(2019) 2 ALT 35 : (2019) 2 JLJ 346 : (2019) 37 LCD 626 : (2019) 2 MPJR 173 : (2019) 1 RCR(Civil) 985 : (2019) 2 Scale 620 : (2019) 2 Supreme 225 : (2019) 1 WLN 216 : (2019) 2 AWC 1646 : (2019) SCR 1 : (2019) 2 JT 295 : (2019) 2 Scale 620 : (2019) 1 ACJ 42

Supreme Court Of India

Case No: Civil Appeal No. 1052 Of 2019

Shivnarayan (D) By Lrs		APPELLANT
	Vs	
Maniklal (D)Thr. Lrs. & Ors		RESPONDENT

Date of Decision: Feb. 6, 2019

Acts Referred:
Code of Civil Procedure, 1908 â€" Section 15, 16, 16(b), 16(c), 17, 18, 19, 20, 22, 39, 39(1)(c), Order 2 Rule 2, Order 2 Rule 2(1), Order 2 Rule 3, Order 6 Rule 16#General Clauses Act, 1897 â€" Section 13

Citation: (2019) 2 ALT 35 : (2019) 2 JLJ 346 : (2019) 37 LCD 626 : (2019) 2 MPJR 173 : (2019) 1 RCR(Civil) 985 : (2019) 2 Scale 620 : (2019) 2 Supreme 225 : (2019) 1 WLN 216 : (2019) 2 AWC 1646 : (2019) SCR 1 : (2019) 2 JT 295 : (2019) 2 Scale 620 : (2019) 1 ACJ 42

Hon'ble Judges: Ashok Bhushan, J; K.M. Joseph, J

Bench: Division Bench

Advocate: Vinay Navare, Gwen Karthika, Abha R. Sharma, Neha Sharma

Final Decision: Dismissed

Judgement

Ã¢â‚¬Å“Kaluram Bairulal Vaidya (Since Deceased dt. 15/08/1969) effect:-1.A),,,,

Shankarlal (20/04/98)

(Plaintiff) (Deceased)",,Maniklal (Dft. No.1),Babulal (Deceased),Shivnarayan (4/11/75)

Leelbai

Def. No.2","Sushilaben

Def. No.3",,"Vimal (25.11.2007) (Wife

of Deceased)Ã¢â‚¬â€‹",

action for the Mumbai property took place in Indore. In the application, following reliefs has been prayed for by the defendant Nos. 7 and 8:-",,,,

Ã¢â‚¬Å“(a) All the pleadings and the relief clauses relating to the property situate at Mumbai may kindly be ordered to be struck off from the plaint, in",,,,

exercise of powers conferred on this HonÃ¢â‚¬â„¢ble Court under Order 6 Rule 16 of the Civil Procedure Code, and as a consequence the suit against the",,,,

defendants No.7 and 8 may kindly be dismissed with costs for the answering defendants; while the Suit relating to the Indore property may be,,,,

continued if otherwise round maintainable under the law;,,,,

OR in the alternative,",,,,

An order may kindly be passed declining to entertain the part of the suit relating to the property in Mumbai with costs for the answering defendants;,,,,

and,,,,

(b) Such other order may kindly be passed as may be deemed appropriate in the circumstances of the case.Ã¢â‚¬â€‹,,,,

2.5 The trial court after hearing the parties on the application dated 19.03.2011 filed by the defendant Nos. 8 and 9 passed an order dated 17.08.2011,,,,

allowed the application. An order was passed deleting the property mentioned In Para No. 1B of the plaint and the relief sought with regard to the said,,,,

property. The trial court held that separate cause of actions cannot be combined in a single suit.,,,,

2.6 Aggrieved by the order of the trial court, a writ petition was filed in the High Court, which too has been dismissed by the High Court vide its order",,,,

dated 13.11.2013 affirming the order of the trial court. High Court referring to Section 17 of the Civil Procedure Code, 1908 held that for property",,,,

situated at Mumbai, the trial court committed no error in allowing the application filed by defendant Nos. 7 and 8. The plaintiff-appellant aggrieved by",,,,

the order of the High court has come up in this appeal.,,,,

3. We have heard Shri Vinay Navare for the appellant. Shri Chinmoy Khaladkar has appeared for respondent Nos. 7 and 8.,,,,

