

(2009) 02 MAD CK 0171

In the Madras High Court

Case No : Application No. 4704 of 2006 in C.S. No. 783 of 2006

Dr. Hendry Dasarathan and 2 Others

APPELLANT

Vs

R. Prabhakaran

RESPONDENT

Date of Decision : 03-02-2009

Acts Referred:

Specific Relief Act, 1963 — Section 22

Citation : (2009) 4 CTC 181

Hon'ble Judges : M. Jeyapaul, J

Bench : Single Bench

Advocate : S. Hemalatha, for the Appellant; K.S. Natarajan, for the Respondent

Final Decision : Dismissed

Judgement

M. Jeyapaul, J.—The Application is filed seeking to revoke the leave granted in Application No. 4061 of 2006 dated 29.9.2006 and consequently to reject the Plaint in C.S. No. 783 of 2006. The respondent/plaintiff filed the Suit in C.S. No. 783 of 2006 seeking Specific Performance of agreement for sale and also for permanent injunction restraining the defendants and their men from encumbering or alienating the suit schedule property.

2. The Court, having found that the Suit is one not for land, but, for Specific Performance of the agreement for sale and also for permanent injunction not to deal with the Suit schedule property, granted leave to the respondent/plaintiff to lay the Suit inasmuch as part of the cause of action has arisen within the jurisdiction of this Court.

3. The applicants/defendants would contend that the suit property is situate outside the jurisdiction of this Court. As the Suit relief relates to immovable property situate outside the jurisdiction of this Court, the respondent/plaintiff is not entitled to lay the suit before this Court, it is submitted.

4. The respondent/plaintiff, in his counter, would contend that the Suit is basically for enforcement of the terms of the contract and therefore, the same is

not a Suit for land. Nor was the title to the suit property is sought to be decided by the Court. Therefore, the applicants/defendants have come forward with this Application under total misconception with respect to the scope and frame of the Suit.

5. Learned Senior Counsel appearing for the applicants would vehemently submit that delivery of property was not contemplated under the agreement for sale entered into between the respondent and the applicants. When the possession is with the applicants, there is every possibility for the respondent to pray for delivery of possession invoking the provision u/s 22 of the Specific Relief Act at any stage of the proceedings. The current prayer in the Suit alone will not decide the matter. Therefore, he would submit that the Suit is basically one for land and therefore, revocation of leave granted by this Court is not warranted.

6. Per contra, learned Senior Counsel appearing for the respondent would submit that inasmuch as there is no relief sought in the Suit seeking recovery of possession, the Suit simplicitor for Specific Performance of agreement for sale shall be considered as Suit not for land. The future scope made available u/s 22 of the Specific Relief Act cannot come in the way of deciding the question whether the respondent is entitled to lay the Suit with the leave of the Court.

7. It is true that the agreement for sale entered into between the applicants and the respondent does not contemplate delivery of possession by the applicants to the respondent. But, the fact remains that the Suit is filed seeking the relief of Specific Performance of agreement for sale and also for permanent injunction as against the applicants not to deal with the property.

8. The Court cannot dictate the plaintiff to seek a particular relief which was left out in the Plaint. The party will have to reap the consequence of the failure to seek for the prayer as per law. The entire pleadings and the prayer found in the Plaint will have to be considered by the Court while granting leave to sue. It is to be taken note of that the respondent/plaintiff has not whispered anything about the prayer for delivery of possession.

9. Learned Senior Counsel appearing for the applicants referred to the judgment of this Court in M/s. Ram Bahadur Thakur (P) Ltd. Vs. A. Velliangiri and 3 others pronounced by Srinivasan, J. (as he then was). That was a basically a Suit for Specific Performance of agreement for sale. But, it appears that the fourth defendant therein purchased the very same property subsequent to the agreement entered into between the other defendants and the plaintiff therein. Therefore, the plaintiff in that Suit specifically prayed for directing the fourth defendant who was the subsequent purchaser to deliver vacant possession of the subject property to the plaintiff. The learned Single Judge, observed therein that the Suit involves the question of title to the property inasmuch as the title vested in the fourth defendant therein is sought to be dislodged by the plaintiff on the strength of the contract between him and the first defendant. Therefore, it was held therein that the Suit falls very much within the definition of "Suit for land".

Referring to the Proviso to sub-section (2) of Section 22 of the Specific Relief Act, 1963, the learned Judge further observed that even if the plaintiff had not claimed any such relief at the initial stage, the Court is bound to allow him at any stage of the proceedings to amend the Plaint on such terms as may be just for including a claim for recovery of possession. The following observation with reference thereto was made by the learned Judge in the aforesaid judgment:

This shows that in a Suit for Specific Performance even if there is no prayer for possession initially, the relief of possession could be obtained by the plaintiff at a subsequent stage by amending the Paint and that he cannot file a separate Suit for possession after getting a decree for Specific Performance in the earlier Suit. It follows that every Suit for Specific Performance is also a Suit for recovery of possession after the passing of the Specific Relief Act, 1963 in cases where the plaintiff is not already put in possession by the vendor under the agreement.

10. As already observed, the Court is called upon to go through the current pleadings and the prayer found in the Suit and not the prospective scope for the plaintiff to include a relief which was left out as contemplated under the Proviso to sub-section (2) of Section 22 of the Specific Relief Act. Further, the Court also cannot call upon a party to introduce a prayer in the Suit against his will.

