

**(1989) 07 MAD CK 0028**

**In the Madras High Court**

**Case No :** A. No 1818, 1819 and 2043, 480 of 1987 and 980 of 1988/C.S. No. 237 of 1986

M/s. Ram Bahadur Thakur (P) Ltd.

APPELLANT

Vs

A. Velliangiri and 3 others <BR>A. Velliangiri Vs Travancore  
Tea Estate Company Ltd. and 3 others

RESPONDENT

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**Date of Decision :** 26-07-1989

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2, 10, 47  
Specific Relief Act, 1963 — Section 22, 22(2), 28, 28(3), 28(4)  
Transfer of Property Act, 1882 — Section 52, 55  
Trusts Act, 1882 — Section 91

**Citation :** (1989) 07 MAD CK 0028

**Hon'ble Judges :** Srinivasan, J

**Bench :** Single Bench

**Advocate :** V. Nataraj, B.G. Giridhar Rao and S.R. Raghavan, for the Appellant;  
King and Partridge, R. Mohan, T.K. Sadagopan, for the Respondent

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**Judgement**

Srinivasan, J.—Application No. 1818 of 1987 : This application has been filed by the fourth defendant in the suit for revoking the leave granted to file the suit in this Court in Appl. No. 1324 of 1986 by the order dated 24-3-86. The suit is one for specific performance of an agreement dated 15-8-1973 between the first defendant and the plaintiff. The agreement contained certain conditions. It is not necessary to refer to them in detail. Suffice it to say that the plaintiff filed a suit O.S.No. 459 of 1975 on the file of the City Civil Court, Madras, against defendants 1 to 3 for a decree for mandatory injunction directing the defendants to perform one of the conditions found in the agreement. That suit was later transferred to this Court by virtue of an order passed in a Civil Revision Petition by this Court and the same is now pending on the file of this Court as C.S.No.116 of 1975. In the present suit, the prayer is for a decree for specific performance against defendants 1 and 4 directing them to execute a sale deed in favour of the plaintiff transferring and conveying the property described in the Schedule to the plaint and for directing the defendants, especially the fourth defendant to deliver

vacant possession of the suit property to the plaintiff. The fourth defendant is a subsequent purchaser from the first defendant having purchased the property under a sale deed dated 17-9-1976. This suit was presented on 6-1-1986 and leave to institute the suit was granted on 24-3-1986. The application for leave to file the suit was filed on the ground that the fourth defendant is residing and carrying on business outside the jurisdiction of this Court and apart of the cause of action has arisen within the jurisdiction of this Court, This application for revocation of leave has been filed by the fourth defendant on the ground that the suit is one for land, within the meaning Cl. 12 of the Letters Patent and, therefore, as the land is not situated within the local limits of this Court, this Court has no jurisdiction to entertain the suit. This application is opposed by the plaintiff. Before referring to the relevant authorities cited on both sides, it is necessary to have a look at the terms of Cl.12 of the Letters Patent, which reads as follows:--

And 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; or if the defendant at the time of the commencement of the suit shall dwell or carry on business or personally work for gain, within such limits; except that the said High Court shall not have such, original jurisdiction in cases falling within the jurisdiction of the Small Cause at Madras, in which the debt or damage, or value of the property sued for does not exceed one hundred rupees.

There are three parts in the Clause. The first part relates to suits for land or other immovable property. The second part relates to suits in which the cause of action has arisen, either wholly or partly, within the jurisdiction of this Court. The third part relates to suits in which the defendant at the time of the commencement of the suit dwells or carries on business or personally works for gain, within the limits of this Court. This Clause came up for consideration before a Division Bench of this Court in Bank of Madurai Ltd. Vs. Balaramadass and Brothers and Others, . The Bench took the view that the Clause must be rewritten as follows in order to understand the same quickly and easily:--

1. If, in the case of suits for and or other immovable property such land or property shall be situated.

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.

2. Or, in all other cases, if the cause of action shall have arisen.

3. Or, if the defendant at the time of commencement of the suit shall dwell or carry on business, or personally work for gain.

within such limits.

According to the Bench, if the suit is one for land or other immovable property, then it can be instituted in this Court if the property, either wholly or partly is situated within the local limits of the ordinary original jurisdiction of this Court, and in cases where the property is partly situated within the limits of this Court, leave of the Court should be obtained first. The second part of the Clause, according to the Bench, deals with all other cases if the cause of action has arisen either wholly or partly within the jurisdiction of the local limits of this Court. Again, in cases where the cause of action has arisen partly within the limits of this Court, leave of this Court should be obtained first. According to the Bench, the third part of the Clause relates to cases where the defendant at the time of the commencement of the suit shall dwell or carry on business or personally work for gain within the limits of this Court. Ultimately the Bench has taken the view that in cases which fall under the last part of the Clause, it is not necessary to decide whether it is a suit for land or whether it is a suit which will fall under the second part of the Clause. The Bench has held that in a case where the defendants in a suit either reside or carry on business or personally work for gain within the local limits of the ordinary original jurisdiction of this Court, the suit can be instituted in this Court, even if it is a suit for land situated beyond its local limits.