4. Learned counsel for the appellant submits that High Court did not correctly interpret Section 17 of the Code of Civil Procedure. The partition suit,,,,

filed by the appellant with regard to Mumbai and Indore properties was fully maintainable. He submits that Order II Rule 2 of CPC mandates that the,,,,

plaintiff must include the whole claim in respect of a cause of action in the suit. The cause of action claimed by the plaintiff was denial of the,,,,

plaintiffÃ¢â‚¬â„¢s right to share in the Joint Family Property. Restrictive interpretation of Section 17 will do violence to the mandate of Order II Rule 2.,,,,

Section 39(1)(c) of the CPC itself contemplate that there can be a decree of an immovable property, which is situated outside the local limits of the",,,,

jurisdiction. The words Ã¢â‚¬Å“immovable propertyÃ¢â‚¬Ã¢â‚¬â„¢ used in Section 17 is to be interpreted by applying Section 13 of the General Clauses Act. It,,,,

provides that in all Central Acts and Regulations, unless the context and subject otherwise requires, Ã¢â‚¬Å“any singular term shall include pluralÃ¢â‚¬. In",,,,

event, it is accepted that with regard to separate properties situated in different jurisdictions, separate suits have to be filed that shall result in",,,,

conflicting findings of different Courts and shall involve the principles of res judicata.,,,,

5. Learned counsel appearing for defendant Nos. 8 and 9 refuting the submissions of learned counsel for the appellant contends that no error has been,,,,

committed by trial court in deleting the property at Para No.1B in the plaint as well as pleadings and reliefs with regard to said property. It is submitted,,,,

that Section 17 of the CPC contemplate filing of a suit with respect to immovable property situated in jurisdiction of different courts only when any,,,,

portion of the property is situated in the jurisdiction of a Court, where suit has to be filed. The word Ã¢â‚¬Å“any portion of the propertyÃ¢â‚¬ indicate that",,,,

property has to be one whose different portions may be situated in jurisdiction of two or more Courts. He further submits that there is no common,,,,

cause of action with regard to property situate at Indore and property situate at Mumbai. Transfer deed with regard to Indore Property as well as,,,,

transfer deeds of Mumbai property are different. The purchasers of both the properties, i.e. Indore property and Mumbai property are also different.",,,,

According to pleadings in the plaint itself, the Mumbai property was purchased by Babulal, the husband of Smt. Vimla Vaidya in his own name, which",,,,

after death of Babulal in the year 1975 was mutated in the name of Smt. Vimla Vaidya. The plaintiff has sought to club different cause of actions in,,,,

one suit. There is mis-joinder of the parties also in the suit since the defendants pertaining to different transactions have been impleaded in one suit,,,,

whereas there is no nexus with the properties, transactions and persons. Learned counsel for the defendant Nos. 8 and 9 submits that by order of",,,,

Court of Civil Judge (Senior Division), Pune, the property is already mutated in the year 1975 in the name of Smt. Vimla Vaidya after death of her",,,,

husband, which was rightfully transferred by her to defendant Nos. 8 and 9 on 15.10.2007. It is submitted that the Court at Indore might proceed with",,,,

the property at Indore with the defendants, who are related to Indore property but suit pertaining to Mumbai property, transactions relating thereto and",,,,

defendants relating to Mumbai property have rightly been struck off from the case.,,,,

6. Before we consider the submissions of the learned counsel for the parties, relevant provisions pertaining to place of suing as contained in Code of",,,,

Civil Procedure needs to be noted. Section 15 to Section 20 contains a heading Ã¢â‚¬Å“place of suingÃ¢â‚¬. Section 16 provides that Suits to be instituted,,,,

where subject-matter situate. Section 16 is as follows:-,,,,

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 or 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.,,,,

Explanation.Ã¢â‚¬" In this section Ã¢â‚¬Å“propertyÃ¢â‚¬â€‹ means property situate in India.,,,,

7. Section 17, which falls for consideration in the present case, deals with suits for immovable property situate within jurisdiction of different courts is",,,,

as follows:-,,,,

17. Suits for immovable property situate within jurisdiction of different Courts.-- Where a suit is to obtain relief respecting, or compensation for wrong",,,,

to, immovable property situate within the jurisdiction of different Court, the suit may be instituted in any Court within the local limits of whose",,,,

jurisdiction any portion of the property is situate :,,,,

Provided that, in respect of the value of the subject matter of the suit, the entire claim is cognizable by such Court.",,,,

8. We need to notice the Scheme under Code of Civil Procedure as delineated by Sections 16 and 17. Section 16 provides that suit shall be instituted in,,,,

the Court within the local limits of whose jurisdiction the property is situated. Section 16(b) mentions Ã¢â‚¬Å“for the partition of immovable propertyÃ¢â‚¬â€‹.,,,,

