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A.No.5859 of 2022

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in
C.S(Comm.Div) DR.No.140611 of 2022

C.SARAVANAN, J.

The applicant/plaintiff has filed this application to leave the suit under clause 12 of the Letters Patent. The applicant / plaintiff has filed the suit for declaration, permanent injunction, specific performance, mandatory injunction, alternative relief as detailed in the plaint.

2. It is the case of the applicant/plaintiff that application has been filed by way of abundant caution as the applicant/plaintiff would not like to be non-suited at a later point of time.

3. It is submitted that the applicant/plaintiff has not filed the suit either to take any advantage of any imagined Court fee payable in the above suit or that the suit has been filed due to forum shopping.

4. It is submitted that there are no restrictions under the Lease Agreement dated 04.12.2019 entered into between the applicant/plaintiff and the respondent/defendant, to initiate the proceedings before this Court



in respect of any dispute arising out of the breach committed by the respondent/defendant.

5. A specific reference is made to Clause 23(g) of the Lease Deed dated 04.12.2019, wherein, the parties have agreed that Competent Courts at Kancheepuram, Chennai in Tamil Nadu will have exclusive jurisdiction in case of any dispute.

6. It is submitted that the relief as prayed for in the present suit also does not relate to a suit for lease of immovable property. It is submitted that the suit is for a specific performance *simplicitor* and therefore there is no embargo under Clause 12 of Letters Patent for grant of leave.

7. It is submitted that though there could be a indirect relief being conferred on the immovable property, if the suit is ultimately decreed as prayed for, it cannot be said that the present suit relates to land or any immovable property to oust the jurisdiction.



8. The learned counsel for the applicant/plaintiff has placed reliance on the decision of the Hon'ble Supreme Court in the case of **Adcon Electronics Pvt Ltd Vs. Daulat and another** (2001) 7 SCC 698. A reference is made to Para 15, 16 and 18, wherein, the Hon'ble Supreme Court after referring to several case laws on the subject including the decision of the Federal Court in the case of **Moolji Jaitha and Company Vs. The Khandesh Spinning and Weaving Mills Co.Ltd** concluded that suit for specific performance was not a suit for land or immovable property to oust the jurisdiction to entertain the suit.

9. Thus, it is submitted that though in proposed suit, interest of the applicant/plaintiff in immovable property was involved, it was nevertheless a suit filed for a specific performance of obligation under the Agreement dated 04.02.2019.

10. The learned counsel for the applicant/plaintiff submits that only if a suit was for a permanent injunction restraining the defendant *simplicitor* and/or for mandatory injunction in respect of a land or building, it would be a suit for land or immovable property and therefore only under those



circumstances, the jurisdiction of this Court would stand ousted.

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11. The learned counsel for the applicant/plaintiff has also placed reliance on the decision of the Hon'ble Calcutta High Court in the case of **Debendra Nath Chowdhury Vs. Southern Bank Ltd.,** 1960 SCC Online Cal 109, wherein, the Court held that though a decree of specific performance will result in ultimate possession being given for an immovable property, it would not convert it into a suit for land.

12. It is submitted that the learned Single Judge of the Calcutta High Court took note of the decision of the Federal Court in the case of **Moolji Jaitha and Company Vs. The Khandesh Spinning and Weaving Mills Co.Ltd** to buttress the point that the proposed suit by the applicant/plaintiff was well within the jurisdiction of this Court and therefore the applicant/plaintiff is entitled for a leave.

13. This application is opposed by the learned counsel for the respondent/defendant on the ground that the present suit which has been filed by the applicant/plaintiff was nothing but a suit for land/immovable



property situated outside the jurisdiction of this Court within the jurisdiction of the Kanchipuram District Court and therefore the leave to such suit cannot be granted.

14. It is submitted that Clause 12 of Letters Patent Act deals with four different instances. The suit is barred if the suit that has been filed in respect of land or immovable property.

15. It is submitted that merely because the Agreement was signed in Chennai and the respondent/defendant was also located in Chennai *ipso facto* itself would not entitle the applicant/plaintiff to file the suit before this Court in respect of the land situated out of the jurisdiction of this Court.

16. Specifically, the learned counsel for the respondent/defendant has placed reliance on a recent decision of the Hon'ble Division Bench of this Court in the case of **Harsha Estates and Ors Vs. P.Kalyana Chakravarthy and Ors**, 2018 3 L.W.900. A specific reference is made to the following passage from the said judgment:-

“A suit for bare injunction restraining the defendant from interfering with the possession and



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enjoyment of the property by the plaintiff, will be “suit for land”.

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.”

17. It is submitted that a clever drafting of the plaint also cannot clothe jurisdiction on the Court under Clause 12 of the Letters Patent. It is further submitted that the above view of the Hon'ble Division Bench of this Court was affirmed by another decision in **K.Paranthaman, rep. by its Power of Attorney Agent, Mr.Raja Vs. C.Padmanabhan and Another**, vide order dated 05.03.2019 in O.S.A.No.260 of 2018, wherein, the Court reiterated the law in the case of **Harsha Estates's case** referred to *supra*. The Court further observed that clever drafting of plaint to bring the suit for land situated outside the jurisdiction of the original jurisdiction of the Court will not and should not result in grant of leave.

18. The learned counsel for the respondent/defendant also sought to highlight the difference between the case of license and lease and referred to the decision of the Hon'ble Supreme Court in the case of **Smt.Rajbir Kaur and another Vs. S.Chokesiri and Co.**, reported in (1989) 1 SCC 19.