2. In this case admittedly the fourth defendant is not residing or carrying on business or personally working for gain within the local limits of the jurisdiction of this Court. Hence, this suit will not fall under the last part of Cl. 12 of the Letters Patent. The question is whether it falls under the first part of Cl. 12 of the Letters Patent. If so it has to be held that this Court has no jurisdiction as admittedly the property to which this suit relates is situated outside the original jurisdiction of this Court. The second part of the Clause can come into play only if the suit does not fall under the first part. In other words, if it is not a suit for land, then it will fall under the second part of the clause and the question then will be whether part of the cause of action has arisen within the jurisdiction of this Court. Hence, it has to be decided now whether this suit is a suit for land or not.

3. The expression "suit for land for immovable property" has been defined in P. Ramanatha Aiyar's Law Lexicon, Reprint Edition 1987, at page 1235 as follows:--

The words "Suit for land other immovable property" in Cl.12. Letters Patent, 1865, mean a suit for the purpose of acquiring possession of, or establishing a title to, or a right in, land or other immovable property.

Reference given therein is to the judgment in *Nalumlakshmikanthan v. Krishnaswamy* ILR 27 Madras 157 and *Sundararaj v. Thirumal Rao* 3 I.C. 930= ILR 33 Mad 131. A reference is also made to *Srinivasa Murthy v. Venkata Varada*

Ayyangar 38 I.A. 129= ILR 34 Mad 257, which is a decision of the Privy Council. It is stated further in the Law Lexicon that "the expression "suit for land" must be construed as an action, the primary object of which is to establish claims regarding the title to property or possession of property and no suit can be described as a "suit for land" as the result of the decision in which the title to, or possession of, immovable property will not in any manner or measure be directly affected". Again it is stated that "The phrase Suit for land" in Cl. 12 of the Letters Patent, is by no means limited to a suit for the recovery of land; the expression is not to be read with a technical limitation, which never had been associated with it. Where the leading purpose of a suit is to establish a title to possession of land situate outside the local limits of the jurisdiction of the Court and to secure that possession from molestation, and the claim is based not on any contract, trust or fraud or any circumstance giving rise to privity between the parties but is brought to vindicate rights resulting from ownership and possession alleged to be with the plaintiffs, the suit is a suit for land within the meaning of the clause.

4. In Krishnadoss Vittaldoss Vs. Ghanshamdoss and Others, , a Division Bench of This Court held that the expression "suit for land" must be construed as an action, the primary object of which is to establish claims regarding the title to property or possession of property and no suit can be described as a "suit for land" as the result of the decision in which the title to, or possession of, immovable property will not in any manner or measure be directly effected. The Division Bench comprised of Coutts-Trotter, C.J., and Srinivasan Iyengar, J.

5. In Khatun Bibi v. Lilabati Dasi ILR 1945 I Cal. 47, Das, J. defined the expression "suit for land" in clause 12 of the Letters Patent as "a suit for recovery of land". He held that its meaning cannot be extended to include "a suit in which, having regard to the issues raised in they pleadings, the decree or order will affect directly the proprietary or possessory title to land i.e., a suit in which the substantial question is the right to land" or "a suit relating to or concerning land". In that case, that was a suit for specific performance and for possession. The learned Judge held that possession having been sought as one of the reliefs in the suit, it was a suit for land and consequently the Court did not have jurisdiction to entertain the same as the land was situated outside the limits of its jurisdiction. The relevant observation of the learned Judge is as follows :--

On a review of the decisions of the different High Courts in suits for specific performance and on a construction of the expression "suit for land" in Cl. 12 I have come to the conclusion that in its true meaning that expression only covers a suit for recovery of land and a suit for specific performance simpliciter, whether brought by the vendor or by the purchaser, is not a "suit for land" so understood. As I have explained above there is in legal principle, no distinction between a vendor's suit and a purchaser's suit.