9. Now, we look into Section 17, which deals with suits for immovable property situated within jurisdiction of different Courts. As per Section 17, the",,,,

suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situated. What is the meaning of the word,,,,

Ã¢â‚¬Å“any portion of the propertyÃ¢â‚¬? There may be a fact situation where immovable property is a big chunk of land, which falls into territorial",,,,

jurisdiction of two courts in which fact situation in Court in whose jurisdiction any portion of property is situated can entertain the suit. Whether,,,,

Section 17 applies only when a composite property spread in jurisdiction of two Courts or Section 17 contemplate any wider situation. One of the,,,,

submissions of the learned counsel for the appellant is that the word Ã¢â‚¬Å“propertyÃ¢â‚¬ as occurring in Section 17 shall also include the plural as per,,,,

Section 13 of General Clauses Act, 1897. Section 13 of the General Clauses Act provides:-",,,,

13. Gender and number.-In all Central Acts and Regulations, unless there is anything repugnant in the subject or context.-",,,,

(1) Words importing the masculine gender shall be taken to include females; and,,,,

(2) words in the singular shall include the plural, and vice versa.",,,,

10. Applying Section 13 of General Clauses Act, the Bombay High Court explaining the word Ã¢â‚¬Å“propertyÃ¢â‚¬ used in Section 17 held that it includes",,,,

properties. We are also of the same view that the word Ã¢â‚¬Å“propertyÃ¢â‚¬â€‹ used in Section 17 can be more than one property or properties.,,,,

11. The word Ã¢â‚¬Å“propertyÃ¢â‚¬ under Section 17 of the Civil Procedure code may also be properties, hence, in a schedule of plaint, more than one",,,,

property can be included. Section 17 can be applied in event there are several properties, one or more of which may be located in different jurisdiction",,,,

of courts. The word Ã¢â‚¬Å“portion of the propertyÃ¢â‚¬ occurring in Section 17 has to be understood in context of more than one property also, meaning",,,,

thereby one property out of a lot of several properties can be treated as portion of the property as occurring in Section 17. Thus, interpretation of word",,,,

Ã¢â‚¬Å“portion of the propertyÃ¢â‚¬ cannot only be understood in a limited and restrictive sense of being portion of one property situated in jurisdiction of two,,,,

courts.,,,,

12. We now look into the decisions of various Courts in reference to Section 17 of Civil Procedure Code. How the word Ã¢â‚¬Å“propertyÃ¢â‚¬ and,,,,

Ã¢â‚¬Å“portion of the propertyÃ¢â‚¬ occurring in Section 17 has been understood by different High Courts. There are few decisions of the Privy Council also,,,,

where Section 17 of the Civil Procedure Code came for consideration. In Nilkanth Balwant Natu and Others Vs. Vidya Narasinh Bharathi Swami and,,,,

Others, AIR 1930 PC 188, Privy Council had occasion to consider Section 17 of Civil Procedure Code. The properties in respect of which relief was",,,,

sought by the plaintiff were situated in Satara, Belgaum and Kolhapur. Although Satara and Belgaum were situated in British India but Kolhapur was",,,,

not. The Privy Council after noticing the provision of Sections 17 and 16(c) laid down following:-,,,,

Ã¢â‚¬Å“The learned Judge had jurisdiction to try the suit so far as it related to the mortgaged properties situate in Satara; and, inasmuch as the mortgaged",,,,

properties in Belgaum are within the jurisdiction of a different Court in British India, he had jurisdiction to deal with those properties also.Ã¢â‚¬â€‹",,,,

13. The Privy Council, thus, held that Satara Court had jurisdiction to entertain suit with regard to property situated at Satara and Belgaum whereas it",,,,

has no jurisdiction to entertain suit pertaining to Kolhapur, which was not in the British India. In another case of Privy Council, Nrisingha Charan",,,,

Nandy Choudhry Vs. Rajniti Prasad Singh and Others, AIR 1936 PC 189, mortgage lands were in the Sonthal Parganas, State of Bihar and also in the",,,,

