementary rights of pathway to the other property owners. The learned counsel further submitted that if a declaration of title is made then, the properties of other land owners would be landlocked and their rights would be adversely affected and therefore, a centralized adjudication is required. The learned counsel also pointed out to a Suit filed in O.S.No.25 of 2013, for partition by the respondents herein, against the second appellant herein and another and therefore, submitted that for all the above said reasons, the order passed by the learned Arbitrator does not call for any interference.

5. The only question to be decided in the instant appeal is whether the learned Arbitrator is right in holding that the prayers - (iii) (iv) and (v) extracted above are arbitrable. The prayers - (iii) and (iv) relate to declaration of title to a property. This Court finds that the Hon'ble Supreme



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Court in ***Deccan Paper Mills Company Limited Vs. Regency Mahavir***

Properties and others (cited supra) held that the relief under Section 34 of the Specific Relief Act, 1963 is binding only on the parties to the Suit as per Section 35 of the said Act. Therefore, the actions for declaration of title are actions *in personam*. The relevant portions of the Judgment are extracted hereunder for better understanding:

"29. When Sections 34 and 35 are seen, the position becomes even clearer. Unlike Section 31, under Section 34, any person entitled to any legal character may institute a suit for a declaration that he is so entitled. Considering that it is possible to argue on a reading of this provision that the legal character so declared may be against the entire world, Section 35 follows, making it clear that such declaration is binding only on the parties to the suit and persons claiming through them, respectively. This is for the reason that under Section 4 of the Specific Relief Act, specific relief is granted only for the purpose of enforcing individual civil rights. The principle contained in Section 4 permeates the entire Act, and it



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would be most incongruous to say that every other provision of the Specific Relief Act refers to in personam actions. Section 31 alone being out of step i.e. referring to in rem actions."

Further, it is seen that the actions *in personam* are arbitrable as can be seen from Paragraph 16 of this Judgment. The relevant portions are extracted hereunder for better understanding:

"16. Sections 29 and 30 are also important, in that a plaintiff instituting a suit for specific performance may pray in the alternative that if the contract cannot be specifically enforced, it may be rescinded and be delivered up to be cancelled.

In addition, on adjudging the rescission of the contract, the court may require the party to whom such relief is granted to restore, so far as may be, any benefit which he may have received from the other party and to make any compensation to him which justice may require. These two sections would also show that following rescission of a



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contract, it has to be delivered up to the plaintiff to be cancelled and all of this can be done in a suit for specific performance. Thus far, therefore, it is clear that an action for rescission of a contract and delivering up of that contract to be cancelled is an action in personam which can be the subject matter of a suit for specific performance, making such rescission and delivering up the contract to be cancelled, the subject – the matter of arbitration."

It is well settled that the declaration of title is an action *in personam* which has been reiterated by this Court in ***K.Sasinathan and Another Vs. N. Umasankar*** (cited supra). The Punjab and High Court in ***Ashok Kumar Malhotra and others Vs. Kasturi Lal Malhotra*** (cited supra) had held that all disputes relating to rights *in personam* are amenable to Arbitration.

6. The learned counsel for the respondents' submission that easementary rights of third parties are involved and hence, the dispute is not arbitrable cannot be countenanced. A declaration of title would not affect or enhance any third parties' right; that has to be independently established.



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Therefore, it cannot be said that merely because easementary rights are involved, the claim for declaration of title would become an action *in rem*.

Further, it is also seen that the Suit referred to by the learned counsel for the respondents relates to some other property which is not related to the claim made by the appellants. Therefore, the prayers (iii) and (iv) cannot be said to be non arbitrable. It is also seen that the prayer (v) is pursuant to the dispute in the partnership. Merely because it concerns the account of the partnership firm; it does not oust the jurisdiction of the learned Arbitrator to decide the claim. Therefore, this Court is of the view that there is no basis for holding that prayers (iii), (iv) and (v) extracted above are actions *in rem* and not arbitrable. Therefore, this Court sets aside the Order passed by the learned Sole Arbitrator under Section 16 of the Arbitration and Conciliation Act, 1996 and holds that the claim of the appellants can be adjudicated by the Arbitrator. Hence, the Civil Miscellaneous Appeal is allowed. No Cost.

28.07.2023

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Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



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SUNDER MOHAN, J.

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