



OSA No.233 of 2022.

**IN THE HIGH COURT OF JUDICIATURE AT MADRAS**

**DATED : 08.06.2023**

**CORAM**

**THE HONOURABLE MR.JUSTICE R.MAHADEVAN  
and  
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ**

**O.S.A. No. 233 of 2022**

**M. Ct. P. Chidambaram**

**.. Appellant**

**Versus**

**1. M.Ct. Pethachi**

**2. M.Ct.P. Muthiah**

**.. Respondents**

Original Side Appeal filed under Order XXXVI Rule 1 of the Original Side Rules read with Clause 15 of Letters Patent against the order dated 20.07.2022 passed in Application No. 1799 of 2022 in Civil Suit Diary No. 39450 of 2022 on the file of this Court.

For Appellant : Mr. PL. Narayanan, Senior Advocate  
for Mr. E. Hariharan

For R2 : Mr. AR.L. Sundaresan, Senior Advocate  
for Mr. C.T. Murugappan

**JUDGMENT**

(Judgment of the Court was delivered by R. MAHADEVAN, J)

The appellant has filed this intra-court appeal aggrieved by the order dated 20.07.2022 passed by the learned Judge rejecting his application bearing No.



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1799 of 2022 filed to grant leave to institute the suit in respect of item Nos. I to VI, VIII, XIII to XV of the properties morefully described in the plaint in C.S.D. No. 39450 of 2022.

2. The appellant, as plaintiff, has instituted the suit praying to grant a decree directing the defendants (a) to specifically perform the family arrangements dated 10.08.2018, including the oral family arrangement dated 09.09.2002 arrived at between the plaintiff and the defendants in respect of the suit schedule properties or else appoint an officer of this Court or an Advocate Commissioner to enforce the family arrangements dated 10.08.2018 including the oral family arrangement dated 09.09.2022 arrived at between the plaintiff and the defendants in respect of the suit schedule properties; (b) to declare the Settlement deed dated 23.07.2021 bearing Doc.No.2058 of 2021 executed by the first defendant in favour of the second defendant on the file of Sub Registrar Office, Marakkanam as null and void; (c) to declare the Special Power of Attorney dated 25.03.2022 bearing document No. 26 of 2022 executed by the first defendant in favour of Mr. Sridharan on the file of Sub-Registrar Office, Mylapore as null and void; and (d) for permanent injunction restraining the defendants, their agents, servants or any person from in any manner alienating



and/or dealing with the suit properties morefully described in the plaint; and for costs.

3. According to the appellant / plaintiff, the properties referred to in the Memorandum of Family Arrangements arrived at in the years 2002 and 2018 include the properties situated within the jurisdiction of this Court as well as outside the territorial jurisdiction of this Court. Therefore, by way of abundant caution, he has sought the leave of the Court to institute the suit insofar as it relates to the properties, which are listed as item Nos.1 to VI, VIII, XIII to XV of the plaint. These properties are lying outside the jurisdiction of this Court and they are also required to be dealt with under the above suit. The prayer sought for in the suit is also one for declaration to declare the settlement deed executed by the first defendant in favour of the second defendant on 23.07.2021 as null and void. It is further stated that the properties covered in the said settlement deed dated 23.07.2021 are situated at Aatchikadu and a part of cause of action arises out of the jurisdiction of this Court. Similarly, the properties included as item Nos.I to VI, VIII, XIII to XV of the plaint schedule properties are situated outside the jurisdiction of this Court. However, a major part of the cause of action to institute the suit arose within the jurisdiction of this Court, where the



other properties listed in the plaint schedule are lying. Therefore, along with the suit, the application viz., A.No.1799 of 2022 seeking leave to institute the suit in respect of item Nos. I to VI, VIII, XIII to XV has been filed.

4. Opposing the application seeking leave, the first defendant/first respondent has filed a counter affidavit stating *inter alia* that admittedly, the properties referred to as item Nos. I to VI, VIII, XIII to XV of the plaint schedule are situated outside the jurisdiction of this Court. The first respondent specifically denied the oral family arrangements said to have taken place on 09.09.2002 and 10.08.2018. According to the first respondent, no such family arrangements had ever taken place between the plaintiff and the defendants and therefore, the foundation for laying the suit itself is false and frivolous. It is further stated that neither the plaintiff nor the second defendant / second respondent has any right over the plaint schedule properties and it is the first defendant / first respondent alone has a right to deal with the properties covered under the plaint. Above all, the relief sought in the suit is one to claim title over the suit properties indirectly and therefore, it is a suit for land as provided under Section 16 of the Code of Civil Procedure. When the suit is one for land over a property situated outside the territorial jurisdiction of this Court, then, such suit



has to be instituted before the competent Court having jurisdiction. In other words, this Court has no jurisdiction to entertain the suit under Clause 12 of the Letters Patent. The relief claimed in the suit is, in effect, one for title in respect of the properties mentioned in the plaint schedule and most of the properties are situated outside the jurisdiction of this Court. While so, the application seeking leave to sue is liable to be dismissed, as it is not maintainable as per Clause 12 of Letters Patent.