Gaya district of State of Bihar. In Paragraph 9, following was laid down:-",,,,

Ã¢â‚¬Å“9. Now, the mortgage deeds include, as already stated, lands situated, not only in the Sonthal Parganas, but also in the Gaya District. What is the",,,,

ordinary rule for determining the court which can take cognizance of a suit for immovable property situated within the local limits of two or more,,,,

tribunals? The answer is furnished by Section 17 of the Code of Civil Procedure (Act V. of 1908), which provides that where a suit is to obtain relief",,,,

respecting immovable property situate within the jurisdiction of different courts, the suit may be instituted in any court within the local limits of whose",,,,

jurisdiction any portion of the property is situate.Ã¢â‚¬â€‹,,,,

14. Different High Courts have also while interpreting Section 17 of Civil Procedure Code laid down that Section 17 is applicable in case where,,,,

properties are situated in the jurisdiction of more than one court. In Rajendra Kumar Bose Vs. Brojendra Kumar Bose, AIR 1923 Calcutta 501, the",,,,

Division Bench of the Calcutta High Court noticed following:-,,,,

Ã¢â‚¬Å“Exceptions to the rule that a suit cannot lie for partition of a portion of the family property have been recognised when different portions of the,,,,

family property are situated in different jurisdictions, aid separate suits for separate portions have sometimes been allowed, where different rules of",,,,

substantive or adjective law prevail in the differed Courts; Hari v. Ganpat Rao, (1883) 7 Bom. 272; Ramacharia v. Anantacharia, (1894) 18 Bom. 389;",,,,

Moti Ram v. Kanhaya Lal, AIR 1920 Lah. 474; Panchanon v. Sib Chandra, (1887) 14 Cal. 835; Balaram v. Ram Chandra, (1898) 22 Bom. 922;",,,,

Abdul v. Badruddin, (1905) 28 Mad. 216; Padmani v. Jagadamba, (1871) 6 B.L.R. 134; Rammohan v. Mulchand, (1906)28 All. 39; Lachmana v.",,,,

Terimul, 4 Mad. Jur. 241; Subba v. Rama, (1866-67) 3 Mad. H.C.R. 376; Jayaram v. Atmaram, (1879) 4 Bom. 482;Ã¢â‚¬â€‹",,,,

15. A Full Bench of Allahabad High Court in Kubra Jan Vs. Ram Bali and Others, (1908) ILR 30 All. 560 had occasion to consider suit, which was",,,,

filed at Bareilly with regard to Bareilly property as well as Bara Banki property situated in two different districts. The jurisdiction at Bareilly Court,,,,

was upheld in Paragraph Nos. 1 and 8, in which it was laid down as follows:-",,,,

Ã¢â‚¬Å“1. This appeal has been laid before a Full Bench by reason of a conflict in the authorities upon a question raised in the appeal. The suit is one by,,,,

the daughter of one Bande Ali to recover from her brother Akbar Husain and a number of other defendants, transferees from him, her share in the",,,,

property of her deceased father. This property is situate in the district of Bareilly and also in the district of Bara Banki in Oudh. It appears that Akbar,,,,

Husain transferred the Bareilly property to the defendants Nos. 2 to 8 and the Bara Banki property to persons from whom the defendant respondent,,,,

Ram Bali acquired it by virtue of a decree for pre-emption. The suit in regard to the Bareilly property was compromised, with the result that the claim",,,,

in respect of that property was abandoned, and the suit proceeded as regards the Bara Banki property only.",,,,

8. Again, it is said that after the compromise in respect of the Bareilly property the Court ceased to have any jurisdiction to deal with the plaintiff's",,,,

claim, that is, that though the Bareilly Court bad jurisdiction, when the plaint was filed, to deal with the suit, it ceased to have jurisdiction when portion",,,,

of the property claimed was withdrawn from the litigation. 'It seems to me that once jurisdiction is vested in a Court, in the absence of a provision of",,,,

law to the contrary, that jurisdiction will not be taken away by any act of the parties. There is no allegation here that the plaint was filed in the Bareilly",,,,

Court with any intention to defeat the provisions of the Code of Civil Procedure as regards the venue of suits for recovery of immovable property. If,,,,

any fraud of that kind had been alleged and proved, other considerations would arise. But in this case, as I have said, no such suggestion has been",,,,

made.Ã¢â‚¬â€‹,,,,

16. Similar view was taken in Ramdhin and Others Vs. Thakuran Dulaiya and Others, AIR 1952 Nag. 303 (Full Bench); Basanta Priya Dei and",,,,

Another Vs. Ramkrishna Das and Others, AIR 1960 Ori. 159; Laxmibai Vs. Madhankar Vinayak Kulkarni and Others, AIR 1968 Kant. 82; Prem",,,,

