



O.A.No.963 of 2023

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

**Reserved on : 18.12.2023**

**Pronounced on : 28.12.2023**

**CORAM:**

**THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE**

**O.A.No.963 of 2023  
in  
C.S.(Comm.Div) No.281 of 2023**

Mrs.Niraimathy Ilangovan,  
No.7, Bury-side Close, Aldborough Road North,  
Ilford, Essex IG2 7JF,  
United Kingdom.

... Applicant/  
Plaintiff

**Vs.**

1. M/s.Anjappan Authentic Chettinadu Restaurant,  
Rep. by shri.A.Rengasamy,  
No.71, Dr.Radhakrishnan Salai,  
Mylapore, Chennai - 600 004.

2. Shri. A. Rengasamy,  
No.71, Dr.Radhakrishnan Salai,  
Mylapore, Chennai - 600 004.

3. Shri. A.Kandasamy,  
No.71, Dr.Radhakrishnan Salai,  
Mylapore, Chennai - 600 004.

4. Shri. A. Maruthupandian,  
No.71, Dr.Radhakrishnan Salai,  
Mylapore, Chennai - 600 004.

... Respondents/  
Defendants



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**Prayer in application:-** This application has been filed seeking to grant an order of interim injunction restraining the respondents, their relatives, agents, sister concerns, subsidiaries, servants or representatives or any third person through or under them from in any manner opening any restaurants directly or indirectly or through franchise business model under the brand name, trademark and goodwill of "Anjappar Authentic Chettinadu Restaurant" or under the trade name of "Anjappar" and/or any other name attached with the name "Anjappar which may be Identical and/or deceptively similar at 69 High Street, Ilford IG6 2AF, London, or at 262 Northholt Road, South Harrow, Harrow HA2 8HF, London or at any such place within a radius of 150 Kms from the outlet of the applicant in London, pending disposal of the main suit.

**Prayer in the main suit:-** Complaint filed under Order IV Rule 1 of the Original Side Rules and Order VII Rule 1 of the C.P.C. read with Section 7 of the Commercial Courts Act, 2015:

a) For a permanent injunction restraining the Defendants, their relatives, agents, sister concerns, subsidiaries, servants or representatives or any third person through or under them from in any manner opening any restaurants in the trading name of "Anjappar" and/or any other name attached with the name "Anjappar which may be Identical and/or deceptively similar or under the franchise of "Anjappar Authentic Chettinadu Restaurant" directly or indirectly, including the one at 69 High Street, Ilford IG6 2AF, London, and the other at 262 Northholt Road, South Harrow, Harrow HA2 8HF, London or at any such place within a radius of 150 Kms from the outlet of the Plaintiff situated in



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London;

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(b) For a permanent injunction restraining the Defendants from directly or indirectly opening or granting franchise or license to any third party, relatives, agents, sister company, subsidiaries, servants or representatives through or under them directly or indirectly to establish any restaurant/s under the franchise of "Anjappar Authentic Chettinadu Restaurant" or in the trading name of "Anjappar" and/or any other name attached with the name "Anjappar" which may be identical and/or deceptively similar within a radius of 150 Kms from the outlet of the Plaintiff situated in London;

(c) To pay costs of the suit to the Plaintiff.

For Plaintiff : Mr.V.Raghavachari  
Senior Counsel  
for  
Dr.R.Maheswari

For defendants : Mr.A.K.Sriram  
Senior Counsel  
for  
Mr.P.K.Harinath Babu  
for D1 and D2

Mr.M.Sriram  
for D3

Mr.S.Wilson  
for D4



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**ORDER**

The issue that arises for consideration in this matter is whether this Court is having the territorial jurisdiction to adjudicate this suit and if so, whether the plaintiff is entitled for an order of interim injunction as prayed for in this application.

2. The plaintiff claims to be a franchisee under the first defendant, running a restaurant in London in the name of "Anjappar", which is a registered trademark owned by the first defendant. According to the plaintiff, as per the Memorandum of Understanding (MOU) dated 19.10.2022 entered into between the plaintiff and the first defendant, Madras High Court is vested with the exclusive jurisdiction to decide any dispute arising out of the MoU. The issue raised by the plaintiff is that the defendants have committed breach of contract by attempting to set up a restaurant in London within the radius of 150 Kms from the plaintiff's restaurant in London, i.e., at 69 High Street, Ilford IG6 2AF, London or at 262 Northholt Road, South Harrow, Harrow HA2 8HF, London, in the same name "Anjappar". Under the aforementioned circumstances, the suit has been filed.



