



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.8219 OF 2023

- 1] Gangubai w/o. Laxman Nawale,
Age: 67 years, Occupation : Household
& agriculture.
- 2] Ganesh s/o.Sopan Nawale,
Age: 31 years, Occupation : Agriculture.
- 3] Sulochana w/o. Karbhari Nawale,
Age: 69 years, Occupation : household
& agriculture.
- 4] Latabai w/o. Ramdas Nawale,
Age: 61 years, Occupation : household
& agriculture
- 5] Bhimabai w/o. Kantilal Nawale,
Age: 47 years, Occupation : household
& agriculture.
- 6] Dnyaneshwar s/o. Shantilal Nawale,
Age: 34 Years, Occupation : Agriculture
- 7] Aniket s/o. Nivrutti Nawale,
Age: 33 years, Occupation : Agriculture

All the petitioners are residing at the
Akoli Wadgaon, Taluka Gangapur,
District : Aurangabad.

.. PETITIONERS
Original Plaintiffs

VERSUS

- 1] Hemant s/o. Harendra Nanawati,
Age: 47 years, Occupation : business,
R/o. Samadhan Banglow, Adalat Road,
Aurangabad.

2] Hiten s/o. Harendra Nanawati,
Age: 45 years, Occupation : business,
R/o. Samadhan Banglow, Adalat Road,
Aurangabad. .. **RESPONDENTS**
Original Defendants

...
Mr.Hemant S. Surve, Advocate for the petitioners
Mr.D.R.Kale, Advocate for the respondent nos. 1 and 2

...
CORAM : ARUN R. PEDNEKER, J.
DATE : 20.02.2024

JUDGMENT :

1] By way of present Writ Petition, the petitioners are challenging the order dated 02.02.2023 passed by the Civil judge Senior Division, Aurangabad in Special Civil Suit No. 66/2021 whereby the Court was pleased to hold that it does not have territorial jurisdiction to try and decide the suit and directed transfer of the suit to the Court of Civil Judge Senior Division at Vaijapur.

Brief facts leading to filing the present writ petition can be summarized as under :

2] The plaintiffs filed suit against the defendant nos. 1 and 2 in the Court of Civil Judge Senior Division, Aurangabad for specific performance of contract of sale

dated 17.01.2019 in respect of the suit property and for perpetual injunction, restraining defendants from creating third party interest in the suit property, so also to restrain defendants from creating disturbance in the peaceful possession of the plaintiffs. The agreement to sell [*Isar Pawati*] dated 17.01.2019 was executed between parties at Aurangabad. It is contended by the plaintiffs that the plaintiffs are in possession of the suit property since 1990 on the basis of an earlier agreement to sell and a fresh agreement of sale was executed on 17.01.2019 for sale of suit property at enhanced consideration. It is stipulated in the agreement dated 17.01.2019 that the plaintiffs had paid an amount of Rs.30,000/- to the defendants as part consideration and remaining amount is of Rs.19,70,000/- which the plaintiffs has to pay to the defendants. The plaintiffs got information on 07.02.2021 that the defendants have obtained heirship certificate and that the defendants are trying to transfer the suit property to a third person. As such, the plaintiffs filed a suit for above relief.

3] Thereafter, the defendants appeared in the suit and filed an application for framing the preliminary issues regarding maintainability of the suit and jurisdiction of the court vide Exh.12. The defendants raised objection that the suit property is immovable property which is situated at village Akoli Wadgaon within the jurisdiction of civil court at Vaijapur and the plaintiffs have filed suit for specific performance of contract at Aurangabad.

4] The defendants also filed an application below Exh.26 for dismissal of the suit for non compliance of the legal provisions, as the defendants are deaf and dumb. The application Exh.26 came to be decided and the Superintendent of Administration, Civil Judge, Senior Division, Aurangabad came to be appointed as Guardian for the defendants.

5] The application [Exh. 12] came to be decided on 25.02.2022 and partly allowed and accordingly issue regarding the jurisdiction came to be framed.

6] While deciding the issue of jurisdiction, the Civil Court observed that the agreement to sell dated 17.03.1991 came to be executed by the Chandrakalabai Vishwanathdas Bhatiya in favour of Gangadhar Gopalrao Nawale regarding the suit property. The plaintiffs are the legal heirs of the deceased Gangadharrao Gopalrao Nawale and in the 7/12 extract of the suit property the name of Gangadhar is shown in the said suit as 'Bhogwatadar'. The fresh agreement to sell dated 17.01.2019 came to be executed between the plaintiffs and defendants and Rs.20,00,000/- as enhanced consideration amount was agreed between the parties.