5. Upon hearing the submissions of the counsel for both sides, the learned Judge, dismissed the application filed by the appellant/plaintiff seeking leave, with the following observations:

*"7. Though both the respondents are residing within the jurisdiction of this Court, excepting for six items out of total sixteen items, all other items are situated outside the jurisdiction of this Court and the relief sought for by the applicant falls under the suit for land. Therefore, if the suit is for land and the properties are situate outside the jurisdiction of this Court, as per Clause 12 of Letters Patent, this Court has no jurisdiction to entertain the suit. Section 16 to 22 of CPC would not applicable to the original side jurisdiction and letters Patent Act alone would applicable but not CPC. If the relief sought for in the plaint is not suit for land, this Court can entertain the suit, though some of the properties are outside the jurisdiction of this Court.*

*8. The citation referred to by the counsel for the applicant is not applicable to the present case on hand. As per the Division Bench decision of this Court reported in 2019 (3) CTC 228 relied on by the learned counsel for the first respondent, the relief sought for in the application falls under the suit for land. Therefore, the application is liable to be dismissed. Registry is directed to return the plaint to the applicant to enable him to present the suit before the competent Court which has got the territorial jurisdiction."*



6.1. Assailing the order of dismissal passed by the learned Judge, the learned Senior counsel for the appellant would submit that clause 12 of Letters Patent use the phraseology "leave of the court shall be obtained" which means when the immovable properties are not within the jurisdiction of this Court, then, it will be necessary to obtain leave before instituting the suit. If leave is not granted, then, the object and purpose with which Clause XII of Letters Patent has been enacted itself, will become unusable dead letter of law. Adding further, the learned senior counsel submitted that the learned Judge failed to appreciate that several suits have been entertained, where the properties are situated outside the jurisdiction of this Court upon entertaining an application to grant leave to sue. In the present case, the learned Judge did not appreciate that when the suit is for a land, that, some of the immovable properties are situated within the jurisdiction of this Court and some other properties are outside the jurisdiction of this court, leave to sue can be granted on the principles of "forum conveniens" when all the parties and witnesses are residing within the jurisdiction of this Court. The learned Judge had taken note of the fact that both the plaintiff and the defendants are residing within the jurisdiction of this Court. While so, by rejecting the application seeking leave to sue, the learned Judge had indirectly driven the appellant to institute the suit for the same relief before the Court



having jurisdiction, which would cause enormous prejudice and hardship to the appellant. The legislative intent of clause XII of the Letters Patent could possibly to prevent multiplicity of proceedings and to avoid lodging of suits relating to the same parties before different Courts, but this was not properly appreciated by the learned Judge while dismissing the suit.

6.2. That apart, the learned Senior counsel for the appellant placed reliance on the following decisions:

(i) In the order dated 22.10.1987 passed by the Division Bench of this Court in the case of *A. Giridhar and others vs. A. Suresh and others* in Application No.5348 of 1986, the plaintiff sought for leave to sue the defendant for partition and separate possession of the properties. In that application, it was stated that partition is claimed in respect of immovable property consisting of houses and agricultural lands. While the houses are situated at Madras, the agricultural lands are situated in Chengalpat District, outside the jurisdiction of this Court. The Division Bench held that *in cases of suits for land, if leave is taken under Clause 12, the Court can entertain such suits if part of the land or immovable property is situated within the jurisdiction*. In that order, the Division Bench held as follows:

*"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*



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*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 Madurai's case 97 LW 485 = AIR 1985 Mad 1, 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 Manu/TN/0185/1985:97 L.W. 485 = AIR 1985 Mad 1. 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 Manu/TN/0185/1985 : 97 L.W. 485 = AIR 1985 Mad 1, 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 constructed by the Division Bench in Bank of Madurai Ltd., vs. Balaramdas and Bros. 56 Cal 94, 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 analysed by the Division Bench. Accordingly this petition for leave is allowed."*

(ii) In the Judgment dated 11.11.2011 passed by the Division Bench of this Court in Original Side Appeal Nos. 320 and 321 of 2011 in the case of **S.A. Fasluddin and others vs. S.M.A. Siyauddin and others (Manu/TN/4358/2011)**, it was held as follows:

*"18. It is also pertinent to note that Plaintiffs 2 and 3 are dwelling in Ayanavaram, Chennai-23, since August 2008 within the jurisdiction of Madras High Court. 1st Appellant-2nd Defendant himself is stated to be permanently residing in the Apartment D-3 in the residential building complex at Schedule-I in Shastri Nagar, Adyar, Chennai-20. Even though, 1st Appellant-2nd Defendant denies the dwelling in the Apartment in the residential building complex in Schedule-I property, we find such denial is an*



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afterthought. It is also pertinent to note that in the two suits filed by the 1st Appellant-2nd Defendant and his sons in O.S.No.4910 of 2008 and O.S.No.6457 of 2008, the address is stated to be "Shastri Nagar, Adyar, Chennai-20".