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3. The plaintiff relies upon a clause in the MOU, which prohibits such an attempt being made by the first defendant. The plaintiff claims that the first defendant being the partnership firm which had entered into a franchisee agreement with the plaintiff and the defendant Nos.2 and 4, who are its partners, are jointly and severally liable to redress the grievance of the plaintiff.

4. On the other hand, the defendant Nos.1 and 2, as seen from the counter to O.A.No.963 of 2023, would categorically contend as follows:

a) This Court does not have territorial jurisdiction to decide the suit, since the right is sought to be established by the plaintiff in respect of immovable properties in London;

b) The suit is a suit for land as the property for which the relief is sought by the plaintiff is in London, which is situated outside the territorial jurisdiction of this Court;

c) Clause XII of the Letters Patent enables this Court to exercise jurisdiction only when a property which is the subject matter of dispute is located within the local original territorial jurisdiction of this Court;

d) Section 20 of C.P.C., which deals with the part of cause of



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action principle, has no applicability to this Court in view of Section 120 of C.P.C., which makes Section 16, 17 and 20 of C.P.C. inapplicable to the original side of this Court;

e) The two prayers in the suit have been combined into a single prayer in the interim application. If the interim injunction is granted, it would amount to the suit being decreed at the interlocutory stage, which is legally impermissible;

f) Interim injunction cannot be granted as per the provisions of Section 41 (d) of the Specific Relief Act when damages is an effective alternate remedy;

g) A perusal of the pleadings in the plaint and the application do not make out any case for an urgent interim relief and therefore, Section 12A of the Commercial Courts Act, 2015 which mandates pre-suit mediation has not been complied with;

h) *Prima-facie* case, balance of convenience and irreparable hardship have not been established by the plaintiff for the grant of interim injunction as prayed for in this application.



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5. The defendant Nos.3 and 4 have filed separate counter affidavits, and they would contend as follows:

a) They have adopted the contentions of the defendant Nos.1 and 2 with regard to the non-maintainability of the suit before this Court due to lack of territorial jurisdiction;

b) The defendant Nos.3 and 4 are the registered holders of the trademark, known as "Anjappar Authentic Chettinad Restaurant" having obtained the registration before the London Trademark Registry;

c) The defendant Nos.3 and 4 alone are the competent persons to enter into any franchisee agreement. The alleged MOU which is the subject matter of this dispute between the plaintiff and the defendant Nos.1 and 2 was entered into by the defendant No.2 alone and therefore, such an agreement will not bind the defendant Nos.3 and 4;

d) A cursory reading of both the MOU dated 19.10.2022 as well as the plaint in C.S.No.281 of 2023 and the affidavit filed in support of this application does not disclose any partnership between the plaintiff and the defendants 3 and 4.

e) The defendant Nos.3 and 4 are not signatories to the alleged



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MOU dated 19.10.2022 entered into between the plaintiff and the defendant Nos.1 and 2;

f) The third defendant after coming to know of the MOU entered into between the plaintiff and the defendant Nos.1 and 2 has initiated legal action against the plaintiff as well as the defendant No.2, by issuing a legal notice dated 16.10.2023 through his lawyers at London, calling upon the plaintiff to cease and desist from using the trademark "Anjappar Authentic Chettinadu Restaurant" at London;

g) The plaintiff has suppressed the receipt of the legal notice dated 16.10.2023 from the third defendant's Attorney at London in the suit filed before this Court. The plaintiff is therefore guilty of suppression of material facts and on that ground also she is not entitled for any relief as prayed for in the plaint as well as in this application;

h) The defendant Nos.3 and 4 are no way concerned about the transfer of funds by the plaintiff under the MOU to the individual bank account of the 2nd defendant. There is no privity of contract between the plaintiff and the defendant Nos.3 and 4 and therefore, no adverse orders can be passed against the defendant Nos.3 and 4 as it would amount to being an order not passed in accordance with law;



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i) The period of MOU has also got expired on 17.10.2023 and therefore, the suit reliefs as well as the interlocutory relief sought for by the plaintiff cannot be granted by this Court.