7] The Trial Court held that the plaintiffs have filed the suit for specific performance of contract dated 17.01.2019 which has been executed between the plaintiffs and defendants at Aurangabad. However, the suit property is situated at village Wadgaon, Tq. Gangapur, Dist. Aurangabad and within the jurisdiction of Vaijapur Court and not within the jurisdiction of the Civil Court at Aurangabad. In view of the provisions of Section 16 (d) of

Code of Civil Procedure, the suit for specific performance is required to be instituted in whose jurisdiction the suit property is situated. As such, by the impugned order dated 02.02.2023 the suit is transferred to Civil Judge Senior Division at Vaijapur. Being aggrieved by the said order, the present writ petition is filed.

8] It is the contention of the petitioners that the agreement to sell is executed at Aurangabad and both the parties in the suit are resident of Aurangabad. Therefore, in view of the provisions of Section 20 of the Civil Procedure Code, the suit is maintainable at Aurangabad as the part of cause of action is in Aurangabad. It is further contended that in terms of proviso to Section 16 of CPC, since the defendant is resident of Aurangabad and the entire decree can be satisfied by the personal obedience of the defendant, the suit is maintainable at Aurangabad. The learned counsel for the petitioners relies upon the judgments in the case of **Om Prakash Srivastava Vs. Union of India and Anr.** in Criminal Appeal No.786 of 2006 [arising out of SLP [Crl.]

No.282 of 2006], decided on 24.07.2006, in the case of **Laxman Prasad Vs. Prodigy Electronics** in Civil Appeal No.5751 of 2007 [arising out of SLP(C) No.12405 of 2006, decided on 10.12.2007, in the case of **South East Asia Shipping Co.Ltd. Vs. Nav Bharat Enterprises Pvt.Ltd. And others** in Civil Appeal No.1116 of 1981, decided on 13.03.1996, in the case of **Board of Trustees for the port of Calcutta Vs. Bombay Flour Mills Pvt. Ltd.** in Civil appeal No.7382 of 1994 [arising out of SLP (C) No.9410 of 1994, decided on 07.10.1994, in the case of **A.B.C.Laminart Pvt. Ltd. And another Vs. A.P.Agencies, Salem** in Civil Appeal No.2682 1982, decided on 13.03.1989, in the case of **Union of India and another Vs. Shri Ladulal Jain** in Civil Appeal No.717 of 1962, decided on 07.05.1963 and in the case of **M/s. Hanil Era Textiles Ltd. Vs. M/s. Puromatic Filters (P) Ltd.** in Civil Appeal No.2490 of 2004 [arising out of SLP (C) No.5552 of 2002] decided on 16.04.2004. The learned counsel submits that in view of the law laid down in the aforesaid judgments that if the part of cause of action has arisen at Aurangabad, in view of the provisions of Section

20 of Civil Procedure Code, the suit would rightly lie before the Civil Judge Senior Division at Aurangabad.

9] *Per contra*, the learned counsel for the respondents – defendants submits that the suit for specific performance of contract to sell immovable property has to be filed where the suit property is situated. The learned counsel further submits that the addresses of the plaintiffs are also mentioned in the suit as Vaijapur. The learned counsel further submits that since the suit property is situated at Vaijapur, only the Civil Court at Vaijapur had jurisdiction to decide the suit for specific performance of alleged agreement to sell, therefore, the impugned order is rightly passed by the trial Court. The learned counsel for the respondents relies upon the judgment in the case of **Harshad Chiman Lal Modi Vs. DLF Universal Ltd and another** reported in [2005] 7 SCC 791.

10] Having considered the submissions the issue that arises for consideration whether the suit for specific performance of the agreement to sell executed at

Aurangabad for the immovable property which is situated at Vaijapur would lie before the Civil Court at Aurangabad or before the Civil Court at Vaijapur. The relevant provisions of Section 16, 18 and 20 of the Civil Procedure Code dealing the issue are quoted as under :

16. Suits to be instituted where subject-matter situate. Subject to the pecuniary or other limitations prescribed by any law, suits-

(a) for the recovery of immovable property with or without rent or profits,

(b) for the partition of immovable property,

(c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property,

(d) for the determination of any other right to or interest in immovable property,

(e) for compensation for wrong to immovable property,

(f) for the recovery of movable property actually under distraint or attachment, shall be instituted in the Court within the local limits of whose jurisdiction the property is situate:

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

Explanation. In this section "property" means property situate in [India].