Kumar and Others Vs. Dharam Pal Sehgal and Others, AIR 1972 Delhi 90 and Janki Devi Vs. Mannilal and Others, AIR 1975 All. 91.",,,,

17. The views of the different High Courts as well as of the Privy Council, as noticed above, clearly indicate that Section 17 has been held to be",,,,

applicable when there are more than one property situated in different districts.,,,,

18. The point to be noticed is that the permissibility of instituting suit in one Court, where properties, which are subject matter of the suit are situated in",,,,

jurisdiction of different courts have been permitted with one rider, i.e., cause of action for filing the suit regarding property situated in different",,,,

jurisdiction is one and the same. In a suit when the cause of action for filing the suit is different, the Courts have not upheld the jurisdiction of one",,,,

Court to entertain suits pertaining to property situated in different courts. In this context, we need to refer to some judgments of High Courts as well",,,,

as of the Privy Council, which has considered the issue. In Sardar Nisar Ali Khan Vs. Mohammad Ali Khan, AIR 1932 PC 172, Privy Council had",,,,

occasion to consider the case where subject matter of the suit were several properties situated in jurisdiction of different courts. Suit was instituted in,,,,

Oudh (which later became part of Uttar Pradesh). The Privy Council held that since there was different cause of actions, the same cannot be clubbed",,,,

together. One of the properties, which was situated in Punjab was referred to in the suit as Khalikabad property. Although, suit with regard to the",,,,

other three properties had similar cause of action but cause of action with regard to Khalikabad property being found to be different, the Court held",,,,

that Section 17 Civil Procedure Code was not applicable. Following was laid down in the case by the Privy Council:-,,,,

Ã¢â‚¬Å“There remains the question of the Khalikabad estate. Here the respondent cannot succeed unless he shows that under the terms of the deed,,,,

creating the wakf he is the trustee. That question depends upon the construction of the deed. It is a separate and different cause of action from these,,,,

which found the proceedings in respect of the other three properties. Their Lordships are unable to find any jurisdiction for bringing the suit in respect,,,,

of this property elsewhere than in the Court of the district where the property is situate. Such justification cannot in their Lordships' judgment be found,,,,

in Section 17, Civil P.C. upon which the respondent relied.Ã¢â‚¬â€‹",,,,

19. A Two-Judge Bench judgment of Allahabad High Court has been heavily relied upon by the learned counsel for the respondent reported in AIR,,,,

1942 All. 387, Karan Singh and Others Vs. Kunwar Sen and Others. In the above case, suit properties were situated in Haridwar and Amritsar. Suit",,,,

was filed in the Court of Civil Judge, Saharanpur. An application under Section 22, Civil P.C. was filed to determine as to whether a suit which is",,,,

pending in the Court of the Civil Judge of Saharanpur should proceed in the corresponding Court having jurisdiction at Amritsar in the Punjab. The,,,,

Court after noticing Section 17 held that plaintiffs were claiming two properties against two set of defendants, whom they alleged to be trespassers.",,,,

The Court held that unless suit is filed on one cause of action, two properties situate in different jurisdiction cannot be clubbed. Following was laid",,,,

down:-,,,,

Ã¢â‚¬Å“Having made these observations I must now return to the question whether in the suit with which we are dealing it can be said that the relief,,,,

claimed against the Defendants in possession of the property at Hardwar and the Defendants in possession of the property at Amritsar arises out of,,,,

the same series of acts or transactions and whether the two properties claimed can, for the purposes of Section 17, be described as a single entity. It",,,,

must be admitted that there is no apparent connection between the transfer of the Amritsar property to Amar Nath under the will executed by Jwala,,,,

Devi and the subsequent transfers made by him and his successors-in-interest on the one hand and the transfer made by Prem Devi of the Hardwar,,,,

property on the other hand. It must be admitted also that the Plaintiffs are not claiming the estates of Badri Das as a whole against any rival claimant,,,,

to the estate. They are claiming two properties against two sets of Defendants whom they allege to be trespassers and who, if they are trespassers,",,,,

have absolutely no connection with each other. The only connecting link is that the Plaintiff's claim in both the properties arose at the time of the death,,,,

of Prem Devi and that the claim is based on the assumption that the Defendants are in possession as the results of transfers made by limited owners,,,,

who were entitled, during their lives, to the enjoyment of the whole estate and the properties comprised within it. It was held many years ago in the",,,,

case of Mst. Jehan Bebee v. Saivuk Ram (1867) H.C.R. 1. 109, that unconnected transfers by a Hindu widow of properties comprised within the",,,,

husband's estate did not give rise to one cause of action against the various transferees. The same rule was laid down in the case of Bindo Bibi v.,,,,

