

(2003) 08 MAD CK 0187

In the Madras High Court

Case No : Application No. 1176 of 2001 and C.S. (Sr. No. 5662) of 2001

Harikumar Rajah

APPELLANT

Vs

Ashok R. Thakkar

RESPONDENT

Date of Decision : 22-08-2003

Acts Referred:

Companies Act, 1956 — Section 10

Citation : (2004) 51 SCL 735

Hon'ble Judges : A.K. Rajan, J

Bench : Single Bench

Advocate : S.W. Kanagaraj, for the Appellant; S. Raghavan, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Rajan, J.—This application is for the grant of leave to sue the defendants,

2. The suit prayers, inter alia, are for declaration that the allotment of shares made in favour of the defendants in the year 1979 are null and void; for declaration that the nomination of the defendants 1 to 3 is null and void; for declaration that the nominees of the plaintiff are duly elected in the annual general body meeting held on 20-6-1998; for declaration that E.G.M. held on 25-11-1998 is null and void; for permanent injunction restraining the defendants from alienating the properties of the company.

3. The registered office of the 1 Oth respondent is at Noombal Village and the defendants 1 to 4 are its directors. It is stated in the affidavit filed in support of the application that the cause of action for the suit had arisen within the jurisdiction of this court and all the defendants are leaving or working for gain or having their offices within the territorial jurisdiction of this court. But the suit property situate outside the city of Channai and therefore this application to leave to sue the defendants is filed.

4. This court issued notice to the respondents in this application. A counter affidavit has been filed by the respondents. In the counter it is contended that

the relief prayed for cannot be granted by this court. It is further stated that the plaint schedule property belongs to the company and it is at Noombal Village which is beyond the territorial jurisdiction of this court. Neither the defendants nor the plaintiffs have any right, title or interest in the property. The allotment of shares have been made in 1979 itself; but that does not give the cause of action to file the suit in this court. The relief sought for in the plaint was already claimed in C.P. 49 of 1987 before this court and in C.P. 81 of 1998 before the Company Law Board. All the contentions raised by the plaintiffs were negated by this court as well as by the Company Law Board. The order passed by this court or by the Company Law Board did not provide any cause of action to the plaintiffs and no suit can be filed on the basis of those orders.

5. Mr. Kanakaraj, the learned counsel appearing for the applicants submitted that the suit is for declaration that the allocation of shares is null and void. It is not a suit on "land". Since all the directors of the company are residing within the jurisdiction of this court, this court has jurisdiction to try the suit. In support of his contention the learned counsel for the applicants referred to the judgment in 2001 VII AD 513 (SC) where the Supreme Court has held that under Clause 12 of the Letters Patent if prior leave of the court has been obtained and the cause of action has arisen in part within the local limits of original jurisdiction of the High Court, then the High Court can decide the case. It was held in case that the suit "on land" is a suit in which the relief claimed relates to title or delivery of possession of land or immovable property.

6. The learned counsel further submitted that whether the plaint is to be taken on file or is to be rejected shall be determined only on the averments found in the plaint. It cannot refer the written statement or any other arguments advanced by the defendant. In support of his contention he relied upon the judgment of the Supreme Court in Saleem Bhai v. State of Maharashtra 2003 (I) CTC 186 where the Supreme Court has held that the plea taken by the defendant in the written statement is wholly irrelevant and, therefore, the averments in the plaint alone shall be taken into consideration for deciding the application for leave to sue. Therefore, based on the averments contained in the plaint the leave sought for shall be granted.

7. The learned counsel for the respondents submitted that even according to the plaint, the five individual directors of the company are said to be residing within the jurisdiction of this court, but the company is situated outside the jurisdiction of this court. The residence of the directors is not the residence of the company and that does not give or confer jurisdiction. He further submitted that the prayer in the suit is to declare the allotment of shares of the company as invalid; the situs of share is where the company is situated. Therefore, the alleged fraud in the allotment of shares occurred outside the jurisdiction of this court. In support of his argument he relied upon the judgment of the Supreme Court in R. Viswanathan Vs. Rukn-UI-Mulk Syed Abdul Wajid, in which the Supreme Court has held that situs of shares of a company which are movables may normally be

the place where the registered office situate. Therefore, the cause of action viz., the transfer of shares has occurred outside the jurisdiction of this court. Hence, the suit cannot be filed on the basis of part cause of action.