Finally, it was submitted that the parties cannot confer the jurisdiction on the Court with consent if indeed the Court has no territorial jurisdiction to entertain the suit.

19. I have considered the arguments advanced by the learned counsel for the applicant/plaintiff and the learned counsel for the defendant/respondent and also perused the decision cited by the learned counsel for the applicant/plaintiff. Clause 12 of the 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 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 such 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.



20. The High Court is empowered to receive, try, and determine suits of every description. However, it is subject to limitation contained in Clause 12 of the Letter Patent. A reading of the Clause 12 of Letter Patent indicates that four instances are contemplated. The first instance deals with a situation where the suit is for land or immovable property. If the land is situated outside the jurisdiction of this Court, this Court will have no jurisdiction to entertain the suit. Such suit will have to be filed only before the concerned jurisdictional Court in accordance with the provisions of the Code of Civil Procedure.

21. The second instance deals with the situation where the cause of action has arisen within the jurisdiction of this Court, in which case, no leave is required.

22. The third instance deals with a situation where a part of cause of action has arisen, in which case, mandatorily a leave of this Court has to be obtained by the plaintiff. The Court will be guided by the principle of forum conveniens as per the decision of the Hon'ble Supreme Court in **Kusum Ignots and Alloys Ltd. Vs. Union of India and others**, (2004) 6



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23. The fourth instances deals with a situation where the defendant at the time of commencement of the suit dwells or carries on business or personally works for gain, within limits.

24. The only exception to the above situation is where the cause of action has arisen within the jurisdiction but the jurisdiction is specifically reserved with the Court of Small Causes at Madras, in which case, the High Court will not have jurisdiction.

25. The Federal Court in **Moolji's** case referred to *supra* has given five different opinions. Almost all the opinions are categorical. Wherever, a suit is for a land or immovable property, the jurisdiction of the Court cannot be invoked if the land is situated outside the jurisdiction of the Court.

26. The decision of the Hon'ble Supreme Court in the case of **Adcon**



Electronics Pvt Ltd Vs. Daulat and another, (2001) 7 SCC 698 has also considered the views that was prevailing as on the date of the judgment and several decisions including that of the Calcutta High Court which has been relied upon by the learned counsel for the applicant/plaintiff. Both the cases were rendered in the context of Section 22 of the Specific Relief Act. The Court there concluded that a suit for specific performance cannot be treated as a suit of land. This view was expressed after referring to the views of the Calcutta High Court in the case of **Debendra Nath Chowdhury Vs. Southern Bank Ltd.**, AIR 1960 Calcutta 626, wherein, the Court held that merely because a decree for specific performance will result in ultimate possession being given or obtained, does not convert it into a suit for land.

27. The above view was also considered by the Hon'ble Supreme Court in the case of **Adcon Electronics Pvt Ltd** referred to *supra*.

In paragraph 15, the Court held as under:-

15. From the above discussion it follows that a “suit for land” is a suit in which the relief claimed relates to title to or delivery of possession of land or immovable property. Whether a suit is a “suit for land” or not has to be determined on the averments in the plaint with reference to the reliefs claimed therein; where the relief relates to adjudication of title to land or immovable



property or delivery of possession of the land or immovable property, it will be a “suit for land”. We are in respectful agreement with the view expressed by Mahajan, J. in *Moolji Jaitha case* [AIR 1950 FC 83 : 1949 FCR 849] .

16. In a suit for specific performance of contract for sale of immovable property containing a stipulation that on execution of the sale deed the possession of the immovable property will be handed over to the purchaser, it is implied that delivery of possession of the immovable property is part of the decree of specific performance of contract.

28. However, the Division Bench of this Court in the case of **Hursha Estates** referred to *supra*, in paragraph 10, has summarized the laws 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”.
- (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.N0.2/2018, dt.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”.



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29. The above view has been subsequently followed by yet another decision of the Hon'ble Division Bench of this Court in the case of **K.Paranthaman** referred to *supra*.

30. A reading of the averment in the plaint and the affidavit filed in support of the application and the documents filed by the applicant/plaintiff in respect of the suit indicates that the present suit filed by the applicant/plaintiff would be barred under Clause 12 of the Letter Patent Act. The applicant and respondent have also conferred the jurisdiction on the Courts in Kancheepuram, Chennai in respect of dispute arising out of the lease deed dated 04.12.2019 executed between them.

31. Therefore, even going by the agreement signed between the parties and even if the decision of the Hon'ble Supreme Court in **Adcon Electronics Pvt Ltd** referred to *supra* following the decision of the Calcutta High Court in the case of **Debendra Nath Chowdhury** referred to *supra* is followed, only the Courts in Kancheepuram, Chennai will have the jurisdiction in respect of the disputes between the parties. Therefore, this



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application filed by the applicant/plaintiff is not maintainable. Accordingly, this application deserves to be dismissed.

32. The applicant / plaintiff is given liberty to take return of the documents filed along with the suit papers for a proper re-presentation of the plaint before the Court of competent jurisdiction in Kancheepuram District, Chennai.

33. The Court fee paid by the applicant/plaintiff before this Court is directed to be adjusted and accepted as the Court fee payable for the plaint on its re-presentation before the jurisdictional Court in Kancheepuram District, Chennai.

34. Registry is directed to return the plaint and suit documents together with court fee paid by the applicant / plaintiff for a proper re-presentation of the plaint before the jurisdictional Court in Kancheepuram District, Chennai, immediately.

35. Thus, this application is dismissed.



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