
(2012) 12 MAD CK 0122

In the Madras High Court

Case No : Original Side Appeal Nos. 348 and 349 of 2012

Jethmull Chordia

APPELLANT

Vs

C. Venkatasubba Reddy

RESPONDENT

Date of Decision : 20-12-2012

Acts Referred:

Citation : (2013) 1 MadWN(Civil) 305

Hon'ble Judges : Mrs. R. Banumathi and Mr. K.K. Sasidharan, JJ.

Bench : Division Bench

Final Decision : Dismissed

Judgement

R. Banumathi, J.—Being aggrieved by the order revoking leave in respect of "B" schedule property-land and building situated in Shanthi Nagar, Nellore, Andhra Pradesh and consequently vacating the interim injunction in respect of "B" schedule property, Appellant-Plaintiff has preferred this appeal. For convenience, the parties are referred to hereinafter as per their array in the suit.

2. The Appellant-Plaintiff filed the suit - C.S.No.887 of 2009 against the Respondents-Defendants for permanent injunction restraining the Defendants from in any manner disturbing the peaceful possession and enjoyment of "A" and "B" schedule properties. Defendants 2 and 3 are the son and wife of 1st Defendant. Case of Plaintiff is that he purchased "A" schedule property measuring undivided share of 1050/4200 sq. ft. together with flat situated at Door No.25, Puliur Second Main Road, Kodambakkam, Chennai from Defendants 2 and 3 through 1st Defendant being their power agent, by a registered sale deed dated 24.03.2009. Likewise, Plaintiff purchased "B" schedule property measuring an extent of 5021.= sq. ft. together with building thereon at Door No.24-2-153, Shanthi Nagar, Nellore, Andhra Pradesh from 2nd Defendant, through 1st Defendant acting as his power agent under registered sale deed dated 22.8.2009. According to Plaintiff, he is in absolute possession and enjoyment of both "A" and "B" schedule properties. 3. Further case of Plaintiff is that due to dispute between the Defendants for sharing the sale consideration,

he was called by some third parties claiming to be the representatives of Defendants 2 and 3 and asked to vacate the plaint schedule properties or otherwise, he would be thrown out by force. Apprehending disturbance to his possession and enjoyment of the suit properties, Plaintiff has filed the suit in C.S.No.887 of 2009 for permanent injunction. Since "B" schedule property is situated in Nellore District, State of Andhra Pradesh, Plaintiff obtained leave in A.No.4980 of 2009 to file suit in the Original Side of Madras High Court. Plaintiff had also filed O.A.No.1033 of 2009 for interim injunction and obtained an order of interim injunction in respect of "A" and "B" schedule properties. 4. Defendants 2 and 3 have filed application A.No.2041 of 2012 to revoke the leave granted in A.No.4980 of 2009 with regard to "B" schedule property. According to Defendants 2 and 3, "B" schedule property is situated in Shanthi Nagar, Nellore District, Andhra Pradesh out side the jurisdiction of Madras High Court and that the Original Side of Madras High Court has no jurisdiction with regard to "B" schedule property. Pointing out that Defendants are also residing outside the jurisdiction of Madras High Court i.e. in Andhra Pradesh, Defendants 2 and 3 contended that no part of cause of action had arisen in Madras. Defendants 2 and 3 have also filed A.No.328 of 2012 to vacate the interim injunction granted in O.A.No.1033 of 2009 with regard to "B" schedule property. 5. Plaintiff resisted both the applications contending that the threat made by the Defendants is one and the same for both "A" and "B" schedule properties and that the threat was received at Chennai. Plaintiff contended that part of cause of action arose within the jurisdiction of Madras High Court and prayed for dismissal of both the applications. 6. Upon consideration of rival contentions, learned single Judge revoked the leave holding that suit for permanent injunction is "suit for land" and "B" schedule property situated in Nellore District, State of Andhra Pradesh is not situated within the jurisdiction of the Original Side of Madras High Court. Learned single Judge held that the nature of relief sought for by the Plaintiff would amount to control over the land and that the Plaintiff ought to have filed the suit before the Court only where the suit property is situated and accordingly leave was revoked. Consequent upon revoking leave, the learned single Judge vacated the interim injunction granted in respect of "B" schedule property. 7. Mr. B. Kumar, learned Senior Counsel for Plaintiff contended that Clause 12 of Letters Patent Act stipulates that High Court has jurisdiction to entertain the cases in respect of which part of cause of action arose within the territorial jurisdiction of the High Court and while so, the learned single Judge erred in observing that "cause of action for the purpose of grant of leave is immaterial". It was contended that the learned single Judge ought to have kept in view that cause of action in respect of both schedule "A" and "B" properties is one and the same and that the learned single Judge erred in not appreciating the ambit of Clause 12 of Letters Patent Act. In support of his contention, learned Senior Counsel placed reliance upon AIR 1985 Madras 1 (Bank of Madurai Ltd. v. Balaramadass and brothers and others) and 1988-2-L.W. 308 (A. Giridhar and another v. A.Suresh and others). 8. Mr. S.A. Rajan, learned counsel for Defendants 2 and 3 contended that "B" schedule property is situated at Nellore District, Andhra

