

ORDER SHEET

APOT/284/2024
WITH
CS/172/2024
IA NO. GA/1/2024

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

BHAWRILAL SANEI AND ANR.
VERSUS
RAVI SANEI

BEFORE:

The Hon'ble JUSTICE SOUMEN SEN
AND

The Hon'ble JUSTICE BISWAROOP CHOWDHURY
Date : 29th January, 2025

Appearance:

Mr. Surajit Nath Mitra, Sr. Adv.
Mr. Sourojit Dasgupta, Adv.
Mr. Vishwarup Acharyya, Adv.
...for the appellants.

Mr. Rupak Ghosh, Adv.
Mr. Santosh Kr. Ray, Adv.
Ms. Rituparna Sanyal, Adv.
Ms. Antalina Guha, Adv.
...for the respondent.

Soumen Sen, J. (Oral):

1. This appeal is arising out of a judgment passed by the learned Single Judge on 31st July, 2024 in an application for grant of ad interim injunction filed by the plaintiff.
2. The defendants are the present appellants.
3. The appellant no.1 is the father of the present respondent and the appellant no.2 is the mother of the present respondent.
4. The plaintiff Ravi Sanei is the younger son of the appellant nos.1 and 2. The dispute is essentially a family dispute. We tried out

best to resolve the disputes and referred the parties to mediation, but the parties have failed to arrive at any amicable settlement.

5. In view thereof, we heard this appeal filed by the father and the mother.
6. Mr. S.N. Mitra, learned Senior Counsel appearing with Mr. Sourojit Dasgupta, Advocate have argued that the preliminary objection raised by the appellants with regard to the jurisdiction of this Court has been erroneously decided. It is submitted that the suit is essentially for partition of immovable properties admittedly situated outside the jurisdiction of this Court.
7. Mr. Mitra has referred to the various paragraphs of the plaint to show that the essential disputes between the parties are with regard to their right, title and interest over immovable properties situated outside the jurisdiction of this Court.
8. It is submitted that unless all the immovable properties are situated within the jurisdiction of this Court, no decree could have been passed in favour of the plaintiff due to lack of jurisdiction. It is submitted that Clause 12 leave could have been obtained provided some of the immovable properties are situated within the jurisdiction. It is submitted that although this point was urged before the learned Single Judge, the learned Single Judge was of the view that since the plaintiff has claimed that an agreement for arbitration for deciding the family disputes in which a family settlement was arrived at by and between the parties and an agreement dated 21st June, 2023 was executed and the plaintiff is claiming partition of the suit properties in terms of the said family

agreement and having regard to the fact that all these agreements have been entered into within the jurisdiction of this Court applying the principle that at this stage the Court is required to proceed on the basis of the averments made in the plaint held the suit to be maintainable in this Court.

9. Mr. Rupak Ghosh, learned Counsel appearing on behalf of the plaintiff has submitted that the plaintiff is essentially seeking enforcement of his right under the family settlement that was admittedly entered into within the jurisdiction of this Court and at this stage the Court is not required to decide whether the plaintiff will be entitled to get all the reliefs in the suit. It may so happen that the plaintiff may not be able to get all the reliefs due to lack of jurisdiction in respect of certain claims but that by itself would not be a ground to revoke leave under Clause 12 of the Letters Patent. Mr. Ghosh has fairly submitted that the properties of which partition is claimed are situated outside the jurisdiction of this Court and the plaintiff intends to file an application for prayer under Clause 14 of the Letters Patent to unite the different causes of action.
10. Mr. Ghosh has referred to a decision of this Court in the case of **Bengal Agricultural and Industrial Corporation Ltd. vs. Corporation of Calcutta and Another** reported in **1959 SCC OnLine Cal 54; AIR 1960 Cal 123** to argue that the right to claim possession on the basis of an agreement entered into within jurisdiction was held to be not a suit for land. Similarly, a suit for

recovery of rent is equally a suit not for land. Mr. Ghosh has relied upon paragraph 19 of the report which reads as follows:

“19. The Indenture dated 25-10-1951 which is the foundation of this action gives the plaintiff really two rights: (1) exclusive right to draw and re-move sludge from the sedimentation tanks which it is claimed includes the lagoons and exclusive right to sell if as a commercial product and (2) right to possession of 20 bighas of land, to enable the plaintiff for carrying on its operations. Violation of each right would give the plaintiff a cause of action to institute a suit. The averment in the plaint is that there was violation of both the rights. Hence the declaration claimed in the plaint is with respect to both the rights. Injunction claimed is also to safeguard both the rights. Though the rights in favour of the plaintiff are derived from the same indenture, the causes of action are different. The plaintiff could have instituted this suit to enforce one right only abandoning the other. In the instant case the plaintiff could have abandoned its claim arising out of the infringement of the plaintiff's right to possession of 20 bighas of land. If the plaintiff could have done it at the time of the institution of the suit, I do not see any reason why the plaintiff cannot abandon it at a subsequent stage, on the realisation that the claim has been improperly included in the plaint. For the same reason, the plaintiff is entitled to claim that the relief claimed with respect to its right over 20 bighas of land may be dismissed on the ground that the Court had no jurisdiction but that the Court should try the other case of the plaintiff based on its exclusive right to draw and remove sludge from the sedimentation tanks and its exclusive right to market the same as a commercial product. If the sludge is not immovable property, then the Court is competent to entertain this claim.” (emphasis supplied)

11. It is submitted that merely that the immovable properties are situated outside the jurisdiction of this Court will not preclude the Court from granting other reliefs, if the Court ultimately is of the view that one of the several reliefs, namely, the reliefs for partition cannot be granted since the properties are situated outside the jurisdiction of this Court.
12. Mr. Ghosh also referred to a decision of the Bombay High Court in the case of **John George Dobson vs. The Krishna Mills Ltd** reported in **1910 SCC Online Bom 64** with regard to Clause 14 of the Letters Patent to argue that once the Court has exercised its jurisdiction under Clause 12 of the Letters Patent, the Court is now required to issue a show cause in exercise of power under Clause 14 of the Letters Patent to the defendants and decide whether the prayer for partition can be heard along with other prayers.
13. We have carefully read the plaint. The predominant feature of the plaint is division of properties according to shares to be declared in accordance with the family settlement. That it is primarily a suit for partition cannot be doubted. The plaintiff was under no misconception or harbouring any doubt as to the true nature and character of the plaint as would appear from paragraph 29 of the plaint. For the sake of convenience, paragraph 29 of the plaint is reproduced below:

“29. The properties, both movable and immovable, are both situated outside and within the jurisdiction of this Hon’ble High Court inasmuch as the present suit is a suit for partition, this Hon’ble Court has jurisdiction to affect partition between the

parties. As such, this Hon'ble Court has the territorial jurisdiction to receive, try and determine the instant suit."

14. Clause 14 contemplates that this Court shall have original jurisdiction in respect of one of such causes of action to permit two separate and distinct causes of action being joined and united in one suit. Like Order II Rule 3 of the Code of Civil Procedure, the test to be applied is if there is any nexus between the two causes of action.
15. Clause 14 of the Letters Patent confers a discretionary jurisdiction to join several causes of action unless a further cause of action sought to be joined pertains to any land or immovable property situated outside the territorial jurisdiction of this Court.

16. The Clause 14 provides as follows:

"14. Joinder of several causes of action. – *And We do further ordain, that were Plaintiff has several causes of action against a Defendant, such causes of action not being for land or other immovable property, and the said High Court shall have original jurisdiction in respect of one of such causes of action, it shall be lawful for the said High Court to call on the Defendant to show cause why the several causes of action should not be joined together in one suit, and to make such order for trial of the same as to the said High Court shall seem fit."*

17. The aforesaid Clause has two parts. The second limb of the said Clause is to the effect that it shall be lawful for the High Court to join several causes of action in one suit is subject to two conditions: that this Court should be competent to receive at least one of the several causes of action sought to be joined and, that the

causes of action sought to be joined should not be in relation to any land situated beyond the jurisdiction, to put it differently, as long as a cause of action does not pertain to land or immovable properties situated outside the jurisdiction of this Court, this Court would have jurisdiction to join other causes of action, subject to whatever the defendants may give reply to the show cause to resist such joinder of causes of action.

