
(1997) 04 MAD CK 0099

In the Madras High Court

Case No : Transfer Application No's. 891 to 893, 922 to 924 and 1175 of 1997

Central Bank of India

APPELLANT

Vs

Joseph and Others

RESPONDENT

Date of Decision : 29-04-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 16
Tamil Nadu Civil Courts and Madras City Civil Courts (Amendment) Act, 1995 —
Section 4(1)

Citation : (1997) 2 CTC 1

Hon'ble Judges : N.V. Balasubramanian, J; Abdul Hadi, J

Bench : Division Bench

Advocate : V. Rangarajan, for the Appellant; G.S. Selvatharasu, for the Respondent

Final Decision : Allowed

Judgement

Abdul Hadi, J.—These transfer applications have been posted before this Bench pursuant to the order of Jagadeesan, J. dated 19.3.1997, directing the Registry to get suitable directions from the Honourable Chief Justice for posting these applications before a Division Bench.

2. These transfer applications, by the plaintiffs in different suits which were earlier transferred from the original side of this Court to the City Civil Court, Chennai, presumably pursuant to Section 4(1) of Tamil Nadu Civil Courts and Madras City Civil Courts (Amendment) Act, 1995, seek retransfer of those suits from the City Civil Court to the Original side of this Court, on the ground that the very same Section 4(1) does not authorise transfers of such suits to City Civil Court.

3. The said Section 4(1) runs as follows:- "All suits pending in the High Courts on the date of the commencement of this Act and which would be within the cognizance of the Madras City Civil Court under the provisions of the Madras City Civil Court Act, 1892 (central Act VII of 1892) as amended by this Act shall stand

transferred to the Madras City Civil Court." ((Italic supplied)

4. What learned Counsel for applicants submits is that cognizance of the abovesaid suits cannot be taken by the City Civil Court, since in those mortgage suits by the plaintiffs-Banks for recovery of monies lent on suit mortgages, the lands or other immovable properties mortgaged, are situate outside the limits of the territorial jurisdiction of the City Civil Court, Chennai and that, as such, by virtue of Section 16, C.P.C., the City Civil Court, Chennai has no territorial jurisdiction to try those suits.

5. No doubt, this Court, while the said suits were pending on its file, by granting leave spoken to in Clause 12 of the Letters Patent, secured to itself such jurisdiction to try them, presumably on the footing that the cause of action has arisen partly within the local limits of the ordinary original jurisdiction of this Court.

6. The material portions of the said Clause 12 of the Letters Patent run as follows:

"... 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, such land or 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."

7. There is no such leave provision in Section 16, C.P.C., The material portions of Section 16, C.P.C. are as follows:-

"Subject to the pecuniary or other limitations prescribed by any law, suits-

(a).....

(b).....

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

(d).....

(e).....

(f).....

shall be instituted in the Court within the local limits of whose jurisdiction the property is situate....."

So, when in the abovesaid mortgage actions, the property mortgaged is outside the jurisdiction of the City Civil Court, Chennai, that Court shall have no jurisdiction to try the same.

8. In Southern Petrochemical Industries Corporation Ltd. Vs. Durga Iron Works

and Others, a Division Bench of this Court has also held that such mortgage suits cannot come under the term "suits for land or other immovable property" spoken to in Clause 12 of the Letters Patent.

9. In view of the abovesaid provisions, particularly in view of the expression, "Which would be within the cognizance of the Madras City Civil Court", in the above referred to Section 4(1), we have necessarily to agree with the contentions of learned Counsel for the applicants. Learned Counsel for the respondents also could not argue anything contra. Therefore, the above referred to suits have necessarily to be retransferred from the City Civil Court, Chennai to the Original Side of this Court, since the above referred to transfer of these suits from this Court to the City Civil Court, is not in accordance with the abovesaid Section 4(1) itself. For the above reasons, we are unable to subscribe to the view taken by Jagadeesan, J. in his above referred to order dated 19.3.1997.

10. Accordingly we allow these applications as prayed for. No costs.