Pradesh and that suit for permanent injunction being "suit for land", Madras High Court has no jurisdiction to entertain the suit. Contending that the suit for permanent injunction is "suit for land", learned counsel placed reliance upon 1995-II MLJ 559 : 1995 (2) CTC 181 (P. Ranganathan and either others v. Sai Jagannathan and nine others) and 2006 (1) CTC 270 (Thamiraparani Investments Pvt. Ltd., rep. by its Director, v. Gopal, having its office at No.4/36, Swaminathan Nagar Extension, Kottivakkam, Chennai 600 041 v. Meta Films Pvt. Ltd., having office at No.A-11, Anna Nagar East, Chennai-600 102). 9. There is no dispute that "B" schedule property measuring an extent of 5021- sq. ft. with building measuring an extent of 1728 sq. ft. in the ground floor and 1008 sq. ft. in first floor is situated in Door No.24-2-153, Shanthi Nagar, Nellore, Andhra Pradesh which is outside the Original Side jurisdiction of Madras High Court. Plaintiff claims to have purchased "B" schedule property from the 2nd Defendant through 1st Defendant in his capacity as power agent under sale deed dated 22.8.2009. Plaintiff is also said to have purchased "A" schedule property-land and building thereon bearing Door No.25, Puliyur Second Main Road, Kodambakkam, Chennai from Defendants 2 and 3 through 1st Defendant under two registered sale deeds dated 24.3.2009. Plaintiff has filed the suit in respect of "A" and "B" schedule properties alleging that the cause of action in respect of suit schedule properties are one and the same. 10. The suit is one for permanent injunction and whether the suit is for a land has to be gathered from the nature of suit and the plaint averments as a whole. Inclusion or absence of prayer is not decisive to decide the nature of suit. In this case, Plaintiff alleges that Defendants through third parties threatened him to vacate the suit properties or otherwise, he would be thrown out forcibly and therefore, he has filed the suit for permanent injunction. 11. Even though, it is alleged that cause of action for both "A" and "B" schedule properties are one and the same, the fact remains that "B" schedule property was purchased under sale deed dated 22.8.2009. It is pertinent to note that 2nd Defendant had already filed a suit in O.S.No.144 of 2009 before the I Additional District Court, Nellore to cancel the sale deed executed by the 1st Defendant in favour of Plaintiff in respect of "B" schedule property and to declare that the said sale deed is sham and forged. In the said suit, Plaintiff and 1st Defendant herein have already entered appearance and the said suit is pending. O.S.No.144 of 2009 on the file of I Additional District Court, Nellore was instituted much earlier to the filing of present suit in C.S.No.887 of 2009 before the High Court, Madras. Be it noted that Plaintiff has also filed another suit O.S.No.352 of 2010 on the file of II Additional Senior Civil Judge, Nellore against the occupant of "B" schedule property for recovery of possession and for damages. With regard to "B" schedule property, the earlier suit filed by 2nd Defendant in O.S.No.144 of 2009 is pending before the I Additional District Court, Nellore in which Plaintiff also entered appearance. In such circumstances, in respect of the immovable property ("B" schedule property), whether the Plaintiff was right in invoking the Original Side jurisdiction of Madras High Court is the point falling for consideration in these appeals. 12. In the present case, admittedly, "B" schedule property is situated out side the jurisdiction of Madras

High Court. "B" schedule property was purchased under sale deed dated 22.8.2009. Even though the suit is one for bare injunction, the Defendants challenging, the very sale deed, have already filed the suit O.S.No.144 of 2009 in I Additional District Court, Nellore. While so, it cannot be said that it is a simple suit for permanent injunction. The cause of action allegedly arisen in Chennai due to the alleged threat would not confer jurisdiction upon this Court to entertain the "suit for land". 13. Contending that suit for permanent injunction restraining the Defendant from in any manner interfering with the possession of the property is a "suit for land", the learned counsel for Respondents 2 and 3 placed reliance upon Thamiraparani's case in which the First Bench of this Court held as under:-

