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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.06.2023

PRONOUNCED ON : 29.08.2023

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Application Nos.7893 of 2019, 9951, 6780 & 6215 of 2018
in C.S.No.443 of 2013

Application Nos.7893 of 2019, 9951 & 6780 of 2018

P.Gowshika Boopathy

...

Applicant /
1st Defendant

versus

1.T.Muthu

...

1st Respondent /
Plaintiff

2.V.Ravi

3.Rachna Rallan

4.Rajesh N.Dave

5.G.Amutha

6.G.Amutha

7.M.Dhinesh Kumar

8.G.Kanimozhi

9.G.Ezhilmozhi

10.Rina Suresh Nair

11.S.Annarathina Ammal

12.S.Natesal Thenmozhi

13.M.Revathy

14.R.Thirupura Sundari

15.Mohammed Miyakhan

16.N.Brinda Chezhan



17.The Chief Manager,
Vijaya Bank,
W-122, 3rd Avenue,
Anna Nagar Branch,
Chennai - 600 040.

...

Respondents /
Defendants

PRAYER in A.No.7893 of 2019: Application filed under Order XIV Rule 8 of the Original Side Rules read with Order VII Rule 11 and 151 of Code of Civil Procedure, praying to reject the plaint in the suit in C.S.No.443 of 2013.

PRAYER in A.No.9951 of 2018: Application filed under Order XIV Rule 8 and Order III Rule 1 of the Original Side Rules read with Clause 12 of Letters Patent Act, praying to revoke the leave granted by this Court on 03.07.2023 in A.No.2743 of 2013 in C.S.No.443 of 2013.

PRAYER in A.No.6780 of 2018: Application filed under Order XIV Rule 8 of the Original Side Rules Clause 12 of Letters Patent Act and Order XIV Rule 2(2) read with Section 16 of C.P.C., praying to dismiss the suit as not maintainable for want of jurisdiction as it is barred by law under Section 16 of C.P.C. and Clause 12 of Letters Patent Act.

For Applicant : Mr.S.Parthasarathy
Senior Counsel
for Mr.M.Udayakumar

For Respondents : Mr.N.Jothi,
Senior Counsel
for Mr.N.Srinivasulu

Application No.6215 of 2018

T.Muthu

...

Applicant /
Plaintiff

versus



- 1.P.Gowsika Boopathi
- 2.V.Ravi
- 3.Rachna Rallan
- 4.Rajesh N.Dave
- 5.G.Amutha
- 6.G.Amutha
- 7.M.Dhinesh Kumar
- 8.G.Kanimozhi
- 9.G.Ezhilmozhi
- 10.Rina Suresh Nair
- 11.S.Annarathina Ammal
- 12.S.Natesal Thenmozhi
- 13.M.Revathy
- 14.R.Thirupura Sundari
- 15.Mohammed Miyakhan
- 16.N.Brinda Chezhan

17.The Chief Manager,
Vijaya Bank,
W-122, 3rd Avenue,
Anna Nagar Branch,
Chennai - 600 040.

...

Respondents /
Defendants

18.M/s.Tata Chemicals Limited,
C/o.Reach Logistics (P) Ltd.
“Elavarasan Warehouse”,
No.39, New No.14,
Pammathu Kulam Village,
Ambattur Taluk,
Tiruvallur District.

...

Respondent /
18th Defendant

PRAYER: Application filed under Order XIV Rule 1 of the Original Side Rules read with Order I Rule 10(2) of C.P.C., praying to implead the proposed party as 18th defendant in C.S.No.443 of 2013.



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For Applicant : Mr.N.Jothi,
Senior Counsel
for Mr.N.Srinivasulu

For Respondents : Mr.S.Parthasarathy
Senior Counsel
for Mr.M.Udayakumar

COMMON ORDER

1. Application No.7893 of 2019 has been filed by the applicant / first defendant to reject the plaint in the suit in C.S.No.443 of 2013.