The above conclusion, however, does not dispose of the case before me. I have already referred to para. 5 of the plaint. The formal prayer, in my opinion, must be regarded as a compendious formula covering all that has been claimed in para

5 of the plaint. The agreement itself provides for the purchaser taking possession of the lands. In this view of the matter, this suit is not a suit for specific performance simpliciter, but it is also a suit for possession of the lands which are outside the jurisdiction of this Court. In so far as it is a suit for possession it is a "suit for land" according to the meaning put on that expression and, therefore, this Court has no jurisdiction to entertain this suit. I therefore answer the issue No.1 in the negative.

It is to be noted that this judgment was cited by learned counsel for the plaintiff himself in support of one of his contentions.

6. In *Messrs. Moolji Jaitha and Co. v. The Khandesh Spinning and Weaving Mills Co., Ltd.* AIR 1950 FC 83, each of the five Judges, who constituted the Bench, defined the expression "suit for land" as follows:--

(i) According to Kania, C.J., "in order to see whether a suit is covered by the expression "suit for land" in Cl.12, 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.

(ii) According to Fasl Ali, J., the expression "suit for land" covers the following three classes of suits: (1) suits for the determination of title to land; (2) suits for possession of land; and (3) other suits in which the reliefs claimed, if granted, would directly affect title to or possession of land.

(iii) Patanjali Sastri, J. defined the term as covering claims for recovery of possession or control of land, and that they are apt to connote also suits which primarily and substantially seek an adjudication upon title to immovable property or a determination of any right or interest therein.

(iv) Mahajan, J. observed as follows:--"Where the nature of the suit is such that in substance it involves a controversy about land or immovable property and the Court is called upon to decide conflicting claims to such property and a decree or order is prayed for which will bring about a change in the title to it, that suit can be said to be in respect of land or immovable property; but where incidentally in a suit, the main purpose of which the primary object of which is quite different, some relief has to be given about land, the title to it not being in dispute in the real sense of the term, then such a suit cannot fall within the four corners of this expression.

(v) B.K. Mukherjea, J. observed that the words "suit for land" mean a suit for 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.

7. Thus, it is seen that all the Judges who constituted the Bench in the Federal Court are unanimous on this aspect of the matter that if a relief is sought in the suit for recovery of possession, then it will be a "suit for land". In the present

case, the second prayer is for recovery of possession. That is sufficient to hold that this is a "suit for land".

8. The matter can be looked at from another angle also. The fourth defendant has been impleaded in the suit as a subsequent purchaser from the first defendant. The fourth defendant has already got a sale deed from the first defendant and thus the title to the property has vested in the fourth defendant. No doubt, by virtue of the provisions of the Specific Relief Act it will be subject to the claim which is made by the plaintiff in the suit. If the plaintiff is able to establish the conditions required by the provisions of Specific Relief Act, he will be certainly entitled to a decree against the fourth defendant also; but the position of the fourth defendant is that of a transferee in whom title has already vested and that title should pass on to the plaintiff on his success in the suit. This position has been considered by the Supreme Court in *Lala Durga Prasad and Another Vs. Lala Deep Chand and Others*, While considering the form of a decree to be passed in suits for specific performance, where there is a subsequent purchaser, the Supreme Court has observed as follows :--

First, we reach the position that the title to the property has validly passed from the vendor and resides in the subsequent transferee. The sale to him is not void but only voidable at the option of the earlier "contractor". As the title no longer rests in the vendor, it would be illogical from a conveyancing point of view to compel him to convey to the plaintiff unless steps are taken to re-vest the title in him either by cancellation of the subsequent sale or by reconveyance from the subsequent purchaser to him. We do not know of any case in which a reconveyance to the vendor was ordered but Sulaiman C.J. adopted the other course in- *Kali Charan Singh and Another Vs. Janak Deo Singh and Others* ), He directed cancellation of the subsequent sale and conveyance to the plaintiff by the vendor in accordance with the contract of sale of which the plaintiff sought specific performance. But though this sounds logical the objection to it is that it might bring in its train complications between the vendor and the subsequent purchaser. There may be covenants in the deed between them which it would be inequitable to disturb by cancellation of their deed. Accordingly, we do not think that is a desirable solution.

(41) We are not enamoured of the next alternative either, namely conveyance by the subsequent purchaser alone to the plaintiff. It is true that it would have the effect of vesting the title to the property in the plaintiff but it might be inequitable to compel the subsequent transferee to enter into terms and covenants in the vendor's agreement with the plaintiff to which he would never have agreed had he been a free agent; and if the original contract is varied by altering or omitting such items the court will be remaking the contract, a thing it has no power to do; and in any case it will no longer be specifically enforcing the original contract but another and different one.