6. Heard Mr.V.Raghavachari, learned Senior Counsel assisted by Dr.R.Maheswari, learned counsel for the plaintiff. Mr.A.K.Sriram, learned senior counsel assisted by Mr.P.K.Harinath Babu, learned counsel for the defendant Nos.1 and 2, Mr.M.Sriram, learned counsel for the defendant No.3, and Mr.S.Wilson, learned counsel for the defendant No.4.

7. Mr.V.Raghavachari, learned senior counsel drew the attention of this Court to the various clauses contained in the MOU entered into between the plaintiff and the defendant Nos.1 and 2 and would submit as follows:

a) The plaintiff is only seeking the enforcement of the terms and conditions of the MOU and therefore, the suit is an action in personam and hence, this Court is having the territorial jurisdiction to decide the suit as well as the application;



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b) When the contract stipulates that only the Madras High Court is having the exclusive jurisdiction to decide any dispute arising out of the MOU and the defendants are also residing only at Chennai, this Court has got the jurisdiction to decide the suit as well as the application;

c) As per Section 19 of the Partnership Act, the 2nd defendant is having the implied authority to sign the MOU on behalf of the other partners and hence, eventhough the MOU has not been signed by the defendant Nos.3 and 4, the MOU which is the subject matter of the dispute is also binding on them;

d) England being a reciprocating territory under Section 44 A of C.P.C., this Court is having the territorial jurisdiction to decide the suit as well as the application;

e) The suit instituted by the plaintiff is an action in *personam*, seeking for enforcement of the terms and conditions of the MOU for breach of a negative covenant contained in the MOU which prohibits the first defendant from opening another restaurant in the same trade name "Anjappar Authentic Chettinadu Restaurant" within the vicinity of 150 kms radius from the plaintiff's restaurant at London;



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f) This Court is having the territorial jurisdiction to decide the suit since the defendants are residing / having their Office only at Chennai within the jurisdiction of this Court and the parties have also conferred in the MOU that only the Madras High Court is vested with the exclusive jurisdiction to decide any dispute arising out of the MOU.

8. In support of his submissions, the learned senior counsel for the plaintiff drew the attention of this Court to the following authorities:

| S.No. | Citation                                                                                                           |
|-------|--------------------------------------------------------------------------------------------------------------------|
|       | <b>Reciprocating Territory - Sec.44A of C.P.C.</b>                                                                 |
| 1.    | Chellaram V.Chellaram<br>(Chancery Division)                                                                       |
| 2.    | 2002 (11) SCC 549 - Griesheim GmbH Vs. Goyal MG Gases. UK is a reciprocating territory under Section 44A of C.P.C. |
| 3.    | 1962 SCC Online SC 112 / AIR 1963 SC 1 - R.Viswanathan & Ors. Vs. Rukn-ul-Mulk Syed Abdul Wajid.                   |
| 4.    | 1968 SCC Online Mad 188 / AIR 1970 Mad 119 - Minor Dorairaj Vs.KKR Karuppiah & Ors.                                |
| 5.    | 1989 (2) WLR 276 - Derby & Co. Vs. Weldon & Ors.                                                                   |
| 6.    | 2003 SCC Online Bom 760 - Iridium India Vs. Motorola Inc.                                                          |
|       | <b>Grant of injunction for breach of negative covenant</b>                                                         |
| 7.    | 1995 (5) ACC 545 - Gujarat Botting Vs. Coca Cola                                                                   |
| 8.    | 2003 (4) LW 555 - Prasad Mathew Vs. SCV Unit of Sun TV                                                             |
|       | Enforcement of contract - Relief in personam                                                                       |
| 9.    | 2001 (7) SCC 698 - Adcon Electronics Vs. Daulat & Anr.                                                             |
| 10.   | ILR 1931 55 Bom 709 - Ganesh Sakharam Saraf & Ors. Vs. Narayan Shivram Mulaye                                      |