19. It is also to be pointed out that parties have entered into Arbitral agreement in Chennai wherein the parties have agreed that the venue of arbitration is to be in "Chennai". Plaintiffs 2 and 3 have also filed Claim Statement before the Arbitral Tribunal. Since the Defendants did not participate in the Arbitral proceedings which compel the Plaintiffs to file the suit for partition. Venue of Arbitration to be in "Chennai" is yet another factor to maintain the suit in the Original Side of Madras High Court. Pointing out that Schedule-I, valuable property is situated at Chennai, the learned Judge has rightly declined to revoke the leave and we do not find any reason warranting interference with the finding of the learned Judge.

20. Insofar as application in A.No.54 of 2011, as pointed out earlier, the parties have agreed to go before the arbitration. Since the parties have agreed to go before arbitration and also named the Arbitrators, the learned Judge referred the parties to go before the Arbitrators. Learned counsel for Respondents contended that as per Section 37 of the Arbitration and Conciliation Act, the order passed in an application filed under Section 8 of the Act is not appealable. In the case on hand the very filing of the suit in the Original Side of Madras High Court is objected to and on that ground the order passed in A.No.54 of 2011 is challenged. In the facts and circumstances of the case, the Respondents are not right in raising objection as to the maintainability of the appeal O.S.A.No.321 of 2011. We do not find any reason warranting interference with the order of learned single Judge.

21. In the result, both the appeals are dismissed. Consequently, connected M.Ps. are closed. No costs."

(iii)The Division Bench of this Court in the case of **Harsha Estate, rep.**

**by its Managing Partners and others vs. Dr. P. Kalyana Chakravarthy and others [(2018) 4 CTC 721]**, held as follows:

"10. An analysis of all the above judgments brings out the following principles of law to decide whether a suit is for "suit for land".

(i) In a suit the reliefs claimed, if granted, would directly affect title to or possession of the land it will be "suit for land".

(ii) If the object of the suit is something different, but involves the consideration of the question of title to land indirectly, it will also be "suit for land"



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(iii) *A suit where the claim is for recovery of possession or control of land, it will be “suit for land”*

(iv) *A suit for bare injunction restraining the defendant from interfering with the possession and enjoyment of the property, will be “suit for land”*

(v) *In a suit for bare injunction where the plaintiff seeks to restrain the defendant from dealing with the suit property by creating a charge or alienating or encumbering the property, will also fall within the ambit of a “suit for land”. This Court in M/s. Raja Holdings, Financiers and Merchants, Partnership-Firm represented by its Partner Lalitha Raja in OSA No.2 / 2018 dated 10.07.2018 has considered this issue in detail.*

(vi)(a) *In a suit for specific performance of an agreement wherein the relief of delivery of possession of the suit property has been specifically claimed, it will be “suit for land”*

(vi)(b) *In a suit for specific performance where the suit is only for enforcement of the agreement simpliciter without seeking for any other relief, the same will also fall within the ambit of “suit for land” since the relief of possession is inherent in the relief of specific performance.*

(vi)(c) *In a suit for specific performance, where the suit is only for enforcement of the agreement simpliciter and the plaintiff specifically claims to be in possession of the suit property and there is no denial of the said fact by the defendant, the said suit will not come within the ambit of “suit for land”*

(vi)(d) *In a suit for specific performance where the plaintiff apart from seeking to enforce the agreement also seeks a relief of injunction against the defendant, not to interfere with his possession and enjoyment or not to create any charge or encumbrance or not to alienate the suit property, such suits will also come within the ambit of “suit for land”.*

11. ....

12. ....

13. ....

14. *Even otherwise in this particular case, the plaintiff has specifically pleaded that it is in possession of the suit property and the defendant has refuted it and taken a specific stand that possession was never given to the plaintiffs. Apart from the other issues that will be framed in these suits, this Court must necessarily frame an issue on possession since the parties are at variance on a material fact regarding possession. This factor is so apparent in present cases and it will be too hyper technical for this Court to ignore this issue at the time of considering the revocation of leave petition since this issue is going to necessarily in at the time of framing issues.”*

By pointing out the above decisions, the learned Senior counsel for the appellant

would submit that when a part of cause of action arose within the jurisdiction of



this Court, leave can be granted without driving the appellant to file multiple suits before the Courts having jurisdiction. Further, the plaintiff as well as the defendants are residing within the jurisdiction of this Court and therefore, it will be convenient to attend the suit proceedings. Therefore, the learned Senior counsel prayed for allowing this appeal.

6.3. In addition, the learned Senior counsel for the appellant submitted that even before the order dated 20.07.2022 was passed by the learned Judge, which is impugned in this appeal, the first defendant/first respondent died and his legal heir was already brought on record namely the second respondent. However, the learned Judge did not record the factum of death of the first respondent / first defendant in the suit. The appellant has filed a Memo dated 08.02.2022 to that effect.

7.1. Per contra, the learned Senior counsel for the second respondent/second defendant would, at the outset, contend that the above appeal has been filed by the appellant as against the dead person, who is the first respondent in this appeal. The first respondent died on 26.06.2022. However, at the time of filing this appeal, the address of the first respondent was shown as No.29, Leith Castle North Street, Santhome, Chennai - 600 028. The notice, if



any, ordered in this appeal could not have been served on the dead person viz., first respondent. The appellant is the prodigal son of the deceased first respondent and he cannot plead ignorance of the death of his father. Therefore, on this ground, the learned Senior counsel for the second respondent prayed for dismissal of this appeal.

