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OSA.No.42 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.04.2025

PRONOUNCED ON : 24.04.2025

CORAM

THE HONOURABLE Dr.JUSTICE ANITA SUMANTH
and
THE HONOURABLE Mr.JUSTICE C.KUMARAPPAN

Original Side Appeal No.42 of 2025
and
CMP.No.3747 of 2025

Mr.T.Govindasamy

... Appellant

-Versus-

1. Mrs.Chitra
2. V.Gayathri
3. V.Sanjana
4. G.Vijayamani
5. The Authorised Officer &
Chief Manager,
Indian Bank,
91, First Main Road,
Gandhi Nagar, Adyar,
Chennai-600 020.
6. The Chairman,
Indian Bank
Head Office,
Royapettah
Chennai-600 014.

... Respondents



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Prayer:- Original Side Appeal filed under Order XXXVI Rule 9 of the Original Side Rules read with Clause 15 of the Letters Patent Act, praying to set aside the fair and decreetal order dated 31.01.2025 passed in A.No.4397 of 2024 in C.S.No.297 of 2012.

For Appellant : Mr.K.V.Babu

For Respondents : Mr.R.Sankarasubbu for R1
R2 to R6 - No Appearance

J U D G M E N T

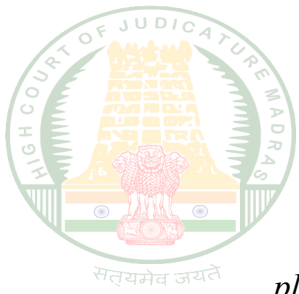
*(Judgment of the Court was delivered by **C.KUMARAPPAN, J.**)*

The instant OSA is arising against the order passed in A.No.4397 of 2024 by and in which the applicant/4th defendant prays to revoke the leave granted by this Court on 24.04.2012.

2. The brief facts which give rise to the instant OSA are as follows:-

The present applicant T.Govindasamy was impleaded in the suit as per the order dated 07.10.2015 in A.No.5628 of 2014. Originally the suit was filed by the respondents 1 to 3 for the following reliefs:-

(a) declaring the Settlement Deed Document No.1598/2002 dated 24.05.2002 as void and inoperative in law and not binding on the



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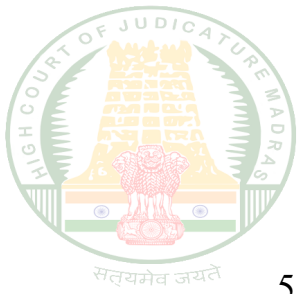
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plaintiffs.

(b) Granting a permanent injunction restraining the second and third defendants from enforcing the security of the schedule mentioned property in any manner including sale in public auction or any other mode.”

3. In the said suit, the Application No.4397 of 2024 was filed on the ground that the suit property is situated in Chengalpet District, and that since the prayer sought for deals about the title of the property, the same should be construed as suit on land, which necessarily has to be instituted before the competent Court having territorial jurisdiction, as provided under Section 16 of CPC.

4. The said suit was resisted by the respondents by contending that the instant application has been filed after a period of 10 years with *mala fide* intention and that the applicant herein has not provided with sufficient reason for the inordinate delay in raising such preliminary objection. It was further pleaded that in various proceedings, the applicant herein has participated effectively. Therefore, after inordinate delay of 12 years from the date of filing of the suit and after 9 years from the date of impleadment a party to the suit cannot seek such relief.



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5. The learned Single Judge, after having considered either side submissions, has ultimately dismissed the application on the ground that the applicant has filed the instant application belatedly and with the view to drag on the proceedings. Aggrieved with the said findings, the applicant is before this Court.

6. Heard Mr.K.V.Babu, learned counsel for the appellant and Mr.R.Sankarasubbu, learned counsel appearing for the first respondent.

7. Mr.K.V.Babu, learned counsel for the appellant would vehemently contend that the very prayer of declaration to declare the settlement deed dated 24.05.2002 is void and inoperative in law and not binding on the plaintiff, and is nothing but a relief sought for on the title of the land and that the land is situated in Kancheepuram Registration District. Accordingly, this Court has no territorial jurisdiction. Therefore, prayed to revoke the leave granted by this Court. To support his contention, the learned counsel for the appellant relied upon the following judgments:-

1. ***Kiran Singh and Ors. Vs. Chaman Paswan and Ors.*** reported in ***AIR 1954 SC 340***;
2. ***Thamiraparani Investments Pvt.Ltd Vs. Meta Films Pvt. Ltd.,*** reported in ***(2006) 1 MLJ 357***;
3. ***T.K.S.Pugazhendhi Vs. Kanishk Gold Private Limited and Ors.*** reported in ***2018 (5) CTC 513***;