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| S.No. | Citation                                                                                                                                          |
|-------|---------------------------------------------------------------------------------------------------------------------------------------------------|
| 11.   | 2007 (4) SCC 795 - Mohit Bhargava Vs. Bharat Bhushan Bhargava & Ors.                                                                              |
|       | <b>Anti-suit injunction and choice of forum</b>                                                                                                   |
| 12.   | 2003 (4) SCC 341 - Modi Entertainment Vs. W.S.G. Cricket - Jurisdiction in Personam.                                                              |
| 13.   | 2004 (7) SCC 447- Man Roland Vs. Multi-Colour Offset. When the parties have agreed on a particular forum, the Courts will enforce such agreement. |
|       | <b>Implied Authority of Partner - Sec.19 of the Partnership Act</b>                                                                               |
| 14.   | 1957 Bom LR 1053                                                                                                                                  |
| 15.   | AIR 2011 MP 172 Sagarmal Vs. Shri Gujarat Beedi Co.                                                                                               |

9. On the other hand, Mr.A.K.Sriram, learned senior counsel appearing for the defendant Nos.1 and 2 would submit as follows:

a) The effect of the suit prayers would effectively mean that a right is sought to be established in respect of an immovable property in London, the details of which are also disclosed by the plaintiff in the plaint and in the interlocutory relief prayers. Hence, the suit filed by the plaintiff is a suit for land. Being a suit for land, the suit can be instituted only at the place where the immovable properties are located which in the instant case is located at London. Hence, this Court does not have territorial jurisdiction to entertain the suit;

b) Para 20 of the plaint refers to Section 20 of C.P.C.. In view of



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Section 120 of C.P.C., it is clear that Sections 16, 17 and 20 of C.P.C. are inapplicable to the original side jurisdiction of this Court, which is being exercised by the plaintiff;

c) The territorial jurisdiction of the Commercial Division of this Court will have to be determined based on clause XII of the Letters Patent only;

d) Learned counsel for the plaintiff has relied upon Section 6 of the Commercial Courts Act, 2015 for the purpose of substantiating the plaintiff's case that Section 20 of C.P.C. will apply. By order dated 28.11.2022 in Appl.No.5013 of 2022 in C.S.(Comm. Div.) SR.No.101355 of 2022, it has been held by this Court that in view of Section 120 of C.P.C., Section 20 of C.P.C. is not applicable to Commercial suits and only clause XII of the Letters Patent applies while deciding the territorial jurisdiction of this Court;

e) The clever drafting of the plaint cannot bring the suit for land within the jurisdiction of this Court in its original side jurisdiction and any such suit will have to be rejected at the threshold itself.

f) The interim relief sought for in the interlocutory application as



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well as the final relief sought for in the plaint are identical reliefs and therefore, interim injunction cannot be granted and if granted, it will amount to final adjudication of the suit;

g) The plaintiff's own averment in the plaint as well as in the affidavit filed in support of this application where she has specifically averred regarding the expenditure, investments, the outflows and the monetary loss, specifying financial loss would go to show that the damages are quantifiable. Therefore, interim injunction sought for by the plaintiff has to be refused by this Court as per the provisions of Section 41 (e) of the Specific Relief Act;

h) The pleadings and documents do not indicate that there is a need for an urgent interim relief in favour of the plaintiff. Therefore, having not complied with the mandatory requirement of pre-suit mediation, as per Section 12A of the Commercial Courts Act, 2015, the suit as well as the application is not maintainable.

10. In support of his submissions, Mr.A.K.Sriram, learned senior counsel appearing for the defendant Nos.1 and 2 relied upon the following authorities:



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| S.No. | Citation                                                                                                                                                                                                |
|-------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.    | 2023 (5) SCC 368<br>Future Sector Land Developers LLP and Another Vs. Bagmane Developers Private Limited and Others                                                                                     |
| 2.    | 2019 (3) CTC 228<br>K.Paranthaman Rep. by its Power of Attorney Vs. C.Padmanabhan and Others                                                                                                            |
| 3.    | Judgment in O.S.No.2 of 2018 (10.07.2018)<br>M/s.Raja Holdings, Financiers and Merchants, Partnership Firm Rep. by its partners Vs. R.R.P.Housing Pvt. Ltd., Rep. by its Managing Director and 3 Others |
| 4.    | 2019 SCC Online Mad 2177<br>Kiran Devi Vs. Philomena and Another                                                                                                                                        |