1.1. Application No.9951 of 2018 has been filed by the applicant / first defendant to revoke the leave granted by this Court in A.No.2743 of 2013 in C.S.No.443 of 2013 dated 03.07.2013.

1.2. Application No.6215 of 2018 has been filed by the applicant / plaintiff to implead the proposed party as 18th defendant in C.S.No.443 of 2013.

1.3. Application No.6780 of 2018 has been filed by the applicant / first defendant to dismiss the suit as not maintainable for want of jurisdiction as it is barred by law under Section 16 C.P.C. and Clause 12 of Letters Patent for High Court of Madras [hereinafter called as 'Clause 12 of Letters Patent'].



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Application in A.No.9951 of 2018 in brief:-

2. The plaintiff has filed the suit for the following reliefs:-

“(a) to declare that the unauthorised alienation of the properties by way of Sale Deeds as more fully stated in the schedule on the respective tables as such executed by the first defendant to defendants 3 to 16 as the case may be declared as invalid and is not binding on the plaintiff to the extent of his 1/3rd subsisting share and rights over the said properties;

alternatively;

(b) to declare that the plaintiff is entitled to have personal decree against the defendants 1 to 16 herein by directing them to pay 1/3rd value of the market price jointly or severally as fixed by this Court as on the date of the judgment and decree with respect to the properties so purchased by the defendants 3 to 16 as the case may be from the 1st defendant as more fully stated in the table of the respective schedule together with interest at the rate of 18% to be reckoned from the date of their purchase;

(c) to declare that the deed of mortgage executed by the first defendant on 14.12.2010 in favour of the 17th defendant is invalid and not binding on the plaintiff to the extent of 1/3rd share and interest of the plaintiff in respect of the properties so mortgaged to the 17th defendant as more fully stated in the respective schedule of this plaint;



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(d) to issue mandatory injunction to the 17th defendant to release 1/3rd share and interest in the properties mortgaged by the first defendant;

(e) to issue permanent injunction restraining the defendants 1 to 17 from either alienating or altering or encumbering the respective properties sold or mortgaged to them by the first defendant as the case may be and thus render justice;

(f) to issue permanent injunction restraining the defendants 1, 5, 7, 8 & 9 from using or letting the godowns built over the suit property either by themselves or by anyone claiming through them.

(g) to award costs of this suit.”

2.1. By seeking the above reliefs the suit has been filed to determine the right or interest over the landed properties and hence it will come within the ambit for “*suit for land*”; the suit schedule properties viz. Item Nos.1 to 15 are situated at Pammadhukulam Village, Ambattur Taluk, Tiruvallur District, which is outside the jurisdiction of this Court and those properties can only fall under the territorial jurisdiction of Court at Tiruvallur.



2.2. The first respondent / plaintiff has filed an application in A.No.2743 of 2013 in C.S.No.443 of 2013 seeking leave to sue as against the defendants 10 and 16 who are residing outside the jurisdiction of this Court; the first respondent / plaintiff deliberately omitted to seek any leave to file the suit by stating the reason that the immovable properties involved in the suit are situated outside the jurisdiction of this Court; the cause of action arises outside the jurisdiction of this Court, the suit has been instituted by misleading the Court and by suppressing the true facts.

2.3. As per Clause 12 of Letters Patent, the ordinary original civil jurisdiction of the High Court of Madras for “*suits for land*” can be exercised only if such land or property are situated within its jurisdiction; if the properties are situated outside the jurisdiction of the Court, the suit itself is not maintainable; as per Section 16 C.P.C., the suit is to be instituted where the subject matter is situated subject to the pecuniary and other limitations prescribed by law and for claiming any right or interest in immovable property, the suit shall be instituted in the Court within the local limits of whose jurisdiction the property is situated. Hence, the application



has been filed to revoke the leave granted by this Court on 03.07.2013 in A.No.2743 of 2013.

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A.No.6780 of 2018 in brief:-

2.4. This application has been filed by the applicant / first defendant to dismiss the suit as not maintainable in view of lack of jurisdiction. The contents of the said application is almost similar as that of the other application filed by the same applicant in A.No.9951 of 2018.