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**4. *P.Chidambaram Vs. Pethachi and Ors.* reported in 2023
(6) CTC 30.**

8. Per contra, Mr.R.Sankarasubbu, learned counsel appearing for the first respondent would vehemently contend that the property of the minor has been illegally brought under auction and that in spite of the order of status quo, the Bank dispossessed them from the property and as a consequence, a contempt application was also filed and the possession of the respondents 1 to 3 were restored. The learned counsel would further contend that since 2015 onwards qua from the date of his impleadment, the appellant herein has been actively participating in all the proceedings and has been filing applications one after another. Therefore, having acquiesced the jurisdiction with this Court, after a period of a long delay, he cannot now take a defence of territorial jurisdiction. Hence, prayed to dismiss this appeal. In support of his contention, the learned counsel relied upon the following judgments:-

- (i). *Chittaranjan Mukherji Vs. Barhoo Mahto* reported in 1950 SCC 200;**
- (ii). *Debendra Nath Chowdhury Vs. Southern Bank Ltd.,* reported in 1960 SCC OnLine Cal 109;**
- (iii). *N.Dhanalakshmi and two others Vs. S.Eknathan* reported in 1997 3 LW 391;**
- (iv). *M/s.Scientific Compounds and Processes Private Limited Vs. M/s.National Soapnut Works* reported in**



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1998 1 LW 640;

(v).P.T.Ummer Koya Vs. Tamil Nadu Chess Association
reported in **2005 (3) CTC 86.**

9. We have given our anxious consideration to either side submissions.

10. According to Section 16(d) of CPC, for the determination of any other right to or interest in immovable property, the suit shall be instituted in a Court, within local limits of whose jurisdiction the property situates. Admittedly, the property is situated in Kancheepuram District. The learned counsel for the appellant would rely upon the judgment referred to in paragraph 7 hereinabove to buttress his contention that the relief sought for, comes within the contours of “suit on land”. We absolutely do not have any grievance over the proposition enunciated in the above rulings. As rightly contended by the learned counsel for the appellant, since the plaintiffs sought for the relief of declaration in respect of a settlement deed dated 24.05.2002, the same squarely comes within the definition of suit on land. If it is a suit on land, then under Section 16(d) of CPC, the suit has to be instituted in whose jurisdiction the property situates.

11. But, while considering the above submission of the learned counsel for the appellant, in all the above referred cases, an application to



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revoke leave was filed immediately after filing of the suit. Therefore, it is amply clear that the person, who challenge the territorial jurisdiction did not acquiesce to the jurisdiction and has not participated effectively with the proceedings of the High Court.

12. But, in the case on hand, this appellant was impleaded during 2015. Subsequently, he filed the counter statement in A.No.1893 of 2015, wherein he did not raise the issue of territorial jurisdiction. He also participated in an application filed by the respondents 1 to 3 in OA.No.1291 of 2015, wherein they sought for an injunction against the defendants including this appellant. This Court passed an order of status quo vide order dated 21.12.2015. It is pertinent to mention here that this appellant is only a auction purchaser in a SARFAESI proceedings. The Bank, who is the other contesting defendant did not raise such an objection. Therefore, in such a background, we must appreciate the merits of the present application qua for revocation of leave.

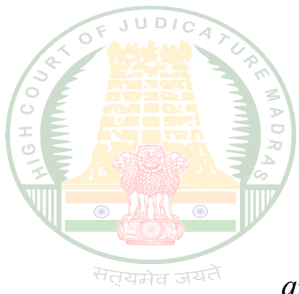
13. In this regard, it is appropriate to refer the judgement of the Hon'ble Division Bench of this Court **P.T.Ummer Koya's** case [cited supra]. It is relevant to extract paragraph 9 of the above judgment.