11. The respective learned counsels appearing for the defendant Nos.3 and 4, apart from adopting the arguments of Mr.A.K.Sriram, learned senior counsel appearing for the defendant Nos.1 and 2, with regard to the non-maintainability of the suit before this Court on the ground of lack of territorial jurisdiction, they would further submit as follows:

a) The defendant Nos.3 and 4 are the registered holders of the trademark "Anjappar Authentic Chettinadu Restaurant" having obtained the same from the Trademarks Registry of London which is still valid and subsisting;

b) The defendant Nos.3 and 4 alone are the competent persons to enter into any franchisee agreement at London;



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c) The defendant Nos.3 and 4 are not parties to the MOU signed by the 2nd defendant which is the subject matter of the suit as well as this application;

d) A cursory reading of both the MOU dated 19.10.2022 as well as the plaint in C.S.(Comm. Div.)No.281 of 2023 and the affidavit filed in support of this application does not disclose any partnership dealing between the plaintiff and the defendant Nos.3 and 4;

e) There is no privity of contract between the plaintiff and the defendant Nos.3 and 4;

f) The third defendant after coming to know about the signing of MOU by the 2nd defendant with the plaintiff, has initiated legal action against the plaintiff as well as the defendant No.2 for infringement of the trademark "Anjappar Authentic Chettinadu Restaurant", by issuing a cease and desist notice dated 16.10.2023 through its attorney at London;

g) The plaintiff has suppressed the receipt of the cease and desist notice dated 16.10.2023 in the suit as well as in the application. The plaintiff is therefore, guilty of suppression of material facts and hence, she is not entitled for any relief from this Court;

h) The amounts alleged to have been remitted by the plaintiff have



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admittedly been remitted to 2nd defendant's individual bank account at Chennai and the defendant Nos.3 and 4 are no way concerned with the said transfer of funds;

i) The defendant Nos.3 and 4 are no way connected with the suit transaction and therefore, any order passed against them in this application will not be in accordance with law;

j) The plaintiff has not followed the procedure contemplated under the Commercial Courts Act, 2015 and therefore, on this ground also, the suit as well as the application are liable to be dismissed.

**Discussion:**

12. The following are the undisputed facts:

- a) The plaintiff is a permanent resident of United Kingdom;
- b) The MoU dated 19.10.2022 entered into between the plaintiff and the defendants 1 and 2 was entered into only at London.
- c) The plaintiff has been appointed as a franchisee by the second defendant to use the trademark "Anjappar" for its restaurant at London;
- d) The cause of action for filing the suit is the alleged breach of memorandum of understanding dated 19.10.2022 by the defendants, who, according to the plaintiff, is attempting to open other outlets in



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London at 69 High Street, Ilford IG6 2AF, London and 262 Northholt Road, South Harrow, Harrow HA2 8HF, London, which are within the 150 kms radius from the outlet of the plaintiff in London, which according to the plaintiff is in gross violation of clause - 4 of the memorandum of understanding dated 19.10.2022;

e) The suit has been filed only for a bare injunction to restrain the defendants from opening new outlets at London within the 150 kms radius from the plaintiff's outlet at London;

f) Clause XII of the Letters Patent makes it clear that in the case of suits for land or other immovable property, such land or property should be situated within the ordinary civil jurisdiction of this Court;

g) The reliefs sought for by the plaintiff in this suit pertain to properties in London. The plaintiff seeks for permanent injunction to restrain the defendants from starting outlets in London within the 150 kms radius from the plaintiff's outlet at London;

13. It is well settled that jurisdiction goes to the root of the matter and any order passed without jurisdiction is a nullity. Without jurisdiction, the Court cannot proceed at all in any cause. Jurisdiction is



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the power to declare the law and when it ceases to exist, the only function remaining to the Court is that of announcing the fact and dismissing the cause.

14. It is settled law that a Judgment which is a nullity has no validity and can confer no right or impose any obligation on anybody. Therefore, any Judgment or order passed by any Court of law for it to become enforceable should have been passed by a Court having competent jurisdiction.

15. Eventhough, Section 16 to Section 20 of C.P.C. may not apply to suits filed under the original jurisdiction of this Court in view of Section 120 of C.P.C., clause XII of the Letters Patent which applies to the original civil jurisdiction of this Court, makes it clear that in case of suit for land, the property against which the relief is sought, should be situated within the jurisdiction of this Court.