(42) In our opinion, the proper form of decree is to direct specific performance of the contract between the vendor and the plaintiff and direct the subsequent

transferee to join in the conveyance so as to pass on the title which resides in him to the plaintiff. He does not join in any special covenants made between the plaintiff and his vendor; all he does is to pass on his title to the plaintiff. This was the course followed by the Calcutta High Court in--" Kafiladdin and Others Vs. Samiraddin and Others, , and appears to be the English practice. See *Pry on Specific Performance*, 6th Edn. page 90, paragraph 207; also--*Potter v. Sanders* (1846) 67 ER 1057(D), We direct accordingly.

Hence, there is no difficulty in holding that this suit involves the question of title to the property, in as much as the fourth defendant has got a title vested in him and that is sought to be dislodged by the plaintiff on the strength of the contract between him and the first defendant. If the defendant succeeds in the suit, the title of the fourth defendant will have to be conveyed to the plaintiff and the fourth defendant will lose his title. Hence, it has to be held that this suit falls very much within the definition of suit for land" as given by the Judges of the Federal Court in the decision referred to above.

9. There is yet another aspect of the matter which has to be referred to at this stage. Under the Specific Relief Act, 1963, S.22 provides for the power of the Court to grant relief for possession, partition, refund of earnest money, etc. Under that section, any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for possession, or partition and separate possession of the property, in addition to such performance or any other relief, sub-S.(2) of S.22 of that Act prevents any Court from granting the relief under sub-section (1) unless it has been specifically claimed. If the plaintiff does not claim the relief of possession, then the Court is not entitled to grant the same in a suit for specific performance. The proviso to sub-section (2) of S.22 of the Act makes it clear that even if the plaintiff has not claimed any such relief at the initial stage, the Court shall allow him at any stage of the proceeding to amend the plaint on such terms as may be just for including a claim for such relief. This shows that unless the relief mentioned in sub-clauses (a) and (b) of sub-section (1) of S.22 of that Act are expressly prayed for, the Court will not be in a position to grant the same. But, the amendment of the plaint can be allowed at any stage of the proceeding for including any such relief, even at the stage of execution. Under S. 28(3) of that Act, if the purchaser in a suit for specific performance, pays the money ordered by the Court under the decree within the period specified therein, the Court may on the application made in the same suit award the purchaser such further relief as he may be entitled to, including in appropriate cases all or any of the reliefs set out therein viz., the execution of a proper conveyance by the vendor and delivery of possession or partition and separate possession of the property on the execution of such conveyance. Reading Ss.22(2) and 28(3) of that Act; it is clear that without an amendment of the plaint and including a prayer for possession or partition or separate possession, the plaintiff in a suit for specific performance will not be entitled to recover possession of the property by merely executing the decree for specific performance simpliciter. Sub-S.(4) of S.28 of that Act bars any

separate suit in respect of any such relief which may be claimed under the Section, either at the instance of the vendor or the purchaser. This statutory position was recognised even before the Act of 1963 came into force in some decisions in which it was held that the relief of possession is inherent in a suit for specific performance and that no separate Court fee need be paid on the same. Vide *Sundara Ramanujam Naidu v. Sivalingam Pillai* and another XLV MLJ 431 and *Dhiraj Bala Karia Vs. Jethia Estate Pvt. Ltd.*, .

10. The Supreme Court had occasion to consider the provisions of Ss.22 and 28 of the Specific Relief Act, 1963, in *Babu Lal Vs. Hazari Lal Kishori Lal and Others*, . In that case, an agreement was entered into for sale of certain plots of land. Some amount was paid as earnest money. The sale deed was agreed to be executed within fifteen days of the agreement. But, a sale deed was executed in favour of another person in respect of the same property in defiance of the earlier agreement. A suit for specific performance of contract was filed. The trial Court dismissed the suit, but on appeal the Additional District Judge decreed the suit. In Second Appeal, the High Court confirmed the judgment and decree of the first appellate Court with a lights modification inasmuch as the High Court directed the purchaser and the vendors to execute the sale deed in favour of the agreement holders. The decree holders applied for execution of decree. An objection was filed by the subsequent purchaser under S.47 of the Code of Civil Procedure. The High Court modified the order of the Courts below in those proceedings to the effect that the decree-holders shall be entitled to possession also. That order of the High Court was challenged before the Supreme Court in a Special Leave Petition. It was contended that the High Court had no jurisdiction to grant the relief of possession in execution proceedings. The Supreme Court held that the High Court was right in granting the relief and there was no fault with the High Court judgment and consequently the application for special leave was dismissed. The Supreme Court pointed out that S.22 of the Specific Relief Act enacts only a rule of pleading and it provided that a person in a suit for specific performance of a contract for the transfer of immovable property, may ask for appropriate reliefs, such as possession and others. It was also held that the only purpose of the newly enacted provision is to avoid multiplicity of suits and that the plaintiff may get appropriate relief without being hampered by procedural complications. 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 plaint 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.

