

(2009) 08 GUJ CK 0044
In the Gujarat High Court

Case No : Appeal from Order No. 172 of 2009 with Civil Application No. 5388 of 2009 in Appeal from Order No. 172 of 2009

M/s. Tec Papers Pvt. Ltd.

APPELLANT

Vs

Ahmedabad Municipal Corporation and Another

RESPONDENT

Date of Decision : 27-08-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1, Order 7 Rule 10, 16, 16, 16(d)

Citation : (2009) 3 GLH 511

Hon'ble Judges : M. R. Shah, J

Bench : Single Bench

Advocate : D.P. Kinariwala, for the Appellant; R.M. Chhaya for Respondent No. 1 and Mr. Sanjay A. Mehta, for the Respondent

Final Decision : Allowed

Judgement

M.R. Shah, J.—The present Appeal from Order under Order 43 Rule 1 of the CPC has been preferred by the. appellant herein - original plaintiff to quash and set aside the impugned order dated 07/ 04/2009 passed by learned Chamber Judge, Court No.23. City Civil Court, Ahmedabad below Exh-20 in Civil Suit No.2433 of 2008, by which, learned Chamber Judge has allowed the said application submitted by respondent No.2 herein - original defendant No.2 (hereinafter referred to as original defendant No.2) under Order 7 Rule 10 of the Code of Civil Procedure, by which, the learned Chamber Judge has returned the plaint of Civil Suit No.2433 of 2008 to the appellant herein - original plaintiff for presenting it before the appropriate Court having jurisdiction. The appellant herein- original plaintiff has instituted Civil Suit No.2433 of 2008 in the City Civil Court, Ahmedabad, against respondents herein-original defendants for declaration and permanent injunction. Original plaintiff has prayed for the following reliefs against defendant Nos.1 and 2 :-

(A) Be pleased to declare that the action of the present defendant No.1 in not taking into consideration a notice of the present plaintiff dated 31-7-2008 and

inaction on their part thereof, is totally against the provisions of law and the defendant No.1 has failed in complying with its statutory obligation cast upon it.

(B) Be pleased to direct the defendant No. 1 to take appropriate action against the present defendant No.2.

(C) Be pleased to restrain the present defendant No.2 from carrying out the alteration/development work being carried out in the building known as Orchid Plaza, Nr.Pride Hotel, Judges" Bungalow Road, Bodakdev, Ahmedabad. And further to restrain the defendant No.2 from interfering with the right of plaintiff of using his right as per the allotment deed executed in favour of the plaintiff.

(D) Be pleased to direct the defendant No.2 to remove the iron bridges, which are likely to affect the life of the persons occupying the building namely Orchid Plaza, Near Pride Hotel, Judges" Bungalow Road, Bodakdev, Ahmedabad.

(E) Be pleased to restrain the present defendant No.2 or its servants, agents of any person for carrying out the alteration/ development work in the building known as Orchid Plaza. Nr.Pride Hotel, Judges" Bungalow Road, Bodakdev, Ahmedabad, without obtaining prior permission from the defendant No.1."

2. It appears that the appellant herein -original plaintiff had instituted the Civil Suit praying for declaration, directing defendant No. 1 - Ahmedabad Municipal Corporation to take appropriate action against defendant No.2 for carrying out the illegal construction and alteration/ development work being carried out in the building known as Orchid Plaza, Nr.Pride Hotel, Judges" Bungalow Road, Bodakdev, Ahmedabad. According to defendant No.2, suit was pertaining to immovable property situated outside the territorial jurisdiction of the City Civil Court, Ahmedabad, the suit was required to be transferred to the Court having territorial jurisdiction where the immovable property is situated and, therefore, the suit before the City Civil Court, Ahmedabad was not to be proceeded further and the plaint was required to be returned to the original plaintiff. Therefore, defendant No.2 submitted application Exh-20 under Order 7 Rule 10 of the CPC to return the plaint to the original plaintiff for presenting it before the Court having territorial jurisdiction where the immovable property is situated. That the said application was opposed by the original plaintiff by submitting that at least so far as prayers in terms of Para 16 (A) and 16(B) are concerned, the City Civil Court, Ahmedabad would have territorial jurisdiction and, therefore, relying upon Section 20 of the Code of Civil Procedure, it was requested to dismiss the said application. That the learned Chamber Judge by impugned order allowed the application Exh-20 submitted by original defendant No.2 under Order 7 Rule 10 of the CPC by holding that the immovable property is situated outside the territorial jurisdiction of the City Civil Court, Ahmedabad and, therefore, the City Civil Court, Ahmedabad would not have territorial jurisdiction and thereby returned the plaint to the original plaintiff to present it before the appropriate Court having territorial jurisdiction.