16. Clause XII of the Letters Patent reads as follows:



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**"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."*

17. The Division Bench of this Court in the case of ***Harsha Estates Vs. Dr.P.Kalyana Chakravarthy*** reported in ***2018 (3) LW 900*** as well as in the case of ***K.Paranthaman Rep. by his Power of Attorney***



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**Agent Mr.Raja... Vs. C. Padmanabhan and Others** reported in **2019 (3)**

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**CTC 228** has lucidly analysed the principles of law as to which of the suits are suits for land. The principles of law laid down by the Division Bench in those judgments 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*



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*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”.*

18. As seen from the aforesaid principles, more particularly, iv, v and vi, it is clear that even if the suit is filed for bare injunction to restrain the defendant from committing the breach of a negative covenant contained in an agreement, the suit can be filed only before the Court which is having the territorial jurisdiction over the property as the said suit is also a suit for land. Therefore, the contention of the learned senior counsel for the plaintiff that the instant suit is not a suit for land since the plaintiff is only seeking to enforce a negative covenant contained in the memorandum of understanding has to be rejected by this Court.

19. It is settled law that parties cannot by consent confer jurisdiction to a Court which does not have the territorial jurisdiction to adjudicate the dispute. Though the memorandum of understanding dated 19.10.2022 which is the subject matter of the dispute has stipulated that any dispute arising out of the memorandum of understanding shall be



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subject to the jurisdiction of the Madras High Court, the said clause will not apply to suits for land as it is settled law that in case of suits for land, the suit can be filed only before the Court which is having the jurisdiction over the subject property.

20. The key distinction between an action *in-rem* and action in-personam lies in whether the legal proceeding is directed against a specific property (in rem) or a particular person or entity (in personam). In-rem is a legal term defining the authority, a Court can exercise over the property (either actual or person) or a 'status' against an individual over whom the Court has no jurisdiction in in-personam. The jurisdiction in-rem means that the property or status is the primary objective of the litigation, rather than personal liability not actually associated to the property. In the case on hand, the primary objective of the plaintiff is to prevent the defendants from opening outlets in London within the vicinity of the plaintiff's outlet at London. Admittedly, neither the plaintiff's outlet nor the proposed outlets to be opened by the defendants are within the territorial jurisdiction of this Court but they are situated in London which is outside India and located beyond the



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territorial jurisdiction of this Court.

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21. It is also to be noted that the memorandum of understanding dated 19.10.2022 was not signed by the defendant Nos.3 and 4 who according to the plaintiff are partners of the first defendant. The said memorandum of understanding was signed on behalf of the first defendant only by the second defendant who is a partner of the first defendant. The defendant Nos.3 and 4 have also asserted in their counter affidavit that they are not aware of the signing of the memorandum of understanding by the second defendant on behalf of the first defendant and that they have also not authorized the second defendant to sign the memorandum of understanding on behalf of the first defendant. The defendant Nos.3 and 4 have also stated that the plaintiff has committed infringement of the trademark, as according to them, they have obtained trademark registration in their name in London for the trademark "Anjappar Authentic Chettinadu Restaurant" and therefore, the plaintiff cannot use the trademark "Anjappar" belonging to the defendant Nos.3 and 4 in London. The defendant Nos.3 and 4 have also stated that the plaintiff has suppressed the cease and desist notice sent by the defendant No.3 in the suit calling upon the plaintiff not to use the trademark



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"Anjappar" in London. According to them, having received the said cease and desist notice, the suppression of the same in the plaint and the affidavit filed in support of this application will dis-entitle the plaintiff from claiming any relief before this Court. The defendant Nos.3 and 4 have also produced a copy of the trademark registration certificate obtained by them from the Trademarks Registry in London for the trademark "Anjappar Authentic Chettinadu Restaurant".

22. Section 19 of the partnership Act which deals with implied authority of a partner as agent of the firm has no applicability to the facts of the instant case. As per Section 19 of the Partnership Act, the act of the partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm. However, the applicability of Section 19 of the Partnership Act is subject to the provisions of Section 22 of the Partnership Act. Section 22 of the Partnership Act makes it clear that in order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm name or in any other manner expressing or implying an intention to bind the firm. Neither the partnership deed alleged to have



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been entered into between the defendant Nos.2, 3 and 4 has been placed on record before this Court to prove that the second defendant had the authority to sign the memorandum of understanding dated 19.10.2022 on behalf of the defendant Nos.3 and 4 nor any other evidence is placed on record before this Court to prove that the second defendant had such an implied authority.