11. Learned counsel for the applicant drew my attention to S.52 of the Transfer of Property Act which relates to transfers pendente lite. He placed reliance on the language of the Section, the relevant portion of which is in the following terms :--



During the pendency in any Court having authority. . .of any suit or proceeding which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

This section has been held to apply to suits for specific performance on the footing that a right to immovable property is directly in question in such a suit. Vide *Vedachari v. Narasimha Mudali and others* XLV M.L.J. 825 and *Gouvi Dutt Maharaj v. Sheikh Sukur Mohammed* 1948 2 M.L.J. 79 (P.C.). Hence, it has to be held that a suit for specific performance, even if there is no express prayer for possession of the property, will be a suit for land if it relates to immovable property.

12. Reliance is placed by learned counsel for the plaintiff on the decision in *P.M.A. Velliappa Chettiar and another v. Saha Govinda Dass and four others* ILR Lii Mad. 809. That is a decision of a Full Bench of five Judges of this Court. The Court held that a suit for specific performance simpliciter is not a "suit for land". On the fact of this case, the ruling does not apply. In that case *Ramesan, J.* who discussed the matter elaborately held that in a suit for specific performance, the decree is primarily addressed to the defendant; that is, the Court acts in personam--which a Court of Equity is always entitled to do. He observed that "though the land may be described in the conveyance, it is not going to be touched even in the execution of the decree as in the case of a decree for sale on a mortgage, nor does any issue as to the title to the land arise in such a suit. On that reasoning, the learned Judge held that a suit for specific performance simpliciter is not a suit for land. In the case before the Full Bench, the suit was filed by the agreement holder against the original owners of the property, subsequent mortgagees, and subsequent purchasers of the properties with notice of the agreement in favour of the plaintiff. The third defendant was a mortgagee with notice and defendants 4 to 6 were impleaded as subsequent purchasers with notice of the agreement. None of the Judges who were parties to the Full Bench thought it fit to define a "suit for land". On the other hand, they proceeded to distinguish the earlier cases which were falling under Cl. 12 of the Letters Patent on the ground that some of them did not relate to suits for specific performance. With regard to suit for specific performance, the Full Bench did not go into the controversy and decide expressly as to why some of the earlier decisions were not accepted by them, even though they had taken the view that suits for specific performance were suits for land. The ultimate decision of the Full Bench was based on the reasoning that a suit for special performance is an action in personam. *Mackay, J.* has observed as follows:--

A suit for specific performance is a suit in personam; a suit for land is an action in rem. They are toto coelo apart; they belong to different jurisdictions which are now no doubt fused. The object of clause 12 of the Letters Patent is to bar the

ordinary original civil jurisdiction of the High Court as to actions in rem, when the land is situate outside Madras; it does not bar the jurisdiction as to suits in personam. The word for which has occasioned all the difficulty is the same in each case, but a suit for specific performance, is not merely in its history but in its nature, distinct from a suit for land. That the present suit is concerned with the passing of title to land is a mere accident.

The same learned Judge observed earlier that the purchaser having obtained his conveyance has, if he finds it necessary, to litigate, whether it be as to title or as to possession, in the local Court of competent jurisdiction, and in that case, in the Court in the District of Chittoor, in which the land was situate. Obviously, the learned Judge was of the opinion that a second suit for possession was maintainable after a decree was passed in the suit for specific performance in favour of the plaintiff directing the defendant to execute a conveyance in his favour. It was on the basis that the relief sought was only for an execution of a conveyance, which was directed as against the person of the defendant which will not in any way concern the land directly the learned Judge held that it was not a suit for land and that a separate suit for possession was maintainable. That position has changed after the 1963 Act came into force. I have already referred to the provisions of S. 28(4) as well as S.22(2) of the Specific Relief Act, 1963. After the Act has come into force, there cannot be a separate suit for possession. Hence, the basis on which the Full Bench decided the matter does not exist.