7.2. As regards the merits of the appeal, it is contended by the learned Senior counsel for the second respondent that the suit was filed to enforce the non-existent family arrangements said to have taken place on 10.08.2018 and 09.09.2002. The so-called family arrangements have said to have taken place in respect of some of the lands, which are situated outside the jurisdiction of this Court. Given the nature of relief sought for in the suit, it is certainly a suit for land and it cannot be regarded as a suit simplicitor for enforcement of a family arrangement, as pleaded by the plaintiff. When the suit is for land, in respect of some of the items of the properties listed in the plaint, then, this Court has no jurisdiction to entertain such suit under clause 12 of Letters Patent. If at all, the suit is maintainable and triable in respect of the properties which are situated within the jurisdiction of this Court and for the properties which are lying outside the jurisdiction of this Court, the plaintiff has to necessarily work out his remedy only before the Court having territorial jurisdiction. In such event, it



cannot be said that the plaintiff would be driven to file multiple number of suits for similar relief. When a Court lacks jurisdiction to entertain a suit, it goes to the root of the matter and any adjudication made by the Court which has no jurisdiction, will only be a nullity.

7.3. In this context, the learned Senior counsel for the second respondent invited the attention of this Court to the decision of the Division Bench of this Court in the case of **K. Paranthaman, Proprietor, American Organic Food Products Inc., vs. C. Padmanabhan and others** reported in **2019 (3) CTC 228** wherein, following the decision in *Harsha Estates* case cited by the learned senior counsel for the appellant, it was held as under:

*"42.The latest Division Bench judgment of this Court in the case of M/s.Harsha Estates & others Vs. Dr.P.Kalyana Chakravarthy and others reported in 2018 (4) CTC 721 (DB) ; 2018 (3) L.W. 900, has lucidly analysed the principles of law to decide whether a suit is a suit for land or not and the principles of law are as follows:*

*“(i) In a suit the reliefs claimed, if granted, would directly affect title to or possession of the land it will be “suit for land”.*

*(ii) If the object of the suit is something different, but involves the consideration of the question of title to land indirectly, it will also be “suit for land”.*

*(iii) A suit where the claim is for recovery of possession or control of land, it will be “suit for land”.*

*(iv) In a suit where determination of any right or interest over an immovable property is involved, it will be “suit for land”.*

*(v) A suit for bare injunction restraining the defendant from interfering with the possession and enjoyment of the property by the plaintiff, will be “suit for land”.*

*(vi) In a suit for bare injunction where the plaintiff seeks to restrain the defendant from dealing with the suit property by creating a charge or*



alienating or encumbering the property, will also fall within the ambit of a “suit for land”. This Court in *M/s.Raja Holdings, Financiers and Merchants, Partnership Firm* represented by its Partner Lalitha Raja in O.S.A.No.2/2018, dated 10.07.2018 has considered this issue in detail.

vi(a) In a suit for Specific Performance of an agreement of sale wherein the relief of delivery of possession of the suit property has been specifically claimed, it will be “suit for land”.

vi(b) In a suit for Specific Performance where the suit is only for enforcement of the agreement simpliciter without seeking for any other relief, the same will also fall within the ambit of “suit for land” since the relief of possession is inherent in the relief of Specific Performance.

vi(c) In a suit for Specific Performance, where the suit is only for enforcement of the agreement simpliciter and the plaintiff specifically claims to be in possession of the suit property and there is no denial of the said fact by the defendant, the said suit will not come within the ambit of “suit for land”.

vi(d) In a suit for Specific Performance where the plaintiff apart from seeking to enforce the agreement also seeks a relief of injunction against the defendant, not to interfere with his possession and enjoyment or not to create any charge or encumbrance or not to alienate the suit property, such suits will also come within the ambit of “suit for land”.

43. The instant suit falls under principle vi (b), vi (c) and vi (d). Applying vi (d), the instant suit will also be a suit for land since the appellant has specifically denied that the first respondent is in possession of the property. Applying vi (d), the instant suit will also be a suit for land since the respondents 1 to 4 have not alone sought for specific performance of the MoU but have also sought for the relief of injunction against the appellant not to interfere with their peaceful possession and enjoyment of the property. Further, as observed earlier, Clause 12 of the Letters Patent comprises of two parts. Since the suit filed by the respondents 1 to 4 falls under the first part of Clause 12, it is certainly a suit for land and this Court does not have the jurisdiction to entertain the suit since the property is situated at Tiruchirappalli outside the jurisdiction of this Court.