18. Place of institution of suit where local limits of jurisdiction of Courts are uncertain. - (1) Where it is alleged to be uncertain within the local limits of the jurisdiction of which of two or more Courts any immovable property is situate, any one of those Courts may, if satisfied that there is ground for the alleged uncertainty, record a statement to that effect and thereupon proceed to entertain and dispose of any suit relating to that property, and its decree in the suit shall have the same effect as if the property were situate within the local limits of its jurisdiction:

Provided that the suit is one with respect to which the Court is competent as regards the nature and value of the suit to exercise jurisdiction.

(2) Where a statement has not been recorded under sub-section (1), and an objection is taken before an Appellate or Revisional Court that a decree or order in a suit relating to such property was made by a Court not having jurisdiction where the property is situate, the Appellate or Revisional Court shall not allow the objection unless in its opinion there was, at the time of the institution of the suit, no reasonable ground for uncertainty as to the Court having jurisdiction with respect thereto and there has been a consequent failure of justice.

20. Other suits to be instituted where defendants reside or cause of action arises. -Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction -

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

[**]

[Explanation].-A corporation shall be deemed to carry on business at its sole or principal office in [India] or, in respect of at any place where it has also a subordinate office, at such place.

11] Section 16 of the Civil Procedure Code provides for suit to be instituted where subject matter is situated and clause (d) of Section 16 provides for suit for determination of any other right to or interest in immovable property, shall be instituted in the Court within the local limits of whose jurisdiction the property is situate. The proviso to Section 16 of the Civil Procedure Code provides that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within

the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

12] The judgments relied by the petitioners are relating to the part of cause of action and in the instant case part of cause of action is in Aurangabad. It has to be noticed that Section 15 to 20 of Civil Procedure Code relates to place of suing. The Hon'ble Supreme Court in the case of **Harshad Chiman Lal Modi Vs. DLF Universal Ltd. And another** reported in [2005] 7 SCC 791 has held that Section 15 requires the suitor to institute a suit in the court of the lowest grade competent to try it. Section 16 provides for the suits for recovery of immovable property, or for partition of immovable property, or for foreclosure, sale or redemption of mortgage property, or for determination of any other right or interest in immovable property, or for compensation for wrong to immovable property shall be instituted in the court within the local limits of whose

jurisdiction the property is situate. The proviso to Section 16 provides that where the relief sought can be obtained through the personal obedience of the defendant, the suit can be instituted either in the court within whose jurisdiction the property is situate or in the court where the defendant actually or voluntarily resides, or carries on business, or personally works for gain. Section 17 supplements Section 16 and is virtually another proviso to that section. It deals with those cases where immovable property is situate within the jurisdiction of different courts. Section 18 applies where local limits of jurisdiction of different courts are uncertain. Section 19 is a special provision and applies to suits for compensation for wrongs to a person or to movable property. Section 20 is a residuary section and covers all those cases not dealt with or covered by Sections 15 to 19. The Hon'ble Supreme Court in the said judgment further held that actions against res or property should be brought in the forum where such res is situate. A court within whose territorial jurisdiction the property is not situate has no power to deal with and

decide the rights or interests in such property. The Hon'ble Supreme Court in the said judgment further held that the proviso is thus an exception to the main part of the section and cannot be interpreted or construed to enlarge the scope of the principal provision. It would apply only if the suit falls within one of the categories specified in the main part of the section and the relief sought could entirely be obtained by personal obedience of the defendant.

13] The Hon'ble Supreme Court in the case of **Begum Sabiha Sultan Vs. Nawab Mohd. Mansur Ali Khan and others** reported in [2007] 4 SCC 343 while dealing with scope of Section 16 of Civil Procedure Code has held in para nos.10, 11 and 13 as under :

10. There is no doubt that at the stage of consideration of the return of the plaint under Order 7 Rule 10 of the Code, what is to be looked into is the plaint and the averments therein. At the same time, it is also necessary to read the plaint in a meaningful manner to find out the real intention behind the suit. In Moolji Jaitha and Co. v. Khandesh Spg. and Wvg. Mills Co. Ltd. the Federal Court observed that : (AIR p. 92, para 24)

"The nature of the suit and its purpose

have to be determined by reading the plaint as a whole."

