

(2014) 12 CAL CK 0040

Calcutta High Court

Case No: APOT 556 of 2014, GA 3167 of 2014 and CS 186 of 2014

Eden Infrastructure Pvt. Ltd.

APPELLANT

Vs

Eden Realty Ventures Pvt. Ltd.

RESPONDENT

Date of Decision: Dec. 17, 2014

Acts Referred:

- Bihar Land Reforms Act, 1950 - Section 3

Citation: AIR 2015 Cal 18 : (2015) 5 CHN 207

Hon'ble Judges: Dr. Manjula Chellur, C.J; Arijit Banerjee, J

Bench: Division Bench

Advocate: Anirban Ray, Sourya Sadhan Bose and S.K. Chakraborty, Advocate for the Appellant; Jayanta Kr. Mitra, Surajit Nath Mitra, Sr. Advs., Debasish Kundu, Arya Dutta and I. Hossain, Advocate for the Respondent

Judgement

Arijit Banerjee, J.

This is an appeal against the judgment and order dated 27th August, 2014 passed by the Ld. First Court in GA No. 1673 of 2014 (CS No. 186 of 2014). By the impugned judgment and order the Ld. Judge returned the plaint of the suit on the ground that the suit was a suit for land and the land being admittedly situated outside the territorial jurisdiction of this Court, this Court does not have jurisdiction to entertain or try the suit. Relevant portion of the Ld. Judge's order is extracted below:

"The suit has been filed by the plaintiff for injunction in relation to immovable properties that are admittedly outside the jurisdiction of this Court. In deciding the prayers in the suit an adjudication has to be made to the right title and interest of the parties in respect of immovable properties that are admittedly situated outside the jurisdiction of this Court. Moreover, the relief, if granted in favour of the plaintiff, would be in relation to an immovable property which is admittedly situated outside the jurisdiction of this Court. Since the subject matter of the suit is situated outside the jurisdiction of this Court and is an immovable property, it is a suit for land and

accordingly, the plaint is returned to the plaintiff in order to enable the plaintiff to present the plaint before the appropriate court having jurisdiction upon furnishing a xerox copy of the plaint in the department concerned. The plaint is returned accordingly. This suit shall not be shown as pending before this Court. In view of the aforesaid the application being GA 1586 stands dismissed. This dismissal is only on the ground that the court has no jurisdiction. The plaintiff shall be entitled to seek similar reliefs before the appropriate forum on the self-same cause of action."

2. Being aggrieved the plaintiffs/appellants are before us.

Contention of the appellants:

3. Appearing on behalf of the appellants, Mr. Anirban Ray, Ld. Counsel, vehemently argued that the suit was not a suit for land. It was contended that a shareholder's agreement dated 16th October, 2007 was entered into by and between the parties for development of a project called Bonhooghly project. Since the respondent No. 1 was threatening to act in breach of the said agreement, the appellants had filed the suit to restrain the respondent No. 1 from acting in derogation of the said agreement. No relief was claimed in respect of the land on which the Bonhooghly project was proposed to be developed. Neither possession of the land was prayed for nor the subject-matter of the suit involved adjudication of right, title or interest in respect of such land. The relief sought was injunction in personam against the defendant No. 1 from taking any steps for implementation or development of the Bonhooghly project in violation of the agreement dated 16th October, 2007. In this connection, Ld. Counsel relied on a decision of the Hon'ble Supreme Court in the case of 971569-->. Reliance was placed on paragraph 15 of the said judgment which is set out hereunder:-

"From the above discussion it follows that a "suit for land" is a suit in which the relief claimed relates to title to or delivery of possession of land or immovable property. Whether a suit is a "suit for land" or not has to be determined on the averments in the plaint with reference to the reliefs claimed therein; where the relief relates to adjudication of title to land or immovable property or delivery of possession of the land or immovable property, it will be a "suit for land". We are in respectful agreement with the view expressed by Mahajan, J. in Moolji Jaitha case."

4. It was the further submission of Mr. Ray that the plaintiff No. 1 Company is in the nature of a partnership, the shares therein being held by the plaintiff No. 2 and the defendant No. 1. He submitted that the land on which the proposed Bonhooghly project is to come up belongs to the plaintiff No. 1 and if an immovable property comes to be owned by a partnership, it loses its character as an immovable property. As such, the question of the present suit being a suit for land does not arise. In this connection, Mr. Ray relied on a decision of the Apex Court in the case of [Addanki Narayanappa and Another Vs. Bhaskara Krishtappa and Others,](#)

Contention of the respondent:

5. Appearing on behalf of the respondent No. 1, Mr. Jayanta Kumar Mitra, Ld. Senior Counsel, strongly urged that on a meaningful reading of the plaint and the prayers thereof it would appear that the suit is nothing but a "suit for land" within the meaning of Clause 12 of the Letters Patent. Mr. Mitra drew our attention to the reliefs claimed in the plaint which are set out hereunder:-

"(a) Perpetual injunction restraining the defendants whether by themselves or by their agents and servants or otherwise howsoever from taking any steps for implementation or development of the Bonhooghly project in violation of the agreement dated 16th October, 2007 or causing the same to be done.