44. The respondents 1 to 4 have sought for specific performance of the execution of a sale deed and for complete transfer of the entire business of *M/s. American Organic Food Products Inc.*, in favour of the first respondent in terms of the MoU dated 09.12.2013 and said to have been signed on 07.04.2015. In effect, the relief sought for by the respondents 1 to 4, if granted, would amount to control, management and possession of the property which is the subject matter of the MoU and the property is also situated outside the jurisdictional limits of this Court. As observed earlier, cause of action is immaterial in the instant case, since the relief sought for is



in respect of an immovable property which is situated outside the jurisdiction of this Court. The reliefs sought for, come within the ambit of the first part of Clause 12 which deals with a suit for land since the subject property falls outside the jurisdiction of this Court and therefore, this Court does not have the jurisdiction to entertain the suit under Clause 12 of the Letters Patent.

45. *Clever drafting of plaint in order to bring the suit for land within the original side jurisdiction of this Court will not help the respondents 1 to 4. The averments and the prayers sought for in the plaint undoubtedly lead to the inference that the suit is a suit for land. In view of the aforesaid reasons given by us in the previous paragraphs, there is no necessity for us to determine whether Section 53A of the Transfer of Property Act, 1882, is applicable or not as we are not deciding the suit on merits but deciding the same only on its maintainability before the Original Side of this Court.*

46. *The Division Bench judgments of this Court relied upon by the learned Counsel for the respondents 1 to 4 namely, (2008) 4 CTC 160 and 1997 3 L.W. 391, were considered in the latest Division Bench judgment passed by this Court reported in 2018 3 L.W. 990 and only thereafter, the principles of law on suits for land were enunciated by the Division Bench. Further, in both the cases, it is not clear as to whether the defendant in those cases disputed the possession of the plaintiff over the property. In the case on hand, there is a dispute as to who is in possession of the property. Therefore, the Division Bench judgments referred to by the learned Counsel for the respondents 1 to 4, cited supra, are not applicable to the facts of the instant case.*

47. *For the aforesaid reasons, we are of the considered view that the suit filed by the respondents 1 to 4 in C.S.No.629 of 2017 before the Original Side of this Court is a suit for land coming within the purview of the first part of Clause 12 of the Letters Patent. Hence, the impugned order of the learned Single Judge is erroneous and not in accordance with law.*

48. *In the result, the order dated 17.04.2018 made in A.No.8015 of 2017 in C.S.No.629 of 2017 by the learned Single Judge, is hereby set aside and Application No.8015 of 2017 filed by the Appellant for revocation of leave before the learned Single Judge is allowed and the respondents 1 to 4 are permitted to obtain return of the plaint filed in C.S.No.629 of 2017 from the Court registry and file the same before the appropriate Court at Tiruchirapalli, within a period of eight weeks from the date of receipt of a copy of this judgment and consequently the appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed."*

Thus, according to the learned senior counsel, when the suit is for a land, the



cause of action for institution of such suit is immaterial and the maintainability of the suit has to be decided only by taking note of the nature of relief sought in the suit. In the present case, for enforcement of a non-existing family arrangement, the suit was instituted. In the counter application filed in the application seeking leave, the first respondent has categorically denied the existence of any such family arrangement. In any event, the suit is one for a land, based on which it was instituted by the plaintiff. The lands are admittedly situated outside the territorial jurisdiction of this Court and therefore, the learned Judge is right in dismissing the application seeking leave to institute the suit insofar as it relates to those properties, which are situated outside the jurisdiction of this Court. The learned Senior counsel for the second respondent, therefore, prayed for dismissal of the appeal.

8. We have heard the learned Senior counsel for the appellant as well as the learned Senior counsel for the second respondent and also perused the materials placed on record.

9. The plaintiff has instituted the suit for various reliefs. One of the reliefs sought for in the plaint is to specifically enforce the family arrangements



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dated 10.08.2018 including oral family arrangement dated 09.09.2002 in respect of the properties mentioned in the plaint schedule. Even according to the plaintiff, some of the properties listed in the plaint are situated within the territorial jurisdiction of this Court, while Item Nos. I to VI, VIII, XIII to XV of the plaint are lying outside the jurisdiction of this Court and therefore, he has filed the application seeking leave to institute the suit in respect of those properties. It is the contention of the learned senior counsel for the plaintiff that when a major properties for which the relief sought, are situated within the jurisdiction of this Court and a miniscule number of properties are lying outside the jurisdiction of this Court, then, the suit is triable and maintainable before this Court by granting leave and he need not be driven to file separate suit in various other Courts where the properties are lying for the same relief. In this context, the learned Senior counsel for the appellant placed reliance on the order dated 22.10.1987 passed by the Division Bench of this Court in the case of **A. Giridhar and others vs. A. Suresh and others** in Application No. 5348 of 1986, wherein it was held that even if it is a suit for land, *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*. By placing reliance on the said decision, it is vehemently contended that the plaintiff need not be relegated to file multiple suits in the Courts having jurisdiction over such properties and hence, sought for granting leave to sue.