A.No.7893 of 2019 in brief:-

2.5. This application has also been filed by the applicant / first defendant to reject the plaint. The first defendant has raised the following four grounds to reject the plaint:-

- “(i) on the point of territorial jurisdiction in view of the suit properties situated outside the jurisdiction of the Court;*
- (ii) the suit is barred by limitation;*
- (iii) the suit is bad for misjoinder of cause of action; and*
- (iv) the Court fees paid is not correct.”*



A.No.6215 of 2018 in brief:-

2.6. This application has been filed by the applicant / plaintiff to implead the tenant by name *Tata Chemicals Limited, C/o.Reach Logistics (P) Ltd.* as 18th defendant in the suit in C.S.No.443 of 2013; during the pendency of the suit, this application has been filed on the allegations that a large scale godown in the name of “Elavarasan Warehouse” has been constructed in the suit properties and that has been let out to Tata Chemicals Limited, C/o.Reach Logistics (P) Ltd.

Counter of the first respondent/ plaintiff for the applications in A.No.7893 of 2019, 9951 of 2018 and 6780 of 2018 in brief:-

3. These applications have been filed after 5 years from the date of institution of the suit; the first defendant participated in the proceedings and advanced the arguments on the injunction application filed in O.A.No.517 of 2013 and other applications filed to obtain leave. The defendants 10 and 16 against whom leave has been obtained have not filed any application to revoke the leave; since the defendants 10 and 16 are residing outside the jurisdiction of the Court leave was obtained; except the first defendant the other defendants have not made objections on the point



of maintainability of the suit; since the plaintiff has filed an application to implead a proposed party who is paying the rent for the suit properties, the first defendant had filed these applications as a counterblast; Section 16 C.P.C. should be read along with Sections 70, 20 and 120 C.P.C.; as per Section 120 C.P.C., the provisions under Sections 16, 17 and 20 C.P.C. are not applicable to the Original side jurisdiction of the High Court.

3.1. The first defendant / plaintiff has clearly stated in his plaint that how the Court Fee has been calculated, how the cause of action had arisen within the jurisdiction of the Court; the 17th defendant is a Nationalised Bank and a mortgage has been created by the first defendant in favour of the 17th defendant and the said transaction has taken place within the jurisdiction of this Court; the contesting defendants such as defendants 1 to 9, 11 to 15 and 17 are also residing and carrying on business within the jurisdiction of this Court and that was ignored by the applicant / first defendant.

3.2. The question of limitation is a mixed question of fact and law and hence it can not be gone into at this stage; the High Court Fees Rules, 1957 applicable to the Original Side is different from the other provisions as



enumerated under the Tamil Nadu Act; issue relating to Court Fee cannot be raised by the first defendant and the other issues of cause of action or joinder of cause of action or parties to the proceedings and point of limitation are all question of facts; the first defendant does not have any *locus standi* to question the leave granted by this Court as against the defendants 10 and 16; in para 61 and 62 of the plaint, the plaintiff has stated clearly about how the suit falls within the jurisdiction of this Court; so the suit prays for grant of money decree and not for “*suit for land*” within the meaning of Clause 12 of Letters Patent and hence the applications of the first defendant filed in A.No.7893 of 2019, 9951 of 2018 and 6780 of 2018 should be dismissed.

Counter of the respondent / first defendant for the Application in A.No.6215 of 2018 in brief:-

3.3. The suit itself is not maintainable as the suit relates to land and the immovable property is situated outside the territorial jurisdiction of this Court; the suit also suffers from misjoinder of cause of action; all the sale deeds which are distinct and separate and registered in favour of different parties through different transactions have been challenged in one suit; the cause of action for the plaintiff against each of the defendant is distinct and



separate; the suit is bad for misjoinder of cause of action and the Court Fee paid is also not correct.