13. Apart from that, I have also referred to the decision of the Supreme Court in Lala Durga Prasad and Another Vs. Lala Deep Chand and Others, , wherein it was held that the subsequent purchaser gets a title vested in him on his purchase and he should be directed to convey the title in favour of the plaintiff in a suit for specific performance. In the Full Bench case also, defendants 4 to 6 subsequent purchasers and their title was in question in that suit. Hence, the reasoning of the Full Bench that the suit was only an action in personam can no longer be held to be good in view of the decision of the Supreme Court in Lala Durga Prasad and Another Vs. Lala Deep Chand and Others,

14. "In action in personam" is defined in P. Ramanatha Aiyar's Law Lexicon as an action which seeks the recovery of a personal judgment. At page 565, the following passage is found:--

An action in personam is distinct from a personal action, both in the sense in which that term is used in the maxim "actio personalis moritur cum persona", and in its sense at common law, which was an action to recover personal property or to enforce a contractor recover damages for its breach or to recover damages for a tort.

A "personal action" has been defined at page 24 as follows:--

"Personal Action". Actions in personam were those brought for the specific recovery of goods, or for damages or other redress for breach of contract and other injuries of every description, excepting only the specific recovery of title or

possession of lands, tenements, and hereditaments.

"An action in rem" is defined in the said Law Lexicon at page 566 in the following terms:--

"In rem". Against the King; against the property, not against a person.

This term is derived from the Roman law, but is not used in English law in precisely the same sense as in that law. Indeed, Bracton, limits proceedings in rem to actions to obtain possession of res by which he understood real actions;

A proceeding in rem is a proceeding instituted against a thing, and not against a person.

A proceeding in rem, in a strict sense, is one taken directly against property, and has for its object the disposition of the property, without reference to the title of individual claimants but in a larger and more general sense the term "proceeding in rem" is applied to actions between parties where the direct object is to reach and dispose of property owned by them, or of some interest therein.

If this definition is applied, this suit will undoubtedly be a "suit for land".

15. The plaintiff put forward three contentions. The first is that the application for revocation of leave is not maintainable. According to him, the fourth defendant cannot file an application for revocation of leave when the first defendant has not come forward with such an application. With the best efforts on my part, I could not understand what exactly the contention was. According to learned counsel for the plaintiff, the fourth defendant being a subsequent purchaser, stands only a step behind the first defendant and he cannot initiate any proceeding by himself for revoking the leave already granted. Learned counsel submitted that the fourth defendant will be a sort of trustee of the first defendant by virtue of S.91 of the Trusts Act, and the first defendant was the only party who entered into the contract with the plaintiff, and, therefore, if the suit is sought to be dislodged on the ground of want of jurisdiction, it should be done only at the instance of the first defendant and not the fourth defendant. I cannot agree with this contention. The fourth defendant is undoubtedly a necessary party to the suit. Both prayers 1 and 2 in the plaint are directed against him. It is well settled in law that a subsequent purchaser is a necessary party in a suit for specific performance based on an agreement. Vide *Chinna Vanan v. Alamelu and others* 88 L.W. 767 = 1975 I M.L.J. 263. As the fourth defendant has been impleaded as a necessary party and prayers are directed against him in the plaint, it is certainly open to him as a defendant in the suit to question the jurisdiction of this Court. He can certainly file an application for revocation of leave. There is no substance in the contention that the application for revocation of leave is not maintainable at the instance of the fourth defendant.

16. The second contention urged by learned counsel for the plaintiff is that the relief of specific performance is an equitable relief and the Courts act in personam to enforce the contract as against the first defendant, who is a party to

the contract and, therefore, this is not a suit for land I have already discussed elaborately as to how the present suit is a "suit for land" within the meaning of Clause 12 of the Letters Patent. There is no need for repeating the same once again. However, I should advert to the rulings relied on by learned counsel for the plaintiff and consider the applicability of the same to the present case.

17. In S.S. Rajabathar Vs. N.A. Sayeed, the question was whether the executing Court could, while executing the decree for specific performance of a contract of sale, direct delivery of possession in the absence of specific direction to that effect in the decree. Ismail, J. held that it was possible for the executing Court to direct delivery of possession without any direction to that effect in the decree, as the relief of possession is incidental to the execution of the conveyance in favour of the decree-holder. The following passage in the said judgment is relied on by learned counsel for the plaintiff :--

15. The same view was reiterated by another Bench of that court i Subodh Kumar Banerjee Vs. Hiramoni Dasi and Others, The learned Judges held--

Thus unless there is a contract to the contrary, giving delivery of possession to the buyer by the seller is an incident of a contract for sale and when there is a decree directing the contract to be specifically performed it includes a direction upon the vendor to give delivery of possession to the purchasers.