3. Being aggrieved and dissatisfied with the impugned order dated 7th April,2009

passed by the City Civil Court, Ahmedabad in Civil Suit No.2433 of 2008 in returning the plaint to the plaintiff, the appellant herein - original plaintiff has preferred the present Appeal from Order under Order 43 Rule 1 of the Code of Civil Procedure.

4. Mr.D.P. Kinariwala, learned Advocate appearing on behalf of the appellant herein - original plaintiff has vehemently submitted that the learned Chamber Judge has committed an error in allowing the application Exh-20 and in returning the plaint to the original plaintiff. It is submitted that considering the prayer in terms of Para 16(A) and 16(B), which were against original defendant No.1 - Ahmedabad Municipal Corporation, learned Chamber Judge ought to have held considering the fact that the office of defendant No.1 is situated within the territorial jurisdiction of the City Civil Court, Ahmedabad and, therefore, for the relief in terms of para 16(A) and 16(B). the City Civil Court, Ahmedabad would have territorial jurisdiction. Learned Chamber Judge has committed an error in returning the entire plaint as a whole to the original plaintiff. It is further submitted that considering Section 16(d) read with Section 20 of the CPC for the aforesaid relief in terms of para 16(A) and 16(B), the City Civil Court, Ahmedabad would have territorial jurisdiction.

5. Mr. Kinariwala, learned Advocate appearing on behalf of original plaintiff has fairly conceded that so far as prayer in terms of para 16(C) onwards is concerned, which are against defendant No.2, as immovable property is situated outside the territorial jurisdiction of the City Civil Court, Ahmedabad and, therefore, the City Civil Court, Ahmedabad would not have territorial jurisdiction. However, he has submitted that in that case also, the entire plaint as a whole is not required to be returned to the original plaintiff and for the relief prayed for in terms of para 16(A) and 16(B), for which, the City Civil Court, Ahmedabad would have territorial jurisdiction, the Suit is required to be retained and is required to be proceeded further. It is further submitted that ultimately the Court may dismiss the suit for the reliefs, for which, the Court has no territorial jurisdiction but as for the part, the Court would have territorial jurisdiction, the Court is required to be proceeded further with the Suit.

6. Mr. Kinariwala, learned Advocate appearing on behalf of the appellant has heavily relied upon the decision of the Delhi High Court in the case of State Bank of India Vs. Sanjeev Malik and others, in support of his submission.

Relying upon the aforesaid judgement, it is submitted that as held by Delhi High Court when part of causes of action falling within the jurisdiction of the Court wherein the plaint is filed and part outside, in that case, the entire plaint cannot be returned. It is submitted that in such a situation i.e. where a plaint is filed in a Court having no jurisdiction to try different causes of action, and the Court decided that it can deal with only one of the causes of action set out in the plaint, then it should retain the plaint and strike out from the plaint that part which it holds is beyond its jurisdiction and then the plaintiff can file another suit in the proper Court as to that cause of action so struck off. The entire plaint

cannot be returned if the Court has jurisdiction in regard to a part.

7. Appeal from Order is opposed by Mr.Sanjay A. Mehta, learned Advocate appearing on behalf of respondent No.2 -original defendant No.2. It is submitted that the original plaintiff has instituted the Suit praying for declaration, directing defendant No.1 - Ahmedabad Municipal Corporation to take appropriate action against defendant No.2 for carrying out the illegal construction and alteration/development work being carried out in the building known as Orchid Plaza, Nr.Pride Hotel, Bodakdev, Ahmedabad, which is admittedly outside the territorial jurisdiction of the City Civil Court, Ahmedabad and, therefore, considering Section 16 read with Section 20 of the Code of Civil Procedure, the learned Chamber Judge has rightly held that the City Civil Court, Ahmedabad would not have territorial jurisdiction and the learned Judge has rightly returned the plaint to the original plaintiff for presenting it before the appropriate Court having territorial jurisdiction where the immovable property is situate. It is submitted that in the facts and circumstances of the case and reliefs claimed in the suit, learned Trial Court has not committed any error in allowing the application Exh-20. It is further submitted by Mr.Mehta, learned Advocate appearing on behalf of original defendant No.2 that relying upon Section 16 read with Section 20 of the Code of Civil Procedure, for any relief with respect to immovable property, the suit is to be filed in the Court having territorial jurisdiction where the immovable property is situate.

8. Mr.Sanjay Mehta, learned Advocate appearing on behalf of respondent No.2 has relied upon the following decisions in support of his prayer to dismiss the present Appeal from Order and in support of his submission that for the reliefs, which are prayed for in the suit, the City Civil Court, Ahmedabad has no jurisdiction at all:

- (i) Harshad Chiman Lal Modi Vs. DLF Universal and Another,
- (ii) The New Mofussil Co. Ltd. Vs. Shankerlal Narayandas Mundade,
- (iii) The decision of this Court in the case of Damjibhai Laljibhai Patel v. Government of India & others reported in 2008 (0) GLHEL-HC 220331
- (iv) Unreported decision dated 18th February,2008 of this Court in the case of Gujarat Industrial Development Corporation v. J. B. International & Export & another rendered in Civil Revision Application No.43 of 2007.