"8. In *M/s. Moolji Jaitha and Company v. The Khandesh Spinning and Weaving Mills Company Ltd.*, AIR 1950 Federal Court 83, the Court noted that the first prayer in the plaint was that it may be declared that the lands belonged to and are the properties of the plaintiff company and the defendants have no beneficial interest therein. In the said judgment, the Court held that in order to consider whether a suit is covered by the expression "suit for land" in Clause 12 of the Letters Patent, one has to consider whether it is for the purpose of obtaining a decree for possession, or a decision in title to land, or is something different, but involves the consideration of the question of title to the land indirectly. The expression "suit for land" covers three classes of suits (i) suits for determination of title to land; (ii) suits for possession of land; and (iii) other suits in which the reliefs claimed if granted would directly affect title to, or possession of, the land. The words "suits for land or other immovable property" in Clause 12, besides obviously covering claims for recovery of possession or control of land, or Appellant to connote also suits, which are primarily and substantially seeking an adjudication upon title to immovable property or a determination of any right or interest therein. The words "suit and land" means establishing title to land or any interest in the same, or for possession or control thereof, and the decree sought for must be intended *proprio vigore* to be enforceable against and binding on the land itself. In the said judgment, it is also stated that the nature of the suit and its purpose have to be determined by reading the plaint as a whole. The inclusion or absence of a prayer is not decisive of the nature of the suit, nor is the order in which the prayers are arrayed in the plaint. The substance or object of the suit has to be gathered from the averments made in the plaint on which the reliefs sought for in the prayers are based. In the case on hand, undoubtedly, looking to the averments made in the plaint as a whole, and the relevant relief sought for, the suit is clearly, substantially, and mainly for land. 9. A reference may also be made to the decision of the Supreme Court in *Adcon Electronics Pvt. Ltd. v. Daulate and another*, 2001(4) CTC 39. In that case, the Supreme Court considered a suit for specific performance and an application for leave filed under Clause 12 of the Letters Patent before the High Court of Judicature at Bombay. The said Clause is in *pari materia* to Clause 12 of the Letters Patent of the High Court of Judicature at Madras. While considering the said Clause, the Supreme

Court held that if a suit is for determination of title to land, or suit for possession of land, or other suits in which the reliefs claimed, if granted, would directly affect the title of possession of land, the suit could be filed only in the Court in which jurisdiction the land is situate. 10. In Southern Petrochemical Industries Corporation Ltd. v. Durga Iron Works and 3 others, 1955(2) CTC 602, a Division Bench of this Court has held that a suit involving determination of title and interest of land for recovery of possession and control of land would be a "Suit for land". 12. The present suit being one for bare injunction, it is a suit for land. In other words, it is a suit for the purpose of acquiring possession of or safeguarding possession of or establishing title to or a right in land viz., the suit schedule property. It is well settled that the expression "suit for land" should not be confined and limited to suits for recovery of possession of land or to obtain a declaration of title to land only. The present suit being one for control of land lying outside the jurisdiction of this Court, this Court has no jurisdiction to entertain the suit and consequently, the learned single Judge has rightly revoked the leave....." The above decision squarely applies to the case on hand. 14. Contending that even when part of cause of action has arisen in Chennai, Madras High Court has jurisdiction to hear the suit irrespective of the place of immovable property, the learned Senior Counsel for Appellant placed reliance upon AIR 1985 Madras 1 (Bank of Madurai Ltd. v. Balaramadass and brothers and others). In Bank of Madurai case, since all the Defendants were residing within the territorial jurisdiction of Madras High Court, the Division Bench took the view that Original Side of High Court has jurisdiction to entertain the suit irrespective of the place of immovable property. 15. Learned Senior Counsel for Appellant also placed reliance upon 1988(2)L.W. 308 (A. Giridhar and another v. A. Suresh and others). The said suit was filed for partition of immovable properties comprising of houses in Madras city and agricultural lands in Chengalpattu District. Since the house property was situated in Madras city, the Division Bench held that High Court can take cognizance of such suits even though part of land or immovable property situated within such limits and part outside the limits, if leave has been first obtained, a suit for such land or immovable property can be entertained by the High Court in its ordinary original civil jurisdiction. By a close reading of the above said decision, we are of the view that the above decisions are of no assistance to the case of Appellant, since one of the item i.e. "B" schedule property situate at Nellore, Andhra Pradesh is out side the jurisdiction of Madras High Court and the suit being one for Permanent Injunction - "suit for land". Therefore, the principles laid down in Thamiraparani case alone is applicable to the case on hand. 16. In Paragraph 5 of the plaint, Plaintiff averred that Defendants are trying to disturb his corporal possession of suit properties and threatening him to vacate the premises and on those averments, he laid the suit for permanent injunction. All the Defendants are residing in Hyderabad, State of Andhra Pradesh. Since "B" schedule property is situated outside Madras High Court and the suit for permanent injunction being "suit for land" and that all the Defendants are also residing outside the jurisdiction of Madras High Court, the learned single Judge has rightly revoked the leave granted in respect of "B"

schedule property and vacated the interim injunction in respect of "B" schedule property. We do not find any illegality warranting interference with the order of learned single Judge and as such both the appeals are liable to be dismissed. 17. For the foregoing reasons, both the appeals are dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs. O.S.As. Dismissed - M.Ps. Closed - No Costs.