Ram Chandra (1919) 17 A.L.J. 658. In that case a reference was made to the decision in Murti v. Bhola Ram (1893) 16 All 165 and it was pointed,,,,

out that that was a case where a claim was made against one Defendant who had taken possession of different properties in execution of one decree.,,,,

There is no doubt that that case is clearly distinguishable from the case with which we are dealingÃ¢â‚¬Â¦Ã¢â‚¬Â¦Ã¢â‚¬Â¦Ã¢â‚¬Â¦Ã¢â‚¬Â¦Ã¢â‚¬Â¦Ã¢â‚¬Â¦Ã¢â‚¬Â¦Ã¢â‚¬Â¦â€‹,,,,

20. The above judgment was subsequently relied and explained by Allahabad High Court in Smt. Janki Devi Vs. Manni Lal and Others, AIR 1975 All.",,,,

91. In Paragraph No.11, following was laid down:-",,,,

Ã¢â‚¬Å“11. Similar view was expressed in Smt. Kubra Jan v. Ram Bali, (1908)ILR 30 All 560. This Full Bench decision does not appear to have been",,,,

brought to the notice of the Division Bench hearing the case of Karam Singh v. Kunwar Sen AIR 1942 All 387. However, many observations made",,,,

therein are not contrary to the law laid down in the above mentioned Full Bench case. The sum and substance of this Division Bench case also is that,,,,

where in the facts and circumstances of the case all the properties can be treated as one entity a joint trial shall be permissible but not where they are,,,,

more or less different properties with different causes of action. The material observations are as below:--,,,,

..... and this implies, in my judgment, that the acts or transactions, where, they are different, should be so connected as to constitute a single series",,,,

which could fairly be described as one entity or fact which would constitute a cause of action against all the defendants jointly. Whether this,,,,

necessary condition exists in any particular case would, of course, depend upon the nature of the case but I am satisfied that this at least is necessary",,,,

that the case should be such that it could be said that the Court in which the suit was instituted had local jurisdiction in the first instance to deal with,,,,

the controversies arising between the plaintiffs and each of the defendantsÃ¢â‚¬Â¦Ã¢â‚¬Â¦Ã¢â‚¬Â¦Ã¢â‚¬Â¦Ã¢â‚¬Â¦Ã¢â‚¬Â¦,,,,

The property must, in the particular circumstances of the suit, be capable of being described as a single entity. Whether it can or cannot be so",,,,

described will depend again upon the nature of the dispute between the parties. If there is a dispute, for instance about a single estate which both",,,,

parties are claiming as a whole that estate is obviously for the purposes of that particular suit a single entity. If, on the other hand, the owner of an",,,,

estate has a claim against unconnected trespassers who have trespassed upon different parts of the estate or different properties situated within it,",,,,

those parts or those properties would not for the purposes of the dispute between him and the trespassers be one entity but several entities and the,,,,

provisions of Section 17, would not apply"".Ã¢â‚¬â€‹",,,,

21. Thus, for a suit filed in a Court pertaining to properties situated in jurisdiction of more than two courts, the suit is maintainable only when suit is",,,,

filed on one cause of action.,,,,

22. Justice Verma of Allahabad High Court in his concurring opinion in Karan Singh v. Kunwar Sen,,,,

(supra) while considering Section 17 of C.P.C. has,,,,

explained his views by giving illustration. Following,,,,

was observed by Justice Verma:,,,,

Ã¢â‚¬Å“I agree, Suppose a scattered Hindu dies possessed of immovable property scattered all over India at Karachi, Peshwar, Lahore,",,,,

Allahabad, Patna, Dacca, Shillong, Calcutta, Madras and Bombay and is succeeded by his widow who, in the course of 40 or 50 years, transfers on",,,,

different dates portions of the property situated at each of the places mentioned above, to different persons each of whom resides at the place where",,,,

the property transferred to,,,,

Ã‚,,,,

him is situated, and the transfers are wholly unconnected with, and independent of one another. Upon the widowÃ¢â‚¬â„¢s death the reversioner wants to",,,,

challenge these various transfers. Learned counsel for the plaintiffs has argued that in such a case the reversioner is entitled to bring one suit,,,,

challenging all the transfers at any one of the places mentioned above, impleading all the transferees, I find it very difficult to hold that such a result is",,,,

contemplated by the provisions of the Code of Civil Procedure upon which reliance has been placed and which are mentioned in the judgment of my,,,,

learned brother. I do not consider it necessary to pursue the matter any further. It is clear to my mind that, if the plaintiffs; argument mentioned above",,,,

is accepted, startling results will follow.Ã¢â‚¬â€‹",,,,

23. Now, we come to submission of learned counsel for the appellant based on Section 39 sub-section (1) (c)of C.P.C. It is submitted that Section",,,,