10. The application filed by the plaintiff was opposed by the first defendant/first respondent by filing a counter. At the outset, the first defendant disputed the allegation that a family arrangement was made among the family members. It was his stand that there was no such family arrangement, as has been portrayed by the plaintiff. Further, the application seeking leave was resisted mainly on the ground that in respect of those properties, which are situated outside the territorial jurisdiction of this Court, the suit is not maintainable before this Court especially when the relief claimed is a suit for land. The suit is not a suit simplicitor for mere enforcement of family arrangement. The relief prayed for by the plaintiff will have a direct bearing on the properties which are situated outside the jurisdiction of this Court. While so, when the suit is one for land and those lands are situated outside the jurisdiction of this Court, the suit is not maintainable and the plaintiff has to be relegated to approach the competent court having jurisdiction. Therefore, the application seeking leave to sue has to be dismissed.



11. In this background, it is essential to refer to the decision of the Division Bench of this Court in the case of **Harsha Estate, represented by its Managing Partners and others vs. Dr.P. Kalyana Chakravarthy and others** reported in **(2018) 4 CTC 721** wherein after detailed analysis, it was culled out as to what constitutes a suit for land and what are the consequences that may befall such suits are entertained by a Court having no jurisdiction. In Para No. 10(i) of the decision of the Division Bench of this Court, it was held that if the relief claimed in the suit will have a direct bearing or it will in any manner affect title to or possession of land, then, it will be a suit for land. In Para No.10 (ii) it was further held that if the object of the suit is something different, but involves the consideration of the question of title to land indirectly, it will also be a suit for land.

12. Both the learned Senior Counsels have relied upon the judgment of the Division Bench in ***Harsha Estates case*** to emphasize as to what a “suit for land” would be. In the present case, though the relief claimed in the suit appears to be a mere suit simplicitor, if it is granted, in essence, it will have a bearing on the title to the lands, which are situated outside the jurisdiction of this Court. Digging deep into the averments made in the plaint and the right that is sought to be asserted, the suit is nothing but a claim for title and rights over the suit



properties. Therefore, the issue as to the title to the lands, which are situated outside the jurisdiction of this Court, will essentially be one of the issues that is required to be framed in the suit for consideration. At this juncture, it would be necessary to refer to the judgment of the Apex Court in **Anathula Sudhakar v. P. Buchi Reddy [2008 (4) SCC 594]**, wherein, the Hon'ble Apex Court while considering the issue as to whether a Trial court could go into title while deciding a suit for prohibitory injunction, held as follows:

*“21. To summarise, the position in regard to suits for prohibitory injunction relating to immovable property, is as under:*

*(a) Where a cloud is raised over the plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with the plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.*

*(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.*

*(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title (either specific, or implied as noticed in Annaimuthu Thevar [Annaimuthu Thevar v. Alagammal, (2005) 6 SCC 202] ). Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.*



*(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straightforward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to the plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.”*

Thus, it is clear from the above judgment that generally, the court is not to decide the issue of title. However, an exception has been carved out in para 21(d) of the above judgment, enabling the Trial court to even decide the issue of title under certain circumstances. A conjoint reading of the above judgment and the judgment in the case of **Harsha Estates (Supra)** and juxtaposing them towards the facts of this case would undoubtedly explicit that the effect of granting the reliefs would not only affect the title and possession of the parties but also the suit in effect is for land.

13. The Learned Senior Counsel for the Appellant, though agreeing that the suit could be classified as a suit for land, contended that by virtue of the doctrine of “Forum Conveniens”, the leave ought to be granted as both the parties are residing within the jurisdiction of this court and as some of the properties are here. The present suit has been filed on the strength of memorandum of Family Arrangement, which according to the learned senior



counsel for the respondents is non-existent. If analysed carefully, it would be evident that the leave is sought on the ground that the cause of action accrues on account of the Memorandum of Family Arrangement executed between the parties in Chennai and that, the Special Power of Attorney was registered in Chennai. However, when the very Memorandum itself is a disputed question of fact, the doctrine of “Forum Conveniens” cannot be invoked to grant leave. Mere residence of the parties would not confer jurisdiction in a suit for land. The Order of the Division Bench in **A. Giridhar and others vs. A. Suresh and others** relied upon by the Learned Senior Counsel for the Appellant would not come to his aid as in that Judgment, the Division Bench of this Court has held that if leave has been obtained, the suit can be entertained. However, in the present case, we are at the stage of considering the application for leave under the Original Side Rules of this Court framed under Clause XXXVII of the Letters Patent Act. It is settled law that the provisions of the Original Side Rules would prevail over the Civil Procedure Code. It would be useful to refer to the following judgments in this regard:

***(a) P.S. Sathappan v. Andhra Bank Ltd., (2004) 11 SCC 672 : 2004 SCC***

**OnLine SC 1280** , in which, it was observed as follows:

*“32. It was next submitted that clause 44 of the Letters Patent showed that Letters Patent were subject to amendment and alteration. It was submitted that*



