

(2005) 12 MAD CK 0069

Madras High Court

Case No: O.S.A. No. 317 of 2005

Thamiraparani Investments Pvt.
Ltd.

APPELLANT

Vs

Meta Films Pvt. Ltd.

RESPONDENT

Date of Decision: Dec. 21, 2005

Citation: (2006) 1 MLJ 357

Hon'ble Judges: A.P. Shah, C.J; M. Jaichandran, J

Bench: Division Bench

Advocate: T.V. Ramanujam for Menon and Goklaney, for the Appellant; M.S. Krishnan, Counsel for Sarvabhauman Associates, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

A.P. Shah, C.J.

The plaintiff in C.S. No. 630 of 2005 has filed this appeal aggrieved by the order dated 25.8.2005 made by the learned Single Judge in Application No. 3210 of 2005.

2. Application No. 3210 of 2005 was filed by the defendant to revoke the leave already granted on 20.7.2005 in Application No. 2916 of 2005 to the plaintiff to institute the suit. The learned Single Judge, by order dated 25.8.2005, allowed the Application No. 3210 of 2005 and revoked the leave granted by order dated 20.7.2005 made in Application No. 2916 of 2005.

3. Facts giving rise to this appeal, briefly stated, are as follows:

The plaintiff has filed the present suit for a judgment and decree of permanent injunction restraining the defendant, its men, agents, servants or anyone claiming through or under them from in any manner entering into the Schedule "A" property and disturbing the possession of the plaintiff and for a mandatory injunction directing the defendant, its men, agents, servants, or anyone to restrict their

activities to that of schedule "B" property and for costs of the suit. The suit has been filed on the following averments:

A Company by name M/s. Citrex Products Ltd., owned an extent of 30.8 acres of land in Thatchur and Peravallur Villages of Ponneri Taluk. The Plaintiff entered into an agreement with the company on 25.8.1995 for purchase of 25.8 acres of land out of 30.8 acres of land together with available superstructure for a total sale consideration of Rs. 30,00,000 and a sum of Rs. 1,000 was paid as advance on that date. As the company was unable to clear the debts, it requested the plaintiff for payment of further advance. Accordingly, a fresh agreement was entered on 2.6.1997, in pursuance of which the plaintiff paid a sum of Rs. 28,99,000 from and out of the total sale consideration of Rs. 30,00,000. On such payment, the Company handed over possession of the property to the plaintiff.

The defendant, in any by an agreement dated 12.3.1997 entered into with the company, agreed to purchase the remaining 5 acres of land out of 30.8 acres of land owned by the Company. On the strength of the said agreement, the defendant, though was entitled to possession of the said 5 acres of the land only, attempted to interfere with the remaining extent of land. Hence, the suit.

4. As the property is situate outside the jurisdiction of this Court, the plaintiff filed Application No. 2916 of 2005 for grant of leave on the ground that the agreement was entered into by the defendant only at Chennai. By an order dated 20.7.2005 the learned Single Judge granted leave based on the submission of the learned counsel for the plaintiff that a Division Bench of this Court in the judgment in [Bank of Madurai Ltd. Vs. Balaramadass and Brothers and Others](#), had held under similar circumstances that the leave could be granted. The defendant had taken out Application No. 3210 of 2005 to revoke the said leave and by the impugned order, the application has been allowed.

5. At the outset, it is required to be stated that the suit has not been filed by the Company which has entered into an agreement with the defendant for sale of the land. The suit has been filed on the basis that the plaintiff had entered into an agreement on 25.8.1995 with the company for purchase of an extent of 25.8 acres of land out of the total extent of 30.8 acres owned by the company and the defendant had entered into an agreement on 12.3.1997 for purchase of the remaining extent of 5 acres of land and on the strength of the said agreement, the defendant is attempting to interfere with the possession of the land held by the plaintiff.

6. Learned Senior Counsel appearing for the appellant/plaintiff fairly conceded that the agreement that was entered into between the defendant and the company cannot be a cause for the plaintiff to maintain the suit at Chennai, as admittedly, that agreement was not between the plaintiff and the defendant. Learned Senior Counsel, however, submitted that a suit for bare injunction cannot be said to be a suit pertaining to the land within the meaning of Clause 12 of the Letters Patent and

in any event, according to him, for the relief of injunction sought for by the plaintiff, the defendant's title or possession of the land is not likely to be affected and therefore, the suit cannot be said to be a suit for land.

7. The short question which falls for our consideration is whether the present suit is a suit for land.

8. In *Moolji Jaitha and Company v. The Khandesh Spining and Weaving Mills Company Ltd.* AIR 1950 F.C. 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 apt 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 Anr.* 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 part *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. Vs. Durga Iron Works and Others](#), 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".

11. The plaintiff has filed the present suit alleging that the defendant has encroached upon the land which has allegedly been sold by the defendant's sister concern Citrex Products Ltd. to the plaintiff. In fact, in paragraph 18 of the plaint, the plaintiff has stated as follows:

Since the defendant is attempting to encroach upon the "A" schedule property and action with the police has not brought about the desired result in view of the stand taken by the defendant, the plaintiff is left with no other alternative but to seek necessary relief from the Court.

12. Further, a reading of paragraph 20 of the plaint clearly shows that the allegation of the plaintiff is that since the defendant is encroaching upon the suit "A" schedule property which is beyond the territorial jurisdiction of this Court, the plaintiff has sought for a decree for permanent injunction. It is not disputed that the registered office of the defendant is at No. 157/1, G.N.T. Road, Chinnambedu Post, Kavarapet-601 206, Tiruvallur District, which is situated outside the jurisdiction of this Court and the defendant has no office within the jurisdiction of this Court. 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.

13. In the result, the appeal is dismissed. C.M.P. No. 20067 of 2005 is closed.

14. The master is directed to return the plaint to enable the plaintiff to present the same before the proper Court within four weeks.