39(1)(c) of C.P.C. is also a pointer to what is intended in Section 17. The scheme as delineated by Section 39 indicates that when a decree is passed,,,,

by a Court with regard to sale or delivery of immovable property situated outside the local limits of the jurisdiction of that Court it may transfer the,,,,

decree for execution to another Court. The provision clearly indicates that a decree of Court may include immovable property situate in local limits of,,,,

that Court as well as property situated outside the local limits of the jurisdiction of the Court passing the decree. Section 39(1)(C) re-enforces our,,,,

conclusion that as per Section 17 suit may be filed with regard to immovable property situated outside the local limit of the jurisdiction of the Court.,,,,

We may, however, add that passing a decree by a Court with regard to immovable property situate outside the local jurisdiction of the Court passing",,,,

the decree may not only confine to Section 17 but there may be other circumstances where such decree is passed. Section 20 of C.P.C. may be one,,,,

of the circumstances where decree can be passed against the defendant whose property may situate in local jurisdiction of local limits of more than,,,,

one Court.,,,,

24. We may further notice that Section 17 uses the words Ã¢â‚¬Ëœthe suit may be instituted in any CourtÃ¢â‚¬â„¢. The use of word in Section 17 makes it,,,,

permissive leaving discretion in some cases not to file one suit with regard to immovable property situated in local jurisdiction of more than one court.,,,,

One of the exceptions to the rule is cases of partial partition where parties agree to keep some property joint and get partition of some of the,,,,

properties.,,,,

25. The partial partition of property is well accepted principle with regard to a joint family. In MayneÃ¢â‚¬â„¢s Hindu Law & Usage, 16th Edition in",,,,

paragraph 485 following has been stated:,,,,

Ã¢â‚¬Å“485. Partition partial or total.-Partition may be either total or partial. A partition may be partial either as regards the persons making it or the,,,,

property divided.,,,,

Partial as to properties.- It is open to the members of a joint family to severe in interest in respect to a part of the joint estate while retaining their,,,,

status of a joint family and holding the rest as the properties of an undivided family. Until some positive action is taken to have partition of joint family,,,,

property, it would remain joint family property.Ã¢â‚¬â€‹",,,,

26. Mulla on Hindu Law, 22nd Edition also refers to partial partition both in respect of the property and or in respect of the persons making it. In",,,,

paragraph 327 following has been stated:,,,,

Ã¢â‚¬Å“327. Partial partition.-(1) A partition between coparceners may be partial either in respect of the property or in respect of the persons making,,,,

it.After a partition is affected, if some of the properties are treated as common properties, it cannot be held that such properties continued to be joint",,,,

properties, since there was a division of title, but such properties were not actually divided.",,,,

(2) Partial as to property.- It is open to the members of a joint family to make a division and severance of interest in respect of a part of the joint,,,,

estate, while retaining their status as a joint family and holding the rest as the properties of a joint and undivided family.Ã¢â‚¬â€‹",,,,

The issues arising in the present case being not related to subject of partial partition the issue need not to be dealt with any further.,,,,

27. Learned counsel for the appellant has also submitted that permitting filing of a separate suit with regard to property situate in different jurisdiction,,,,

shall give rise to conflicting decision and decision in one suit may also be res judicata in another suit. We in the present case being not directly,,,,

concerned with a situation where there are more than one suit or a case having conflicting opinion we need not dwell the issue any further.,,,,

28. Sections 16 and 17 of the C.P.C. are part of the one statutory scheme. Section 16 contains general principle that suits are to be instituted where,,,,

subject-matter is situate whereas Section 17 engrafts an exception to the general rule as occurring in Section 16. From the foregoing discussions, we",,,,

arrive at following conclusions with regard to ambit and scope of Section 17 of C.P.C.,,,,

(i) The word Ã¢â‚¬Ëœpropertyâ€â„¢ occurring in Section 17 although has been used in Ã¢â‚¬Ëœsingularâ€â„¢ but by virtue of Section 13 of the General Clauses,,,,