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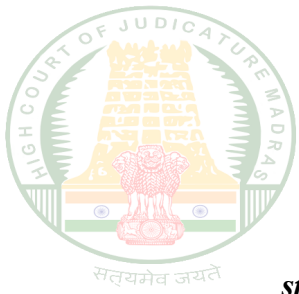
*“9. Another important aspect is that the second defendant in C.S. No. 52/2005 filed two applications, namely, O.A. Nos. 517 and 518/2005 for vacation of the injunction orders. We have perused their counter affidavit and the averments made therein. In the affidavit, duly sworn on 4.2.2005 by P.T. Ummer Koya, appellant in O.S.A. No. 65/2005, though in para 3 there is a reference that the present suit is not maintainable and this Court does not have jurisdiction over the matter, as rightly argued, there is no specific plea for revocation of leave granted earlier. On the other hand, the perusal of the said affidavit dated 4.2.2005 amply shows that he has very much agitated over the grant of injunction and prayed for vacation of the temporary injunction granted in O.A. No.62/2005 dated 31.1.2005. He filed the said affidavit only on 15.2.2005. The said P.T. Ummer Koya filed an application to revoke the leave to sue granted in Application No. 279/2005 dated 24.1.2005. In other words, as rightly pointed out, the appellant herein/2nd defendant participated in the proceedings subjected himself by filing counter affidavit for vacation of the same and later on filed petition to revoke the leave to sue. In such a circumstance, as rightly observed by the learned Judge, he (second defendant) acquiesced the jurisdiction of this Court and thereafter it would not open to him to contend that the leave granted is bad. In the other appeal, though it is argued that the said bar is not applicable, as rightly pointed out by Mr. Sivam, there again an affidavit was filed opposing the injunction order and then only separate application was filed for revocation of leave. In this regard, it is useful to refer a judgment of the Supreme Court in **Chittaaranjan v. Baaarhoo**, AIR 1953 S.C. 472. In that case, a suit was instituted on 17.2.1947 and the respondent entered appearance on 11.3.1947. While considering similar objection, Their Lordships have held that complaining that leave had been improperly granted to file the suit in Calcutta, as he should have done at the earliest possible opportunity, and asking for all proceedings to be stayed until that*



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question was settled, the respondent availed himself of the pending suit to have a consent order passed by the Court appointing the solicitors of the parties as joint receivers to collect and hold the sum of Rs. 21,000 due from the military authorities at Tollygunge. They further held that having secured this advantage, he contested the appellant's application for injunction and receiver in other respects and got it dismissed on 25.4.1947. They further observed that this proceeding would not have gone on and the appellant would not have had to incur the incidental expenses if the application for revocation had been filed and all proceedings stayed soon after the respondent entered appearance on 11th March. In such a circumstance, Their Lordships have held that the respondent has not only acquiesced in the steps taken by the appellant to carry forward the progress of the suit incurring considerable expenses but, made use of the existence of the suit to obtain such interlocutory reliefs as he though would be to his own advantage, at the hands of the Court which he now claims should not try the suit. **The above position makes it clear that the person aggrieved of the grant of leave has to approach the Court at the earliest point of time and seek for revocation without due participation in the other proceedings. In other words, an application for revocation of leave should be made at the early stage of the suit and delay and acquiescence is a bar to such an application.** Though Mr. T.V. Ramanujam vehemently contended that mere filing of vakalath would not amount to participation in the proceedings, as demonstrated before us, **the appellants herein not only filed affidavit questioning the grant of injunction but also prayed for vacation of the same and thereafter filed the separate application for revocation of leave. We are satisfied that by their conduct in participating the proceedings by filing affidavit opposing the injunction, they are acquiesced jurisdiction of this Court and they cannot be permitted to contend otherwise for revocation of leave. No doubt, based on the averments in the written**



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statement, it would be open to the Court to frame a specific issue regarding jurisdiction and consider the same at the time of trial.”

14. The Division Bench after having gone into various aspects and after referring the judgment of the Hon'ble Supreme Court in ***Chittaaranjan Vs. Baaaroo*** reported in ***AIR 1953 SC 472***, has held that if a person is aggrieved of the grant of leave, has to approach the Court at the earliest point of time and seek for a revocation without effective participation on the other proceedings. To put it differently, such an application has to be filed at the earliest stage of the suit, and any delay and acquiescence is a ground to reject such application. As already explained, this appellant has participated in the proceedings since 2015 and he has also filed an application for rejection of plaint on the ground that the plaint lacks territorial jurisdiction. But, this Court vide order dated 26.07.2024 in A.No.2523 of 2024 held that having granted leave, the Court cannot reject the plaint on the ground of lack of territorial jurisdiction, as the same would amount to sitting in appeal over their own order. Only after the above order, the present application has been filed.



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15. Therefore, in such peculiar facts and in line with the Division Bench judgement in *P.T.Ummar Koya's* case [cited supra], at this length of time, we do not want to interfere with the order of the learned Single Judge as there is an inordinate delay and acquiescence on the part of the appellant herein. However, we make it clear that an issue of territorial jurisdiction can be framed and decided by the learned Single Judge during trial. We also want to make it clear that whatever observation made in this order, is only for the disposal of the instant OSA and would in no way have any bearing in the ultimate disposal of the issue regarding jurisdiction in trial.

16. In the result, this OSA stands dismissed. There shall be no order as to costs. Consequently, connected CMP is also closed.

(Dr.ANITA SUMANTH, J .) (C.KUMARAPPAN, J.)
24.04.2025

Index : Yes/No

Neutral Citation : Yes/No

Speaking order/Non speaking order
kmi

To
The Sub Assistant Registrar,
Original Side,
High Court of Madras.



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Dr.ANITA SUMANTH, J.
and
C.KUMARAPPAN, J.

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