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3.4. The proposed party is only a tenant and not an interested party to the suit; no relief is sought against the proposed party; the suit can be effectively and completely determined even without impleading the proposed party; there is no *bonafideness* in filing the impleading application; the question of impleading the tenant as Garnishee or directing him to deposit the rent into the Court does not arise in the suit; the superstructure has been built after obtaining loan from the bank and the loan is repaid in monthly instalments; since superstructure does not belong to the plaintiff he cannot claim any right over the same and hence the tenant need not be added as a party.

3.5. Any action against the Garnishee will arise only during the execution proceedings under Order 21 and Rule 46(A) to (G); as the Power Agent, the first defendant has executed various sale deeds in respect of the suit properties from various persons and they have got valid legal right over the suit properties; it is wrong to state that the applicant / plaintiff alone has invested money for purchasing the suit properties; though the plaintiff



claims that he had revoked the Power of Attorney he has not chosen to inform the first defendant about the same either in person or through any notice; no mandatory notice as per Section 206 of the Contract Act was given; the proposed parties are unnecessary parties to the suit and hence the application should be dismissed.

4. Heard the learned Senior Counsels for the applicant and the respondents and perused the materials available on record.

Discussion:-

5. The suit has been filed by the first respondent / plaintiff to declare that the Sale Deeds executed by the first defendant in respect of the suit properties in favour of the defendants 3 to 16 as invalid and not binding on the plaintiff to the extent of his 1/3rd share and rights over the properties or in alternate to declare that the plaintiff is entitled to have a personal decree against the defendants 1 to 16 by directing them to pay 1/3rd share of the market value jointly or severally in respect of the properties purchased by the defendants 3 to 16 from the first defendant; to declare the deed of mortgage executed by the first defendant on 14.12.2010 in favour



of the 17th defendant bank as invalid and not binding on the plaintiff to the extent of 1/3rd share and interest in respect of the properties along with mandatory injunction against the 17th defendant to release 1/3rd share and interest in the suit properties mortgaged by the first defendant; permanent injunction restraining the defendants 1 to 17 from alienating or encumbering the suit properties and also to restrain the defendants 1, 5, 7, 8 & 9 from using or letting the godowns built over the suit properties.

6. At the time of filing the suit, the leave was sought to be granted in A.No.2743 of 2013 on the allegation that the defendants 10 and 16 are residing outside the jurisdiction of the Court. The suit properties comprising of Item Nos.1 to 15 are situated in Pammadhukulam Village in Survey Nos.551/1 Part, 551/3, 554/5, 550/1A, 550/1b, 550/1B, Sub Registration District of Redhills and Registration District of Chennai North. The description of the property as seen from the plaint itself would show that the properties are situated within the territorial jurisdiction of Tiruvallur District. So it is claimed by the first defendant that the suit itself is not maintainable before this Court in view of lack of territorial jurisdiction and



that the plaintiff did not seek any leave to sue in view of the properties situated outside the jurisdiction of this Court.

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7. Mr.S.Parthasarathy, learned Senior Counsel for the applicant submitted that in view of Section 120 C.P.C., Sections 16, 17 and 20 C.P.C. will not be applicable to the Original side jurisdiction of the High Court. So far as the High Court is concerned, the point of jurisdiction is governed only under Clause 12 of Letters Patent.

8. There cannot be any disagreement on the point that Section 120 C.P.C. exempts the application of Sections 16, 17, 20 C.P.C. to the Original Side Jurisdiction of the High Court. Clause 12 of Letters Patent, reads as under:-

“12. Original jurisdiction as to suits:- And we do further ordain that the said 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, 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



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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 such original jurisdiction in cases falling within the jurisdiction of the Small Causes Court at Madras, in which the debt or damage, or value of the property sued for does not exceed one hundred rupees.”