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this showed that a Letters Patent was a subordinate or subservient piece of law. Undoubtedly, clause 44 permits amendment or alteration of Letters Patent, but then which legislation is not subject to amendment or alteration? CPC is also subject to amendments and alterations. In fact it has been amended on a number of occasions. The only unalterable provisions are the basic structure of our Constitution. Merely because there is a provision for amendment does not mean that, in the absence of an amendment or a contrary provision, the Letters Patent is to be ignored. To submit that a Letters Patent is a subordinate piece of legislation is to not understand the true nature of a Letters Patent. As has been held in *Vinita Khanolkar* case [(1998) 1 SCC 500] and *Sharda Devi* case [(2002) 3 SCC 705] a Letters Patent is the charter of the High Court. As held in *Shah Babulal Khimji* case [(1981) 4 SCC 8] a Letters Patent is the specific law under which a High Court derives its powers. It is not any subordinate piece of legislation. As set out in the aforementioned two cases a Letters Patent cannot be excluded by implication. Further it is settled law that between a special law and a general law the special law will always prevail. A Letters Patent is a special law for the High Court concerned. The Civil Procedure Code is a general law applicable to all courts. It is well-settled law, that in the event of a conflict between a special law and a general law, the special law must always prevail. We see no conflict between the Letters Patent and Section 104 but if there was any conflict between a Letters Patent and the Civil Procedure Code then the provisions of the Letters Patent would always prevail unless there was a specific exclusion. This is also clear from Section 4 of the Civil Procedure Code which provides that nothing in the Code shall limit or affect any special law. As set out in Section 4 CPC only a specific provision to the contrary can exclude the special law. The specific provision would be a provision like Section 100-A.”

**(b) *Iridium India Telecom Ltd. v. Motorola Inc.*, (2005) 2 SCC 145 :**

**2005 SCC OnLine SC 41**, wherein, it was held as under:

**“The statutory scheme**

7. The Code of Civil Procedure, 1908 is an Act to consolidate and amend the laws relating to the procedure of the courts of civil judicature. It would, therefore, govern all actions of a civil nature, unless otherwise provided for in CPC. Some of the provisions of CPC, however, do make some exceptions, and it is necessary to notice them.

.....

**11. Section 129 reads as under:**

“129. Power of High Courts to make rules as to their original civil procedure.—Notwithstanding anything in this Code, any High Court not being the Court of a Judicial Commissioner may make such rules not inconsistent with the Letters Patent or order or other law establishing it to regulate its own



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*procedure in the exercise of its original civil jurisdiction as it shall think fit, and nothing herein contained shall affect the validity of any such rules in force at the commencement of this Code.”*

*20. The legislature recognised the special role assigned to the chartered High Courts and exempted them from the application of several provisions of the Code in the exercise of their ordinary or extraordinary civil jurisdiction for the simple reason that those jurisdictions were governed by the procedure prescribed by the rules made in exercise of the powers of the chartered High Courts under clause 37 of the Letters Patent. Interestingly, Section 652 of this Act itself empowered the High Courts to make rules “consistent with this Code to regulate any matter connected with the procedure of the courts of civil judicature subject to its superintendence”, suggesting that consistency with the Code was a sine qua non only when making rules for the subordinate courts.*

*21. The Code of Civil Procedure, 1882 (Act 14 of 1882) received the assent of the Governor General on 17-3-1882. It also contained Part IX dealing with special rules relating to the chartered High Courts. Section 638 of this Code also exempted the chartered High Courts in the exercise of their ordinary or extraordinary original civil jurisdiction from the application of the Code. Section 652 invested the High Courts with power to make rules “consistent with this Code to regulate any matter connected with its own procedure or the procedure of the courts of civil judicature subject to its superintendence”.*

*(emphasis ours)*

*22. By an amendment made by Act 13 of 1895, Sections 632 and 652 of the Code of Civil Procedure, 1882 were amended. Section 632, as amended by this Act, reads as under:*

*“Except as provided in this chapter and in Section 652 the provisions of this Code apply to such High Courts.”*

*The amendment made in Section 652 provides an aperçu to the controversy. Section 652 was amended by adding the following:*

*“Notwithstanding anything in this Code contained, any High Court established under the said Act for establishing High Courts of Judicature in India may make such rules consistent with the Letters Patent establishing it to regulate its own procedure in the exercise of its original civil jurisdiction as it shall think fit.*

*All such rules shall be published in the local Official Gazette, and shall thereupon have the force of law.”*

*.....*

*24. Then we come to the 1908 Act, which made a drastic departure from the hitherto pattern of the Code. The Code was now divided into a fascicle of*



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substantive sections and a schedule containing rules, which by force of Section 121 were declared to have effect as if enacted in the body of the Code until annulled or altered in accordance with the provisions of Part X CPC.

25. Despite the sweeping change made by the 1908 Act, interestingly, the amendment introduced in the Code of Civil Procedure, 1882 by Act 13 of 1895, which we have quoted above, was retained in a slightly modified form in Section 129.

....

39. Taking into account the extrinsic evidence i.e. the historical circumstances in which the precursor of Section 129 was introduced into the 1882 Code by a specific amendment made in 1895, we are of the view that the non obstante clause used in Section 129 is not merely declaratory, but indicative of Parliament's intention to prevent the application of CPC in respect of civil proceedings on the original side of the High Courts.