It was further observed: (AIR p. 92, para 25)

"The inclusion or absence of a prayer is not decisive of the true nature of the suit, nor is the order in which the prayers are arrayed in the plaint. The substance or object of the suit has to be gathered from the averments made in the plaint and on which the reliefs asked in the prayers are based."

It was further observed: (AIR p. 98, para 59)

"It must be borne in mind that the function of a pleading is only to state material facts and it is for the court to determine the legal result of those facts and to mould the relief in accordance with that result."

11. This position was reiterated by this Court in T. Arivandandam v. T.V. Satyapal by stating that what was called for was a meaningful-not formal-reading of the plaint and any illusion created by clever drafting of the plaint should be buried then and there. In Official Trustee, W.B. v. Sachindra Nath Chatterjee this Court approving the statement of the law by Mukherjee, Acting Chief Justice in Hriday Nath Roy v. Ram Chandra Barna Sarma held: (Official Trustee, W.B. case³, AIR p. 828, para 15)

"[B]efore a court can be held to have jurisdiction to decide a particular matter it must not only have jurisdiction to try the suit brought but must also have the authority to pass the orders sought for. It is not sufficient that it has some

jurisdiction in relation to the subject-matter of the suit. Its jurisdiction must include the power to hear and decide the questions at issue, the authority to hear and decide the particular controversy that has arisen between the parties."

13. On a reading of the plaint as a whole, it is clear, as we have indicated above, that the suit is one which comes within the purview of Sections 16(b) and (d) of the Code. If a suit comes within Section 16 of the Code, it has been held by this Court in *Harshad Chiman Lal Modi v. DLF Universal Ltd.* that Section 20 of the Code cannot have application in view of the opening words of Section 20 "subject to the limitations aforesaid". This Court has also held that the proviso to Section 16 would apply only if the relief sought could entirely be obtained by personal obedience of the defendant. The relief of partition, accounting and declaration of invalidity of the sale executed in respect of immovable property situate in Village Pataudi, Gurgaon, could not entirely be obtained by a personal obedience to the decree by the defendants in the suit. We are in respectful agreement with the view expressed in the above decision. Applying the test laid down therein, it is clear that the present suit could not be brought within the purview of the proviso to Section 16 of the Code or entertained relying on Section 20 of the Code on the basis that three out of the five defendants are residing within the jurisdiction of the court at Delhi.

14] In the instant case, it has to be noticed that the relief sought in the plaint is that of specific performance of

the agreement dated 17.01.2019 respecting immovable property situated within the jurisdiction of Civil Court at Vaijapur, by directing the defendants to execute a sale deed in favour of the plaintiffs. It is claimed that the possession is already with the plaintiffs and injunction is sought against the defendants or his agents from interfering in the suit property.

15] Thus, in the instant case, the proviso to Section 16 has no application. The relief claimed cannot be satisfied by personal obedience of defendant alone. If the plaintiff succeeds in the suit, the defendant has to execute sale deed at Vaijapur or alternatively the court officials at Vaijapur has to execute the sale deed. The relief of injunction cannot be monitored from Aurangabad and has to adjudicate and enforced by Vaijapur Court.

16] As regards Section 20 of the Civil Procedure Code is concerned, it is a residuary provision and covers those cases not falling within the applicability of Section 16 to 19. The opening words of the Section 'subject to the

limitations aforesaid, are significant and make it clear that the section takes within its sweep all personal actions. Section 20 of CPC would come into play in the matters which are not covered within specific Section 16 to 19. In the instant case, once it is held that the case is covered by Section 16 of the Civil Procedure Code and proviso has no application, Section 20 also would not apply as residuary clause. The jurisdiction of the Civil Court is covered main part of Section 16, neither proviso to Section 16 or Section 20 being residuary provision are applicable and thus the Court at Civil Judge Senior Division at Aurangabad has no territorial jurisdiction to decide the suit for specific performance of contract.

17] In view of the law laid down in the case of **Harshad Chiman Lal Modi Vs. DLF Universal Ltd. and another** [supra] and **Begum Sabiha Sultan** [supra], the order passed by the trial Court is upheld. The present Writ Petition is dismissed.

[ARUN R. PEDNEKER]
JUDGE