9. The above Clause in categorical terms state that in case of “suit for land” or other immovable property, the rightful Court which can exercise jurisdiction would be the Court within whose jurisdiction the land or property is situated. The cause of action had arisen either wholly or in part within the local limits of the ordinary original civil jurisdiction of the High Court. In all other cases, it is within the limits where the defendant at the time of commencement of suit dwells or carries on business, or personally works for gain. However the High Court shall not have original jurisdiction in cases falling within the jurisdiction of small causes in matters which the debt/damage or value of the property sued does not exceed Rs.100/-. Clause 11 of Letters Patent would define the local limits from time



to time within which the High Court shall exercise the ordinary original civil jurisdiction.

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10. Mr.S.Parthasarathy, learned Senior Counsel further submitted that “*suit for land*” means the suit in which the relief claimed has an impact on the title and possession of the land in question and in this case the reliefs sought by the first respondent / plaintiff devolves around the title in respect of 1/3rd share and hence the suit ought to have been filed in the Court in whose jurisdiction the properties are situate.

11. Per contra Mr.N.Jothi, learned Senior Counsel for the first respondent / plaintiff submitted that among several reliefs sought by the plaintiff one such relief is in respect of the mortgage executed by the first defendant in favour of the 17th defendant and the said mortgage has been executed within the jurisdiction of this Court and hence part of cause of action has arisen within the jurisdiction of this Court.

12. The attention of this Court was drawn to para No.61 of the plaint which contains the reliefs prayed. In so far as the mortgage in favour



of the 17th defendant is concerned, the following reliefs have been claimed by the plaintiff:-

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“(c) to declare that the deed of mortgage executed by the first defendant on 14.12.2010 in favour of the 17th defendant is invalid and not binding on the plaintiff to the extent of 1/3rd share and interest of the plaintiff in respect of the properties so mortgaged to the 17th defendant as more fully stated in the respective schedule of this plaint;

(d) to issue mandatory injunction to the 17th defendant to release 1/3rd share and interest in the properties mortgaged by the first defendant;

(e) to issue permanent injunction restraining the defendants 1 to 17 from either alienating or altering or encumbering the respective properties sold or mortgaged to them by the first defendant as the case may be and thus render justice;”

13. In *Moolji Jaitha & Co. vs. K.S. & W.Mills Co. [AIR 1950 FC 83]*, the Hon'ble Federal Court has held that the expression “*suit for land*” covers 3 types of suits as under:-

“(i) suits for the determination of title to land;

(ii) suits for possession of land; and



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(iii) *other suits in which reliefs claimed, if granted would directly affect title or possession of land.*”

14. In the said case, the Hon'ble Federal Court had dealt an argument advanced by the learned Advocate General who contended that the defendants are carrying on business within the limits of the Court's ordinary original civil jurisdiction, though the lands are situated outside the jurisdiction of the Bombay High Court. The said argument was rejected and it is held that “*suit for land*” can be tried only by the Court which has territorial jurisdiction over the property situated.

15. The above position has been later followed in various decisions of the Hon'ble Supreme court. The Hon'ble Supreme Court in *Adcon Electronics Pvt. Ltd. vs. Daulat* reported in (2001) 7 SCC 698 has elaborated the application of Clause 12 of Letters Patent and it also occasioned to deal with the various interpretation given by the Federal court and the various High Courts for “*suit for land*” done by various High Courts and the relevant part of the said discussion is extracted as below:-



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“13. In Moolji Jaitha and Co. v. Khandesh Spg. and Wvg. Mills Co. Ltd. [AIR 1950 FC 83], there is divergence of opinion among the learned Judges of five-Judge Bench of the Federal Court in regard to the import of the expression "suit for land". The Chief Justice Kania opined: (AIR p.89, para 15)

"[T]aking the suit as a whole, one has to consider whether it is for the purpose of obtaining a direction for possession or a decision on title to land, or the object of the suit is something different but involves the consideration of the question of title to land indirectly."

Justice Fazl Ali observed: (AIR p.96, para 47)

"[I]f I had really felt that I was called upon to decide it, I would have agreed with the line of cases in which it has been held that, broadly speaking, the expression 'suit for land' covers the following three classes of suits : (1) suits for the determination of title to land; (2) suits for possession of land; and (3) other suits in which the reliefs claimed, if granted, would directly affect title to or possession of land."