8. The learned counsel appearing for the applicants relied that in the order in Company Petition No. 49 of 1987 dated 20-3-1988 this Court has held that the purported allotment of 60,000 shares with the directors themselves was for an illusory consideration. Therefore this part cause of action arose within the jurisdiction of this court and, hence, this suit can be filed in this court.

9. The learned counsel for the respondents contended that the order of this court does not refer to the allotment of shares in the present case (to Sukumaran and others). That was with reference to the allotment of shares to one U.K. Rajah and that, therefore, that finding, even assuming, is part cause of action, does not confer jurisdiction for filing of this suit in this court.

10. As seen already, this suit has been filed for certain declaration referred to above and also for permanent injunction restraining the respondents from alienating the immovable property of the company. This suit has been filed by one of the shareholders. Though it is stated that he filed the suit on behalf of all the shares, it does not appear that he has filed the suit in the representative capacity. Therefore, this suit has been filed only in his individual capacity as one of the shareholders. Under the Company Law, the legal fiction is that the property of the company is owned only by the company and not by the shareholders or by the directors. Therefore, the property belong only to the company and the shareholders or the directors have no right over the property.

11. The company admittedly is having its registered office outside the jurisdiction of this court viz., in Noombal Village. It is an axiomatic principle that the company resides where the registered office situate. Therefore the defendant company has its residence outside the jurisdiction of this Court. The defendant Nos. 1 to 5 who are the directors of the company are residing within the jurisdiction of this Court. The fact that the five directors resides within the jurisdiction of this Court does not mean that the company is having its "residence" within the jurisdiction of this Court. Suppose the directors happens to reside in a far off place, if this argument is to be accepted, the suit can be filed in a far off place which may even be outside the State. Therefore, this argument of the learned counsel for the applicant is not acceptable. The residence of the Directors cannot be equated to the residence of the company. Since the directors are not the owners of the property of the company the jurisdiction on the basis of the residence of owners of the movable property.

12. The cause of action for the filing of the suit is the act of allotment of shares. For the reasons stated above, the shares were allotted only where the company resided (i.e.,) where the registered office situate. Therefore, the cause of action relied upon by the applicant has arisen outside the jurisdiction of this Court. Therefore no part of cause of action can be said to have arisen within the

jurisdiction of this Court.

13. Even accepting the argument submitted by the counsel for the applicant that the present suit cannot be said to be suit on land, insofar as it relates to the declaratory relief, yet there is also a prayer for permanent injunction not to alienate the property of the company. Admittedly that property situate in Noombal village, outside the jurisdiction of this Court. Insofar as the prayer for injunction is concerned, it is a suit on land. Even as per the decision relied upon by the plaintiff in Adcon Electronics (P.) Ltd.'s case (supra) the Supreme Court has clarified that under Clause 12 of the Letters Patent, the High Court, in exercise of its ordinary original jurisdiction, will have power to receive, try and determine the suits on land or other immovable property, if such property is situated within the local limits of original jurisdiction of the High Court. Only with respect to other matters, the immovable properties are not involved, the part cause of action confers jurisdiction. Inasmuch as the injunction prayer is a suit on land, this Court has no territorial jurisdiction over the suit property.

14. The dispute is only with respect to the allotment of shares which does not relate to the land and such allotment create cause of action only at the place where allotment was made. Therefore, the suit can be filed only in that Court which has territorial jurisdiction over the place where the company resides. The residence of the directors of the company or of those persons who have been allotted the shares does not confer any jurisdiction. Therefore, this Court has no jurisdiction to try the suit. Therefore leave to sue, as prayed for, cannot be granted.

15. Accordingly, the application is dismissed.