By making above submissions and relying upon the above decisions, it is requested to dismiss the present Appeal from order.

9. Heard learned Advocates appearing on behalf of the respective parties. The suit in question has been instituted by the appellant herein - original plaintiff for the reliefs as stated herein above. Considering the above, the suit in question can be bifurcated into two parts. Some prayers are against defendant No.1 - Ahmedabad Municipal Corporation [Para 16(A) and 16(B)] and rest of the prayers are against defendant No.2 restraining the defendant No. 2 from carrying out

alteration/ development work being carried out in the building known as Orchid Plaza, Nr.Pride Hotel. Bodakdev, Ahmedabad. It is an admitted position that so far as original defendant No. 1 - Ahmedabad Municipal Corporation is concerned, it is having its office at Sardar Patel Bhavan, Danapith, Ahmedabad. It is an admitted position that the said office is situated within the territorial jurisdiction of the City Civil Court, Ahmedabad. It is also an admitted position that so far as defendant No.2 is concerned, defendant No.2 is having the office outside the territorial jurisdiction of the City Civil Court. Ahmedabad. It is also not in dispute that the immovable property, for which, the reliefs sought, is situated outside the territorial jurisdiction of the City Civil Court, Ahmedabad. Therefore, the question posed for the consideration of this Court is as to whether for the reliefs sought in the suit referred hereinabove, the City Civil Court, Ahmedabad would have territorial jurisdiction or not. Another question, which is posed for consideration of this Court is as to in a case where it is found that for part reliefs, the City Civil Court, Ahmedabad have territorial jurisdiction," the entire plaint is to be returned to the original plaintiff or for such a reliefs, the suit is required to be proceeded further before the City Civil Court, Ahmedabad or not.

For the consideration of above two questions, Section 16 and Section 20 of the Code of Civil Procedure, are required to be considered, which are as under :

"16. Suits to be instituted where subject-matter situate. - Subject to the pecuniary or other limitations prescribed by any law. suits. -

- (a) for the recovery of immovable property, with or without rent of profits,
 - (b) for the partition of immovable property,
 - (c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property,
 - (d) for the determination of any other right to or interest in immovable property,
 - (e) for compensation for wrong to immovable property,
 - (f) for the recovery of movable property actually under distraint or attachment,
- shall be instituted in the Court within the local limits of whose jurisdiction the property is situate:

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

20. Other Suits to be instituted where defendants reside or cause of action arises - Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises."

As per Section 16 of the Code of Civil Procedure, Suit for the determination of any other right to or interest in immovable property, suit is required to be instituted in the Court within the local limits of whose jurisdiction the property is situate. As per Section 20 of the Code of Civil Procedure, subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction, the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or the cause of action, wholly or in part arises. It cannot be disputed that what is provided in Section 20 is subject to what is provided in Sections 16 to 19 of the Code of Civil Procedure. Therefore, irrespective of what is provided in Section 20 of the Code of Civil Procedure, the suit for determination of any other right or interest in the immovable property is to be instituted in the Court within the jurisdiction where the immovable property is situate. However, there is an exception to the above. As per proviso of Section 16 Suit for compensation for wrong to, immovable property held by or on behalf of the defendant may. where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain. As held by Hon"ble Supreme Court in the catena of decisions. Section 20 of the CPC can be said to be residuary provision and subject to what is provided in Section 16 of the Code of Civil Procedure. On conjoint reading of Section 16 with Section 20 of the CPC and considering the reliefs sought in terms of para 16(A) and (B), which is against defendant No. 1 - Ahmedabad Municipal Corporation only, it cannot be said that for such reliefs/prayers, which is basically against defendant No.1 - Ahmedabad Municipal Corporation, the suit before City Civil Court, Ahmedabad is not maintainable and learned City Civil Court would not have any territorial jurisdiction. Admittedly, Ahmedabad Municipal Corporation is having its office and carries on business within the territorial jurisdiction of the City Civil Court, Ahmedabad and, therefore, as per the opinion of this Court, for the reliefs sought in terms of para 16(A) and 16(B), which is against defendant No. 1 Ahmedabad Municipal Corporation only, might be with

respect to immovable property situated outside the territorial jurisdiction of the learned City Civil Court, the Suit would be maintainable. As stated herein above in terms of para 16(A) and (B), the reliefs are sought against defendant No. 1 only, which is having its office and carries on business within the territorial jurisdiction of the City Civil Court, Ahmedabad. Under the circumstance with respect to prayers in terms of para 16(A) and 16(B) in the suit, it is prima facie to be held that the City Civil Court, Ahmedabad would have territorial jurisdiction/ jurisdiction and consequently the impugned order passed by the learned Trial Court to that extent is required to be quashed and set aside.