(b) Perpetual injunction restraining the defendant No. 1 whether by itself or otherwise howsoever from entering into any agreement or giving any effect or further effect to any agreement with the defendant Nos. 2 or otherwise for the purpose of implementation of the Bonhooghly project in any manner whatsoever.

(c) Perpetual injunction restraining the defendant No. 1 from in any manner acting contrary to the covenant contained in the agreement dated 16th October, 2007 as pleaded in paragraph 29 hereinabove."

6. Mr. Mitra further placed the shareholder's agreement in extenso and in particular laid emphasis on the prelude to the agreement as well as Clause 3 thereof. The prelude to the agreement states, *inter alia*, that the Government of West Bengal owns a free hold land measuring approximately 18 acres located in Bonhooghly, Calcutta and the plaintiff No. 1 has been incorporated primarily for the purpose of implementation of the Bonhooghly project and for engaging in all activities and transactions considered necessary in furtherance of such purpose. Clause 3 of the agreement reiterates that the purpose of the company (plaintiff No. 1) is primarily to develop and implement the Bonhooghly in accordance with the provisions of the said agreement.

7. Mr. Mitra drew our attention to paragraph 30 of the plaint wherein it has been averred, *inter alia*, that the said land and the right to develop the land is an asset of the plaintiff No. 1. In paragraph 34 of the plaint it has been stated, *inter alia*, that the defendants are invading the plaintiff's right to enjoyment of property and the invasion is such that any money would not afford adequate relief.

8. Relying on the aforesaid, Mr. Mitra contended that the reliefs claimed in the suit would involve adjudication of right, title and interest in respect of the land in question and as such the suit is a "suit for land".

9. In support of his contention Mr. Mitra relied on a decision in the case of Provas Chandra Sinha Vs. Ashutosh Mukherji and Others, . In that case Page, J. reiterated the test laid down by His Lordship in the earlier decision of Gocul Das-vs.-Chaganlal (infra). Mr. Mitra also relied on a decision in the case of Maharaja Probirendra Mohun Tagore Vs. State of Bihar and Another, . In the said case a Full Bench of this

court held that in considering whether a suit is a "suit for land" within the meaning of Clause 12 of the Letters Patent, the determining factor is the primary object of the suit. In that case, the Court held that on a consideration of the plaint as a whole it appeared that the primary object of the suit brought in this Court on its Original Side was to obtain a permanent injunction restraining the State of Bihar from giving effect to a notification issued under Section 3 of the Bihar Land Reforms Act on a declaration that the said notification did not in any way affect the right, title and interest of the plaintiff in the properties comprised in the notification. Relief sought being in respect of the land situated wholly outside the territorial limits of the State of West Bengal, the suit could not be tried by the High Court in the exercise of its Ordinary Original Civil Jurisdiction.

Court's View:-

10. Before we consider the submissions made before us by the parties, it would be helpful to briefly discuss as to what is the real meaning of the phrase "suit for land". In the case of [Krishnadoss Vittaldoss Vs. Ghanshamdoss and Others](#), a Division Bench of the Madras High Court held that the expression "suit for land" would mean an action, the primary object of which is to establish claims regarding 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 to be directly affected.

11. In the case of [Nepra Vs. Sajer Pramanik and Another](#), Page, J. held that the term "suit for land or other immovable property" is not limited to suits in which the plaintiffs seeks to recover possession of land or other immovable property but means suits in which, having regard to the issues raised in the pleadings the decree or order will affect directly the property or title to land or other immovable property.

12. In the well-known case of AIR 1950 83 (Federal Court), it was (Per Mahajan, J.) held 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 or 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."

13. From the aforesaid decisions it would appear that if adjudication of the issues involved in a suit necessarily involves adjudication of right, title and interest in respect of land or other immovable properties, the suit would be a "suit for land". The primary object of the suit has to be ascertained by reading the averments in the plaint in conjunction with the reliefs claimed therein.

14. In the instant case having carefully gone through the plaint, we are of the opinion that the primary object of the suit is to restrain the defendants from invading the alleged right of the plaintiff No. 1 in respect of the land situated at Bonhooghly. To allow such prayer the Court will have to come to at least a *prima facie* finding that the plaintiff No. 1 has right, title and interest in respect of the said land. In our opinion, the suit is a "suit for land" and the land being situated wholly outside the territorial jurisdiction of this Court, the suit cannot be entertained or tried by this Court.

15. As regards the submission made on behalf of the plaintiffs that the plaintiff No. 1 is a quasi-partnership and the land in question being owned by the plaintiff No. 1, the land loses its immovable character, we do not find any force in such submission. Firstly, the plaintiff No. 1 is a limited company registered under the Companies Act, 1956 and no ground has been made out for the Court to lift the corporate veil and hold that the plaintiff No. 1 is in the nature of a partnership. Secondly, and in any event, we are unable to accept the proposition that if an immovable property comes to be owned by a partnership, the property loses its immovable character. The Apex Court decision in the case of Addanki Narayanappa (*supra*) cited by the appellants does not lay down any such proposition of law.

16. We are, therefore, in agreement with the judgment and order of the Ld. Judge and find no ground to interfere therewith. We affirm the judgment and order of the Ld. Judge. The appeal, therefore, fails and is dismissed without, however, any order as to costs.

Dr. Manjula Chellur, C.J.

I agree.