Justice Patanjali Sastri took the view: (AIR p.97, para 53)

"[T]he words in question, besides obviously covering claims for recovery of possession or control of land, are apt to connote also suits which primarily and substantially seek an



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adjudication upon the title to immovable property or a determination of any right or interest therein."

Justice Mahajan observed: (AIR p.105, para 81)

"If an attempt is made to find a comprehensive definition of the phrase, it will eventually be discovered that it has created further complications. I therefore content myself by saying that where the nature of the suit is such that in substance it involves a controversy about land or immovable property and the court is called upon to decide conflicting claims to such property and a decree or order is prayed for which will bring about a change in the title to it, that suit can be said to be in respect of land or immovable property; but where incidentally in a suit, the main purpose of which or the primary object of which is quite different, some relief has to be given about land, the title to it not being in dispute in the real sense of the term, then such a suit cannot fall within the four corners of this expression."

He added: (AIR p.110, para 102)

"In my opinion, if the suit is for specific performance and a decree for possession of the land sold is claimed, such a suit would certainly be a suit for land; but if the suit is simpliciter for specific performance, i.e., for the enforcement of the contract of sale and for execution of a conveyance, in that event there can be no good ground for holding that such a



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suit is a suit for determination of title to land or that the decree in it would operate on the land."

In that view he expressed his agreement with the decision of the Full Bench of the Madras High Court in P.M.A.Velliappa Chettiar v. Saha Govinda Doss [AIR 1929 Mad 721]. Justice Mukherjea perceived: (AIR p.119, para 142)

"[I]t seems to me fairly clear that the expression 'suit for land' occurring in clause 12 Letters Patent, means a suit which is instituted with the object of establishing claims regarding title to the property or possession of it. Whether or not possession is claimed, if title to any immovable property is to be directly affected by the result of the decision, the suit would be a suit for land."

16. In the said case, the Hon'ble Supreme Court has accepted the view expressed by Mahajan, J. in **Moolji Jaitha's** case. It is further held that so far as the suit for specific performance is concerned, if the suit is a simpliciter for the relief of specific performance of the contract of “*sale of land*”, it is just a suit for enforcement of terms of contract and hence the title to the land as such is not the subject matter of the suit.



17. In *Excel Dealcomm (P) Ltd. vs. Asset Reconstruction Co. (India) Ltd.*

[(2015) 8 SCC 219] it is further clarified by the Hon'ble Supreme Court that even in the suit for enforcement of contract of “*sale of land*”, if the relief sought is a simple specific performance without a prayer for delivery of possession, the suit cannot be a “*suit for land*” but for enforcement of contract. But if a relief for possession is also prayed that should be considered as a “*suit for land*”.

18. However in *Southern Petrochemical Industries Corporation Ltd. vs.*

Durga Iron Works [1995 (2) CTC 602] a Division Bench of this Court has held that a suit involving determination of title and interest of land for recovery of possession and control of land would be a “*suit for land*”.

19. In *Thamiraparani Investments Pvt. Ltd. vs. Meta Films Pvt. Ltd. [2006*

(1) CTC 270] the Full Bench of this Court has held that the expression “*suit for land*” should not be confined and limited to suits for recovery of possession of land or to obtain a declaration of title to land only. A suit filed to have control over the land lying outside the jurisdiction of this Court



should also be construed as “*suit for land*” and hence this Court has no jurisdiction to entertain the same.

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20. It is reasserted by a single Bench judgment of this Court in *M.Banupriya vs. M.Lakshmi* [2013 (4) CTC 175] that if the suit is a “*suit for land*” and if the property is situated outside the jurisdiction of this Court then even if the part of cause of action arose within the jurisdiction of this Court, this Court cannot entertain the suit. So in the language of the above said decisions rendered by various Courts, it can be safely inferred that if the object of the suit is to determine the title or possession of the land directly or indirectly in order to have control over the same, such suits should only be considered as “*suit for land*”.

