

(1970) 04 MAD CK 0005

In the Madras High Court

**In Re: D. Muthukumaraswamy alias Rajakumar by power of attorney
agent M.S. Dakshinamoorthy**

Date of Decision : 17-04-1970

Acts Referred:

Citation : (1970) 83 LW 479 : (1970) 2 MLJ 328

Hon'ble Judges : K.S. Palaniswami, J

Bench : Division Bench

Judgement

K.S. Palaniswami, J.—This is an application under Order 3, Rule 1 of the Original Side Rules for leave to institute an originating summons in

this Court. Sadasiva Mudaliar, applicant's grandfather, owned certain properties in Nilgiris District. He executed two indentures, one on 19th

June, 1955 and another on 7th March, 1962 conveying different portions of his properties constituting the applicant as the beneficiary for his life

time with remainder over to the children of the applicant to be born. The applicant wants to dispose of a portion of the property in which he has

got life interest for the purpose of prosecuting his studies abroad. For this purpose, he wants the leave of the Court. He has filed affidavits of the

intending purchasers who have expressed their willingness to purchase the property for a certain price. As the property is situated outside the

jurisdiction of this Court, the office returned the originating summons and asked the applicant to apply for leave of the Court. It is in these

circumstances that the applicant has taken out this application.

2. The question is whether the originating summons itself is competent, as the property, in respect of which permission is sought for, is wholly

situated outside the jurisdiction of this Court. The applicant has not impleaded any party as defendant. I called upon the learned Counsel for the

applicant to satisfy me that even though no portion of this property is situated within the jurisdiction of this Court, the originating summons can be

entertained by this Court. Mr. Rama-swami Reddiar the applicant's Counsel, stated that he was unable to find any direct authority. But he cited the

Full Bench decision in *P.M.A. Velliappa Chettiar and Another Vs. Saha Govinda Doss and Others*, which, according to him, is almost near to the

point. That case is hardly, relevant. There, the point decided was whether a suit by a purchaser of lands situated outside the jurisdiction of this

Court for specific performance of a contract made within the jurisdiction of this Court by parties resident therein is cognisable by the High Court in

its ordinary original civil jurisdiction. On a review of the case law, the Full Bench answered the question in the affirmative. The view taken was that

the suit is not a suit for land within the meaning of Clause 12 of the Letters Patent, Madras.

3. That an originating summons is a suit within the meaning of Clause 12 of the Letters Patent, Madras, is not and cannot be disputed--Vide T.S.

Rajan Vs. Mrs. Pankajammal and Another, , "where the reason is stated thus:

There are two decisions of the Calcutta High Court, *Provo Chandra v. Ashuthosh Mukherjee* I.L.R.(1929) Cal 979, and *Sewdayal Ramjeedass*

v. Official Trustee of Bengal I.L.R.(1931) Cal. 768, which support the appellant's contention that this is in reality a suit for land, and there is

another decision of the same High Court, *Vedabala Debee v. Official Trustee of Bengal* I.L.R.(1935) Cal. 1062, to the opposite effect.

Proceedings pursuant to the issue of a summons under Order 45 constitute a suit. There is a plaint and a written Statement. Rule 5 of the Order

says that the plaint when accepted shall be filed and numbered as an ordinary suit and entered in the register of suits, but after the serial number the

letter "O.S." shall be placed to distinguish it from plaints filed in ordinary suits.

4. In the same decision one of the questions that arose was whether an originating summons can be instituted in respect of a property situated

outside the limits of the Madras City. The Bench consisting of Leach, C.J., and Horwill, J., felt that the case involved substantial questions of law

not only by reason of the aforesaid question but also on account of the various other matters which arose for consideration. There, the testator

appointed A and B as executors and bequeathed his ancestral property to A. In a

dispute between the executors and the testator's widow and daughter, the latter applied for Letters of Administration with a copy of the will annexed. The executors did not oppose the grant and renounced their claim as executors. The widow and daughter took out an originating summons for direction of the Court alleging that A had lost his right to his legacy as a result of his renunciation. A, who was in possession of the testator's ancestral property, opposed the summons on various grounds, one of them being that the proceedings constituted a suit within the meaning of Clause 12 of the Letters Patent and that the High Court had no jurisdiction since the properties comprised in the legacy were situate outside the limits of Madras City. The Bench found that the controversies involved substantial questions of law, the questions being (1) whether the renunciation signed by A deprived him of the legacy ; (2) whether any final adjudication could be given since A was in possession of the ancestral properties ; and (3) whether the suit was entertainable by the High Court, though the property was situated outside the City of Madras. In that view, the learned Judges dismissed the originating summons directing the plaintiff to seek relief in a properly framed suit.

5. In *Provas Chandra Sinha Vs. Ashutosh Mukherji and Others*, , the Calcutta High Court held that an. originating summons taken out for the purpose of obtaining a decision that the plaintiff was entitled to the residuary estate is a "" suit for land "" within the meaning of Clause 12 of the Letters Patent (Calcutta). In that case, as in the present case, the property, in respect of which possession was sought, was situated outside the jurisdiction of the Calcutta High Court. The Court held that any decision by the Court would affect the property and that inasmuch as that property was situated outside its jurisdiction, the originating summons was incompetent. In *Seshagiri Rau v. Rama Rau* I.L.R.(1896) Mad. 448 : 6 M.L.J.

19, the plaintiffs brought a suit for their share of the family property consisting of lands situated outside the jurisdiction of this Court and for moveables situated within, leave to sue having been granted by the Registrar. It was held that the High Court had no jurisdiction so far as the suit related to the lands is concerned and that the suit must be dismissed as regards lands.

6. In *Moolji Jaitha and Co. v. Khandesh Spinning and Weaving Mills Co. Ltd.*

(1950) S.C.J. 51 : (1949) F.C.R 849, the question considered was regarding the scope of the expression ""suit for land"" occurring in Clause 12 of the Letters Patent, Bombay High Court. After exhaustive discussion of several authorities, Kania, C.J., held:

No judicial decision has attempted to give an exhaustive enumeration of the suits covered by the expression " suit for land" and I do not propose to

do so. It is sufficient to say that taking the suit as a whole one has to consider whether it is for the purpose of obtaining a direction for possession

or a decision on title to land, or the object of the suit is something different but involves the consideration of the question of title to land indirectly.

7. What the applicant wants is the approval of this Court for effecting a sale of the property mentioned in the plaint which is situated in Nilgiris

District. The grant of approval involves a decision that the applicant is entitled to deal with the property and such a decision involves a

consideration of the title to the property. I agree with the view of the Calcutta High Court in Provas Chandra Sinha Vs. Ashutosh Mukherji and

Others, , and hold that a decision in this case on merits would indirectly affect the title to the immovable property situated outside the jurisdiction of

the Court. This Court has no jurisdiction to entertain this proceeding.

8. Mr. Ramaswami Reddiar, appearing for the applicant, brought to my notice two similar originating summons taken out by the applicant in which

he was successful in getting approval of this Court for sale of certain other portions of the properties covered under the two indentures executed by

his grandfather. It appears that when those matters were considered, the fact that the properties were situated outside the jurisdiction of this Court

escaped the notice of this Court. The applicant is hardly entitled to rely upon those proceedings as entitling him to institute this proceeding also.

9. In the result, I find that the originating summons itself is incompetent, as the property is situated wholly outside the jurisdiction of this Court. The

application is therefore dismissed. The originating summons is also rejected.