11. The aforesaid judgment of the learned Single Judge was confirmed by the Division Bench headed by Shivraj Patil and M. Karpagavinayagam, JJ. (as they then were) and the same was A. Velliangiri (deceased) and 3 others Vs. M/s. Ram Bahadur Takur (P)Ltd., Lahariasari, Durbanga Dist. Bihar State and 3 others, . It is to be noted that the Division Bench of this Court did not advert to the observations of the learned Single Judge in the said case with reference to the future scope which was available to the plaintiff to introduce a new prayer for delivery of possession at any stage of the proceedings as per the Proviso to sub-section (2) of Section 22 of the Specific Relief Act, 1963. Having found factually that the Suit was also for delivery of possession as against the fourth defendant, the subsequent purchaser of the subject property, the Division Bench chose to confirm the judgment of the learned Single Judge of this Court. The above observation of the learned Single Judge was not adverted to by the Division Bench.

12. In *Thamiraparani Investments Pvt. Ltd. Vs. Meta Films Pvt. Ltd.* D. Murugesan, J. has held as follows:

It was argued by the learned Senior Counsel for plaintiff that in a Suit for bare injunction the said judgment cannot be made applicable, as the plaintiff has not asked for any relief of title or recovery of possession of the land in question and the relief, if granted, would be a judgment in personam and, therefore, the plaintiff is entitled to sue the defendant with the leave of this Court. In my opinion, the said submission cannot be accepted. Though in a Suit for bare injunction the Court would not go into the question of title but is concerned about a prima facie as to the possession, whether or not possession is claimed, if

title to any immovable property is to be directly affected by the result of the decision, the Suit would be only a Suit for land.

13. That was a case where there was virtually a scramble for possession based on the rival title set up by two opposing parties sourcing their title to the same predecessor in title to the suit property. In such circumstances, the learned Judge has rendered a verdict that though it was a Suit for bare injunction, determination of title to the suit property in view of scramble for possession by rival parties was involved, the Suit will have to be considered as a Suit for land. The verdict of the learned Single Judge was taken in Appeal before the First Bench of this Court. The Division Bench, in *Thamiraparani Investments Pvt. Ltd., rep. by its Director, v. Gopal, Kottivakkam, Chennai-41 v. Metha Films Pvt Ltd., Chennai-12*, 2006 (1) CTC 270, having found that the Suit was one for having effective control over the land, held that the Suit was basically for land. Ultimately, the decision of the learned Single Judge was confirmed by the First Bench of this Court. It is to be observed that a suit for bare injunction cannot be construed by any stretch of imagination as a Suit for land. But, in the special circumstances of the said case, where there was a scramble for possession of the property, based on the title traced to the common predecessor in title which involves determination of title to the subject property, the Court has held that it was a Suit for land. The said ratio cannot be extended indiscriminately to all Suits for bare injunction where the determination of title to the property may not be necessitated.

14. A Division Bench of this Court headed by Shivraj Patil and N. Arumugam, JJ. in *N. Dhanalakshmi and Others Vs. S. Eknathan, Proprietor, Eknath Real Estates*, has held that a Suit for Specific Performance of agreement for sale simplicitor without seeking for recovery of possession cannot be construed as a Suit for land.

15. The Supreme Court in 2001 VII AD 513 (SC) referring to Section 22 of the Specific Relief Act, 1963, has held that in a Suit for Specific Performance of contract for sale of immovable property containing stipulation that on execution of the sale deed, the possession of the immovable property would be handed over to the purchaser, it is implied that delivery of possession of immovable property is part of the decree of Specific Performance of contract. It has been authoritatively held therein that in a Suit for Specific Performance of agreement for sale, wherein the relief of delivery of the suit property was not specifically claimed as such, it cannot be treated as a Suit for land. The Supreme Court has further observed that in its true sense the Suit simplicitor for agreement of sale of land is a Suit for enforcement of terms of contract. The title to the land as such is not the subject matter of such Suit.

16. In a case where there is specific clause in the agreement for sale of immovable property that the possession of the immovable property would be handed over to the purchaser immediately after the execution of the sale deed, there is an implication that delivery of possession forms part of the decree for Specific Performance of contract. Where there was no such clause found in the

contract for sale of immovable property, the plaintiff, who seeks for Specific Performance of agreement for sale, will have to necessarily seek a relief for delivery of possession. Of course, as contemplated under the proviso to sub-section (2) of Section 22 of the Specific Relief Act, 1963, the plaintiff can, at any stage of the Suit, seek for such a relief and the Court shall allow him to amend the Plaint facilitating him to include such a relief in the prayer portion of the Suit. So long as the prayer was not in the contemplation of the scheme of the pleadings, the Suit filed simplicitor for Specific Performance of agreement for sale will have to be necessarily construed only as a Suit not for land, but, for enforcement of the terms of the contract. If the plaintiff elects to invoke the Proviso to sub-section (2) of Section 22 of the Specific Relief Act, 1963 at an advanced stage of the proceedings of the Suit, the defendant is entitled to seek for revocation of the leave at such stage of the proceedings.

17. Coming to the facts and circumstances of the instant case, though, admittedly, possession is only with the applicants who have entered into an agreement with the respondent to sell the property, inasmuch as the frame of the Suit does not contemplate a prayer for delivery of possession and it only seeks for Specific Performance of agreement for sale, the Suit cannot be construed as a Suit for land. This Court has rightly granted leave to sue considering the fact that part of the cause of action has arisen within the jurisdiction of this Court. In view of the above, the Application stands dismissed. There is no order as to costs.