40. The High Court noticed that the interpretation put on Section 129 had been uniformly followed in the several judgments of High Courts, including the judgments of two Full Benches of the Delhi and Calcutta High Courts. (See in this connection *Printpak Machinery Ltd. v. Jay Kay Paper Congeters* [AIR 1979 Del 217 : ILR (1979) 2 Del 28 (FB)] , *Newab Behram Jung v. Haji Sultan Ali Shustry* [ILR (1913) 37 Bom 572 : 14 Bom LR 1106] , *Virupaksha Rao Naidu v. M. Ranganayaki Ammal* [AIR 1925 Mad 1132] , *Umeshchandra Banerji v. Kunjilal Biswas* [AIR 1930 Cal 685 : ILR 57 Cal 676] , *Gowal Das Sidany v. Luchmi Chand Jhawar* [AIR 1930 Cal 324 : ILR 57 Cal 106] , *Manickchand Durgaprasad v. Pratabmull Rameswar* [AIR 1961 Cal 483 (FB)] and *Mool Chand v. Kamta Prasad* [AIR 1961 All 595] .)

....

44. The Full Bench of the High Court of Calcutta in *Manickchand Durgaprasad v. Pratabmull Rameswar* [AIR 1961 Cal 483 (FB)] had occasion to consider this very contention with regard to clause 37 of the Letters Patent and observed: (AIR p. 489, para 13)

“The restriction upon the power of the Court as contained in the proviso to clause 37 of the Letters Patent is that the rules framed under that clause should, ‘as far as possible’ be in conformity with the provisions of the Code of Civil Procedure. This restriction as the phrase ‘as far as possible’ indicates is merely directory. The provisions of the Code of Civil Procedure are intended for the purpose of guidance of this Court in framing rules under clause 37 of the Letters Patent. Consequently, if any rule framed by the High Court under clause 37 be inconsistent with or confers any additional power besides what is granted by the Code of Civil Procedure, the rule framed under clause 37 will prevail over the corresponding provisions of the Code of Civil Procedure.”



*This we think is the correct view to be taken in interpreting the words “as far as possible” in clause 37 of the Letters Patent. This interpretation would be consistent with the amplitude of the words used in Section 129 CPC by which the High Court is empowered to make rules “not inconsistent with the Letters Patent to regulate its own procedure in the exercise of its original jurisdiction as it shall think fit”. ”*

14. It is also necessary to refer to clause 12 of the Letters Patent for the Madras High Court which reads as follows:

*“12. And we do further ordain that the said High Court of Judicature at Madras, in the 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, such land or 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, in 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 original jurisdiction in cases falling within the jurisdiction of the Small Cause Court at Madras, in which the debt or damage, or value of the property sued for does not exceed one hundred rupees.”*

15. An unadorned reading of clause 12 suggests that the ordinary original civil jurisdiction of this court will extend as hereunder :

- a) In a suit for land or other immovable property—*
  - (i) where such land or property is wholly situated in the territorial jurisdiction of the High Court of Madras;*
  - (ii) where such land or property is situated in part only within the said territorial jurisdiction of the court, if the leave of the court shall have been first obtained.*
- (b) In suits other than suit for land—*
  - (i) if the cause of action has arisen wholly within the said limits;*
  - (ii) where the cause of action has arisen in part only within the said limits, if the leave of the court shall have been first obtained;*
  - (iii) if the defendant at the time of the commencement of the suit dwells or carries on business or personally works for gain within such limits.”*



Thus, it is very clear from the above that the jurisdiction of this Court in its original side can be invoked only when the entire property falls within the notified area. In case, a portion of the property is located within the jurisdiction and a portion outside, leave must be sought and the discretion is vested with the court, to grant leave or not. The plaintiff is seeking specific performance of the terms of the alleged Memorandum of Family Arrangements which will fall under Section 22 of the Specific Relief Act, 1963. Even though, possession of the property is not specifically sought, prohibitory injunction has been sought and the effect of enforcement of the Memorandum of Family Arrangements would result in delivery of property, which is inherent. In the present case, out of the 16 properties, 10 properties are located outside the jurisdiction of this Court and the memorandum itself is disputed. Insofar as the power of attorney itself is concerned, the execution of power would neither confirm nor confer title and therefore, the relief of declaration of power of attorney as null and void, is not a material factor to decide the question of grant of leave to sue for properties outside the jurisdiction of this Court. Therefore, the refusal on the part of the learned Judge to grant leave in respect of those properties which are situated outside the territorial jurisdiction of this Court is proper and it does not call for any interference by this Court. It is open to the plaintiff to seek appropriate relief



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before the court having jurisdiction over the suit property in respect of item Nos. I to VI, VIII, XIII to XV.

16. In the result, we confirm the order dated 20.07.2022 passed by the learned Judge in Application No. 1799 of 2022 in Civil Suit Diary No. 39450 of 2022. Resultantly, the Original Side Appeal is dismissed. The Registry is directed to return the plaint to the plaintiff. No costs.

(R.M.D., J)

(M.S.Q., J)

08.06.2023

Index : Yes / No

Internet : Yes / No

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**R. MAHADEVAN, J**

and

**MOHAMMED SHAFFIQ, J**



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