23. Section 44A of the C.P.C. applies to execution proceedings and not to interlocutory applications filed pending suit. The reciprocating territory referred to in Section 44A of the C.P.C. has no connection or relevance for adjudicating the present suit as well as the interlocutory application. "Reciprocating territory does not imply that any Court in India can exercise jurisdiction despite the fact that the properties in respect of which reliefs are sought for are located outside the jurisdiction of that particular Court as in the instant case where they are located in London.

24. A clever drafting of plaint in order to bring the suit within the



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jurisdiction of a particular Court, which lacks territorial jurisdiction, will have to be dealt with an iron hand. When the suit filed by the plaintiff is undoubtedly a suit for land and is an action in-rem and is not maintainable before this Court due to lack of territorial jurisdiction of this Court, the relief sought for in this application to restrain the respondents / defendants from opening outlets in London within the 150 kms. radius of the plaintiff's outlet in London has to be summarily rejected.

25. The judgments relied upon by the learned Senior counsel for the plaintiff are not applicable to the facts of the instant case for the following reasons:-

a) In Chellaram Vs. Chellaram referred to supra, the Court was adjudicating an administration suit, where the party was only seeking for administration of estate in respect of properties at various places including the place where the Court is situated. Administration suit is not an action in-rem and is not a suit for land where the primary objective is not to seek relief against a specific immovable property/ies.

b) Grieshiemgm GmbH Vs. Goyal MG Gases referred to supra,



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dealt with an execution petition. Section 44-A of CPC applies only to execution petitions. The concept of reciprocating territory as per Section 44-A of CPC applies only to execution petitions and does not apply to fresh suits, for which, either Sections 16 to 20 of CPC applies or Clause XII of the Letters Patent applies depending upon whether the jurisdiction is exercised by an ordinary Civil Court or by the High Court exercising ordinary original civil jurisdiction.

c) R.Viswanathan and others Vs. Rukn-Ul-Mulk Syed Abdul Wajid referred to supra dealt with a case where the defendant had submitted to the jurisdiction of the Court, which is not so in the case on hand, where all the defendants have objected to this Court exercising jurisdiction in view of the fact that the properties are in London, which is the outside the jurisdiction of this Court.

d) Minor Dorairaj Vs. K.K.R.Karupiah and others, referred to supra, the said decision rendered by a Division Bench of this Court has also got no applicability to the facts of the instant case, since the said suit was filed for taking accounts of a dissolved partnership and was not involving a matter where the primary objective was in respect of specific immovable properties, which are located in London, and which are



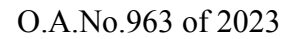
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outside the jurisdiction of this Court.

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e) The other decisions relied upon by the learned Senior counsel for the plaintiff also did not deal with a case which is similar to the case on hand. None of those cases pertain to suits where the primary objective was to seek a relief in respect of properties which are situated outside the jurisdiction of the Court where the suit has been instituted. Therefore, the other decisions relied upon by the learned Senior counsel for the plaintiff have also got no applicability for the facts of the instant case.

f) The decisions pertaining to 'grant of injunction', for breach of negative covenant, enforcement of contract, 'relief in-personam', anti suit injunction and choice of forum and implied authority of partner under Section 19 of the Partnership Act relied upon by the learned Senior counsel for the plaintiff have no bearing to the facts of the instant case, as, in the instant case, it has been clearly established that the primary objective of the plaintiff is to secure her alleged interest over her outlet at London by preventing the defendants to open another outlet/s at London, within the vicinity of her outlet at London. Once the plaintiff has miserably failed to prove that this Court does have territorial jurisdiction



26. The principles culled out in the judgments relied upon by the learned Senior counsel for the first and second defendant for the purpose of deciding the jurisdiction makes it clear that if the primary objective for the plaintiff is to seek reliefs against immovable properties, then the said suit can only be filed at the place where atleast one of the property is located.

28.12.2023

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**ABDUL QUDDHOSE, J.**

ab

**Order in**

**O.A.No.963 of 2023**

**in**

**C.S.(Comm.Div) No.281 of 2023**

28.12.2023