21. In fact, the above view has been fortified by a Division Bench of this Court in *Harsha Estates vs. Dr.P.Kalyana Chakravarthy* [2018 (4) CTC 721]. In the said case after analysing various judgments, the following principles have been evolved.



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“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”.

(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.



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(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.”*

22. In the case in hand, even though the first respondent / plaintiff has sought shelter within the jurisdiction of this Court in view of the



execution of mortgage in respect of the 17th defendant, the fact remains that the properties involved in the mortgage are also situated beyond the territorial jurisdiction of this Court. The reliefs in respect of mortgage also has a direct bearing on the question of title in respect of 1/3rd share claimed by the plaintiff. Unless the plaintiff's entitlement for 1/3rd share in the suit properties is decided none of the reliefs sought by the plaintiff can be granted. So the instant case has been filed to assert the alleged title of the plaintiff in respect of 1/3rd share in the suit properties and hence, this suit falls within the ambit of “*suit for land*” only.

23. The Registry got confused with para 61 of the plaint without realising the fact that the relief sought in respect of the mortgage also involves the question of right over the properties which are situated outside the jurisdiction of this Court. In suits for mortgage, the Courts which has got territorial jurisdiction of the place where the mortgaged property is situated alone has got the jurisdiction. So without any confusion the suit falls outside the jurisdiction of the Court in view of the fact that the properties described under various tables given in the plaint are situated within the jurisdiction of the Tiruvallur District.



24. Having said that the Court has got no jurisdiction, the next step would be to return plaint to be represented before the jurisdictional Court.

Since the Court lacks jurisdiction to entertain the suit, the reliefs sought by the applicant / first defendant to reject the plaint on the grounds of limitation, misjoinder of cause of action, deficit Court Fee cannot be looked into. Similarly, the plaintiff filed application to implead the proposed party as 18th defendant cannot be dealt with. Because dealing with the above applications would amount to assuming jurisdiction which is obviously not possible, in view of the territorial limits of this Court and also the given nature of the suit which is for land.

25. The leave granted earlier by virtue of the order of this Court dated 03.07.2013 in A.No.2743 of 2013 was on the ground that the defendants 10 and 16 are residing outside the jurisdiction of this Court. When the Court itself does not have the territorial jurisdiction to entertain the suit in view of the fact that the suit properties are situated outside the jurisdiction and the reliefs prayed are also in respect of the land and right over the same, this Court is not expected to deal with the residential facts of the defendants.



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26. Since the above order granting leave has been passed without taking cognizance of the fact that the suit is against the immovable properties which are situated outside the jurisdiction of the Court, the leave has to be revoked. However, the applicant / first defendant had filed A.No.6780 of 2018 to dismiss the suit on the point of jurisdiction. When it comes to the knowledge of the Court that this Court has got no territorial jurisdiction to entertain the same, the Court is obliged to return the plaint to be represented in the Court which has got right jurisdiction. Hence, the suit cannot be dismissed on the point of territorial jurisdiction.

27. In view of the aforesaid reasons, A.No.9951 of 2018 is allowed and the leave to sue granted in A.No.2743 of 2013 on 03.07.2013 is revoked.

28. The application in A.No.6780 of 2018 is allowed on the point that this Court has got no territorial jurisdiction. Consequently, the plaint is ordered to be returned to be represented before the appropriate jurisdictional Court within a period of two weeks from the date of receipt of a copy of this order.



29. The points and reliefs raised in A.No.7893 of 2019 and A.No.6215 of 2018 are left open to be decided by the jurisdictional Court and thus disposed.

29.08.2023

Speaking order

Index : Yes

Neutral Citation : Yes

sri



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Application Nos.7893 of 2019, 9951, 6780 & 6215 of 2018
in C.S.No.443 of 2013



R.N.MANJULA, J.

sri

Pre-Delivery Common Order made in
Application Nos.7893 of 2019,
9951, 6780 & 6215 of 2018
in C.S.No.443 of 2013

29.08.2023