Act it may also be read as Ã¢â‚¬Ëœpluralâ€â„¢, i.e., Ã¢â‚¬Å“propertiesâ€â€‹.",,,,

(ii) The expression any portion of the property can be read as portion of one or more properties situated in jurisdiction of different courts and can be,,,,

also read as portion of several properties situated in jurisdiction of different courts.,,,,

(iii) A suit in respect to immovable property or properties situate in jurisdiction of different courts may be instituted in any court within whose local,,,,

limits of jurisdiction, any portion of the property or one or more properties may be situated.",,,,

(iv) A suit in respect to more than one property situated in jurisdiction of different courts can be instituted in a court within local limits of jurisdiction,,,,

where one or more properties are situated provided suit is based on same cause of action with respect to the properties situated in jurisdiction of,,,,

different courts.,,,,

29. Now, we revert to the facts of the present case and pleadings on record. The suit filed by the appellant contained three different sets of",,,,

defendants with different causes of action for each set of defendants. Defendant Nos. four to six are defendants in whose favour Will dated,,,,

15.02.2000 was executed by late Smt. Vimal Vaidya. In the plaint, relief as claimed in paragraph 25(H)is the will executed by late Smt. Vimal Vaidya",,,,

was sought to be declared as null and void. The second cause of action in the suit pertains to sale deed executed by late Smt. Vimal Vaidya dated,,,,

15.10.2007 executed in favour of defendant Nos.7 and 8 with regard to Bombay property. The third set of cause of action relates to transfer,,,,

documents relating to Indore property which was in favour of defendant Nos.9 and 10. The transfer documents dated 21.10.1986, 21.11.1988 and",,,,

20.08.1993 are relating to Indore property. The plaint encompasses different causes of action with different set of defendants. The cause of action,,,,

relating to Indore property and Bombay property were entirely different with different set of defendants. The suit filed by the plaintiff for Indore,,,,

property as well as Bombay property was based on different causes of action and could not have been clubbed together. The suit as framed with,,,,

regard to Bombay property was clearly not maintainable in the Indore Courts. The trial court did not commit any error in striking out the pleadings and,,,,

relief pertaining to Bombay property by its order dated 17.08.2011.,,,,

30. Learned counsel for the appellant has also referred to and relied on order II Rule 2 and Order II Rule 3 C.P.C. Learned counsel submits that,,,,

order II Rule 2 sub-clause (1) provides that every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause,,,,

of action. The cause of action according to Order II Rule 2 sub-clause (1) is one cause of action. What is required by Order II Rule 2 sub-clause (1),,,,

is that every suit shall include the whole of the claim on the basis of a cause of action. Order II Rule 2 cannot be read in a manner as to permit,,,,

clubbing of different causes of action in a suit. Relying on Order II Rule 3 learned counsel for the appellant submits that joinder of causes of action is,,,,

permissible. A perusal of sub-clause (1) of Order II Rule 3 provides that plaintiff may unite in the same suit several causes of action against the same,,,,

defendant, or the same defendants jointly. What is permissible is to unite in the same suit several causes of action against the same defendant, or the",,,,

same defendants jointly. In the present case suit is not against the same defendant or the same defendants jointly. As noticed above there are different,,,,

set of defendants who have different causes of actions.,,,,

31. Learned counsel has lastly submitted that defendant Nos. 7 and 8 in their application having not questioned the cause of action for which suit was,,,,

filed, the submission raised on behalf of the counsel for the respondent that suit was bad for misjoinder of the causes of action cannot be allowed to be",,,,

raised.,,,,

32. It is relevant to notice in the application filed by defendant Nos. 7 and 8, the heading of the application itself referred to Ã¢â‚¬Å“mis-joinder of parties",,,,

and causes of actionÃ¢â‚¬. In Para (1) of the application, it was categorically mentioned that there was mis-joinder of parties and causes of action. The",,,,

trial court in its order dated 17.08.2011 has also clearly held that plaintiff has clubbed different causes of action which is to be deleted from the present,,,,

suit. The trial court further held that the plaintiff is not justified in including different properties and separate cause of actions combining in single suit.,,,,

33. We, thus, are of the view that the trial court has rightly allowed the application filed by the defendant Nos.7 and 8. The High court did not commit",,,,

any error in dismissing the writ petition filed by the appellant challenging the order of the trial court.,,,,

34. We do not find any merit in this appeal, the appeal is dismissed accordingly.",,,,