18. In the instant case, the earlier suit was for in relation to a family settlement that was admittedly entered into within the jurisdiction and a decision on this regard has already attained finality. However, the dispute arose with regard to giving effect to the said family settlement which necessarily involves adjudication of right, title and interest in respect of the properties covered by the family settlement. Admittedly, there is no moveable properties situated within the jurisdiction of this Court and all the immoveable properties mentioned in the plaint are situated outside the jurisdiction of this Court.
19. In **Bengal Agricultural (supra)** the issue was whether sludge is movable or immovable property. This issue was concluded in the following words:

“24. The next point to consider is whether sludge when accumulated in the lagoon becomes a part of the lagoon. The sludge when dried is used as manure to enrich land. It is very much akin to earth or land. But this does not make it a part of the land and as such 'immoveable property' in law if a large quantity of sludge is stored on a land, it does not lose its character as sludge and become land, unless it is allowed to

remain there for so long a time that it becomes a part of the land. Mr. Das has cited the case of *Morgan v. Russel and Sons* 1909-1 KB 357. In this case the subject matter of the agreement for sale was slag and cinders which had been in deposit on the demised land for about 50 years and had become part and parcel of the land. The question was whether it is a sale of goods or sale of immovable property, for if latter, the suit would fail in the absence of registration of the document of sale. The trial Judge held "that it had become part of the ground or soil and were not definite or detached heaps resting so to speak on the ground." The Appeal Court held that this finding was binding on the Appeal Court and as such the sale must be held not to be a sale of goods but a sale of land. The instant case is different. It may be considered to be a definite and detached heap resting on land, even though dried sludge is very much akin to soil or earth. It is not intended to remain long enough in the lagoon to lose its characteristic as sludge and become a part of the land in the lagoon. The fact that vegetation on the sludge within a short time does not, in my judgment, make it a part of land. Sludge when collected in a godown with concrete floor having no touch with land will grow vegetation all the same within a short time if left in the open, and even if it is kept in cover, nobody would in such cases characterise it as land. In the instant case, the Government took huge quantity of sludge from the lagoon and it was taken as sludge and not as land. In my judgment, the sludge when stored in the lagoon retains its character as sludge and cannot be treated in law as immovable property. It follows that this suit in so far as it relates to the plaintiffs right in respect to sludge cannot be treated as a suit for land. For the purpose of jurisdiction, the situs of the sedimentation tank or the lagoon is not, therefore, relevant." (emphasis supplied)

20. The learned Single Judge also has proceeded on the basis that it is a suit for partition and hence observed that ordinarily in a suit for partition, status quo is required to be maintained.
21. The suit is 'immovable properties centric' and such properties are all situated outside jurisdiction of this Court. A bare reading of paragraph 29 of the plaint read with prayer (a) of the plaint makes it abundantly clear that it is essentially a suit for partition of immovable properties admittedly situated outside the jurisdiction of this Court. The causes of action also does not appear to be severable. They are inextricably connected. Moreover, prayers (b) and (c) would not give complete relief to the plaintiff. Even if it is assumed that prayer (a) would be a further relief, the same cannot be granted due to lack of jurisdiction whereas the Court having jurisdiction over the immovable properties can effectively decide and adjudicate all the issues. In view thereof we allow this appeal and set aside the order passed by the learned Single Judge.
22. The original plaint shall be returned to the plaintiff within one week from date after retaining a photocopy of the same by the Department concerned in order to enable the plaintiff to present the plaint before the Court having jurisdiction within four weeks thereafter.
23. With regard to the order passed by the learned Single Judge, in view of the fact that it is a partition suit and the family settlement is not in dispute, we feel that the parties shall maintain status quo as regards possession, nature and character of the suit properties for a period of four weeks.

24. We, however, make it clear that we have not gone into the merits of the injunction application and in the event any application for injunction is filed before the trial Court, the learned trial Court shall decide the matter uninfluenced by any observation made in this order or the order by the learned Single Judge granting interim relief to the plaintiff.
25. The appeal and the connected applications are disposed of.
26. GA/1/2024, GA/2/2024, GA/3/2024, GA/4/2024, GA/5/2024 and GA/6/2024 and CS No.172/2024 are treated as on the day's list and disposed of by the aforesaid order by consent of the parties.
27. The learned Registrar, IT and the Department concerned is directed to make appropriate endorsement with regard to the disposal of the suit along with connected applications.

(SOUMEN SEN, J.)

(BISWAROOP CHOWDHURY, J.)