The same view was taken by the High Court of Madhya Pradesh in Dadulal Hanumanlala Vs. Smt. Deo Kunwar Bai, . The learned Judge held in that case--

Under S.55 of the Transfer of Property Act the rights and liabilities of buyer and seller, in the absence of a contract to the contrary, have been enumerated and, as the contract in question (Ex.P-1) is silent and there being nothing to the contrary as to the delivery of possession, it has to be held that the vendor-defendants had contracted with the plaintiff-vendee to deliver possession to him over the property after execution of the sale deed in his favour. It was a part of the entire contract and had come into existence simultaneously with that part under which the sale deed was to be executed. The result, therefore, was that when the plaintiff went to the court claiming specific performance of the contract (Ex.P-1) and was declared to be so entitled, the defendant-judgment-debtors would be deemed to have been held also correspondingly liable not only to convey the property but also to place the plaintiff-decree-holder in possession thereof on being so required by him.

18. The learned Judge has further pointed out that when the judgment debtor refuses to execute the conveyance and the court executes the conveyance, the court is substituted for the judgment-debtor and by virtue of that substitution, the court is entitled to direct the judgment-debtor to put the decree-holder in possession of the property. The learned Judge went on to state :--

Since under the Transfer of Property Act the right to ask for possession and right to obtain the same is implicit in the contract to transfer the property then the

decree-holder automatically gets that right to demand possession from the party conveying the property and that party in such a situation being only the court, which had replaced the judgment-debtor and which had to act, therefore, on his behalf as his statutory agent, it necessarily became liable to perform that part of the contract relating to delivery of possession also. What the court did was nothing but obeying the decree recognising the contract including performance of such further acts and things as would be found requisite to give full effect to the same.

With respect to the learned Judge, I have my own doubts about the correctness of the dictum as the provisions of S.22(2) and 28(3) and (4) of the Specific Relief Act, 1963, have not been adverted to by the learned Judge in that judgment. However, it is not necessary for me to delve into that subject as in my view, the decision has no application to the facts of the present case. The question whether a suit for specific performance is a suit for land, or not did not arise before the learned Judge. He was only concerned with the question whether the property could be directed to be delivered by the executing Court even in the absence of a direction in the decree passed by the trial Court for specific performance. Hence, the ruling has no application in this case.

19. Learned counsel for the plaintiff places considerable reliance on the observations of the Supreme Court in Babu Lal Vs. Hazari Lal Kishori Lal and Others, to which I have already made a reference, pertaining to S. 22 and 28 of the Specific Relief Act. Learned counsel submits that the Supreme Court has held that S.22 enacts only a rule of pleading and the purpose of Ss. 22 and 28 of the Act is only to avoid multiplicity of proceedings. According to learned counsel, the logical consequence of the judgment of the Supreme Court is that a suit for specific performance is an action in personam even if the relief of possession is prayed for by the plaintiff in the plaint. According to him, the nature of the suit is not in any way altered by the prayer for possession in the plaint. I do not agree with learned counsel. The decision of the Supreme Court does not have any such effect. The Supreme Court has not held that the rule prescribed in sub-S.(2) of S.22 and sub-S.(3) and (4) of S.28 of the Specific Relief Act can be ignored.

20. Learned counsel invited my attention to the decision of a Division Bench in Debendra Nath Chowdhury Vs. Southern Bank Ltd., , in which it was held that a suit where the plaintiff claims a decree for specific performance only, directing the defendant to execute and register a lease with alternative claims for damages is not a suit for land within the meaning of clause 12 of the Letters Patent. The Division Bench also held that the cause of action in a suit for specific performance of a contract to execute a document of transfer is not a cause of action for possession of land, and possession only is consequential and the right to the same arises by virtue of the execution of the document of transfer and not before. According to the Bench, O.2, R.2, of the CPC is not attracted to the suit for specific performance and there can be a further suit recovery of possession in respect of the land for which a decree for specific performance is granted. The

case arose under the earlier Specific Relief Act, 1877 and after the passing of the 1963 Act, the position has changed. The reasoning of the Division Bench in that case has no application to the facts of the present case.

21. The third contention urged by learned counsel for the plaintiff is that the jurisdiction of this court is very wide and under Clause 19 of the Letters Patent, this Court is entitled to exercise equitable jurisdiction. Clause 19 of the Letters Patent reads as follows:--

And We do further ordain that, with respect to the law or equity to be applied to each case coming before the said High Court of Judicature at Madras, in the exercise of its Ordinary Original Civil Jurisdiction, such law or equity shall be the law or equity which would have been applied by the said High Court to such case if these Letters Patent had not issued.