10. Now, the question posed for consideration of this Court is as to whether the plaint as a whole is required to be returned to the plaintiff as prayed for by defendant No.2 or not. As held by this Court in the case of *Gulabchand Makanji Vs. Motapondha Vibhag Tenants' Co-operative, Agricultural Society Ltd.*, in a case where part of the plaint is triable by a Trial Court, if the plaintiff does not file two separate plaints but files only one plaint, the plaintiff should be asked to amend the plaint so as to make it wholly triable by the Trial Court by deleting the portion of the plaint which is triable by another Court and if such an amendment is made, the plaint would be triable by the Trial Court. But if the plaintiff does not do so, then the whole plaint will have to be rejected, as a plaint which is not wholly triable by the Civil Court. In the case before the learned Single Judge it was sought to be contended on behalf of the defendant that the Civil Court has no jurisdiction to entertain the suit which is triable wholly by a revenue Court. It was sought to be contended on behalf of the plaintiff that in the alternative in the plaint it was stated that the plaintiff was claiming the amount also by way of compensation and therefore, to that extent Trial Court would have jurisdiction and considering above, the learned Single Judge has held as above by further observing that procedure of returning the plaint to be presented in another Court is applicable only when the whole suit is triable by another Court.

11. Identical question came to be considered by the Division Bench of the Calcutta High Court in the case of *Smt. Sheela Adhikari v. Rabindra Nath Adikari*, reported in AIR 1998 CAL 273 and it is held by the Division Bench in the said decision that where some of the causes of action united in the plaint are arising within the territorial jurisdiction of the Court where the suit has been filed, while other causes of action joined therein are not triable by it for want of such jurisdiction, neither the suit can be dismissed as a whole nor the plaint can be returned as a whole, for the plaintiff has a right to a judgment on such causes of action as are otherwise cognizable by that Court. It is further observed by the Division Bench that the Court can call upon the plaintiff to amend his plaint by striking out all such causes of action as are beyond its jurisdiction and then proceed with the plaint in respect of the remaining causes of action which are within its jurisdiction. It is further held by the Calcutta High Court that if the plaintiff does not amend the plaint, the Court has to proceed to judgment with the plaint as it stands unamended on all such causes of action as are within its cognizable and to dismiss the suit in respect of the causes of action outside its

jurisdiction. Even this Court is also of the opinion that such is the correct procedure to be adopted.

12. In the case of Sandeep Polymers Pvt. Ltd. Vs. Bajaj Auto Ltd. and Others, , the Hon"ble Supreme Court has held and observed that in a case where suit is filed on various causes of action and it is found that for the some causes of action, the Court in which suit is filed has no jurisdiction, in that case, amendment of the original plaint was enough and return or rejection of the original plaint was not necessary and therefore, fresh suit could be filed in the correct Court in respect of the causes of action for which the original Court did not have jurisdiction. Under the circumstances, the prayer of the defendant No. 2 to return the plaint as a whole cannot be accepted as for reliefs prayed in terms of para 16(A) and 16(B) against defendant No.1, the suit before City Civil Court would be maintainable and the Court has to follow the procedure as stated hereinabove.

13. As held by Delhi High Court in the case of State Bank of India Vs. Sanjeev Malik and others, , where a plaint is filed in a Court having no jurisdiction to try different causes of action, and the Court decided that it can deal with only one of the causes of action set out in the plaint, then it should retain the plaint and strike out from the plaint that part which it holds is beyond its jurisdiction and then the plaintiff can file another suit in the proper Court as to that cause of action so struck off. The entire plaint cannot be returned if the Court has jurisdiction in regard to a part.

14. For the reasons stated hereinabove, the present Appeal from Order succeeds and the impugned order dated 07/04/2009 passed by learned Chamber Judge, Court No.23, City Civil Court, Ahmedabad below Exh-20 in Civil Suit No.2433 of 2008 is hereby quashed and set aside with above observations and findings with respect to prayers in terms of para 16(A) and 16(B) and prayers in terms of paras 16(C) to 16(E). The present Appeal from Order is allowed to the aforesaid extent. Now, the Trial Court has to proceed further with the Suit with respect to the prayers in terms of para 16(A) and 16(B) inclusive of Notice of Motion taken out by original plaintiff. In view of disposal of the Appeal from Order, no order in the Civil Application and the Civil Application is also accordingly disposed of.