The language of Clause 19 of the Letters Patent is very significant. Under the Clause, the law or equity to be applied in each case coming before this Court in exercise of its ordinary original civil jurisdiction shall be the law or equity which would have been applied by this Court to such a case if these Letters Patent had not issued. This does not mean that the Court will have equitable jurisdiction over matters which have been excluded expressly from its jurisdiction by the other Clauses of the Letters Patent. Under Clause 12 of the Letters Patent with respect to suits for land, or immovable property, this Court will have jurisdiction only if such land or property is situated within the jurisdiction of this Court wholly or in case where the property is partly situated within the jurisdiction of this Court, the leave of the Court has been obtained. Clause 19 of the Letters Patent cannot override Cl. 12. Cl. 19 of the Letters Patent provides for the law or equity to be applied to cases which come within the jurisdiction of this Court under Cl. 12 of the Letters Patent. Hence, this contention cannot be accepted.

22. Learned counsel relied upon the observation of Shanmukham, J. in State Industries Promotion Corporation of Tamil Nadu Ltd., Sipcot Vs. Arvind Distillery and Chemicals Ltd., Madras and Others, . The learned Judge has taken the view that Kania, C.J. in Moolji Jatta and Co. v. Khandesh and Weaving Mills Co. Ltd. AIR 1950 P.C. 83 , had ruled that Cl.19 of the Letters Patent permits the Court to apply the equitable principles of English Law on the original Side of the High Court in spite of Cl.12 of the Letters Patent. With respect to the learned Judge, I do not agree. In my view, Kania, C.J. did not intend to lay down a proposition that Cl.19 of the Letters Patent would confer a jurisdiction on this Court with reference to suits which do not fall within Cl.12 of the Letters Patent. After referring to the judgment of Kania, C.J. the learned Judge observed as follows:--

In this case the suit is not for recovery of possession, nor is the question of the title to the land involved even indirectly.

The learned Judge has recognised the position that if a suit is one for recovery of possession of immovable property, then it will be a suit for land. Hence, the decision of Shaumukham, J. for from helping the plaintiff is really against him.

23. Learned counsel for the plaintiff submitted that the decision of the Division Bench in *S. Vijayalakshmi and Others Vs. M.G. Ganesa Iyer (died) and Others*, also recognised the equitable jurisdiction of this Court in Cl.19 of the Letters Patent. I do not find any reference whatever to Cl.19 of the Letters Patent in the judgment of the Division Bench. I have already referred to the said judgment earlier. The ruling in that case does not apply to the facts of the present case.

24. Lastly, learned counsel for the plaintiff submitted that the balance of convenience in this case is in favour of the plaintiff and the principle, of forum convenient would apply and that the application for revocation of leave should be dismissed on that ground. I have already held that if the suit falls under the first part of Cl.12 of the Letters Patent, then leave has to be revoked because the land in question is situated outside the jurisdiction of this Court. It is only in cases which fall under the second part of the Clause, the question of balance of convenience will arise. If a suit is not a "suit for land", then the second part of Cl.12 of the Letters Patent will have to be invoked and in that case, if the cause of action shall have arisen in part within the local limits of the ordinary original civil jurisdiction of the Court, the question of balance of convenience will have to be considered and the Court will decide in such cases whether the suit should be allowed to be instituted in that Court or not. In the case of a suit for land, the question of balance of convenience does not arise at all. In fact, I told learned counsel for the plaintiff that if the question of balance of convenience is relevant in this case, I would certainly hold that the balance of convenience is in favour of the plaintiff in this case. But, that question does not arise in this case, since this is a case of "suit for land" and this comes only under part 1 of Cl.12 of the Letters Patent.

25. Consequently, it has to be held that this Court has no jurisdiction to try the suit by virtue of Cl.12 of the Letters Patent and the leave granted already has to be revoked. Hence, Application No.1818 is ordered. The leave granted by order dated 24-3-1986 in Application No. 1324 of 1986 is revoked and the office is directed to return the plaint to the plaintiff.

26. Application No. 2043 of 1986 and 977 of 1988 : These two applications are filed by the plaintiff for interlocutory reliefs of injunction and appointment of receiver. As I have revoked the leave granted for institution of the suit in this Court, the applications are not sustainable and both the applications are dismissed.

27. Application No. 480 of 1981 : This application is filed by the first defendant for stay of the suit till the disposal of C.S. 116 of 1975 under S.10 of the Code of Civil Procedure. As I have revoked the leave granted for the institution of the suit and directed the return of the plaint, there is no question of stay of the proceedings. Hence, that application is dismissed. Application No. 1819 of 1987: This is filed by the fourth defendant for rejection of the plaint on the ground that it is barred by limitation. There is no necessity to consider the question as I have rejected the leave granted for institution of the suit. The question whether the

suit is barred by limitation can be considered only if the suit is filed in this Court. Now that, I have directed return of the plaint that question does not arise. Hence, the application is dismissed.