

CRP (PD) Nos. 3240 and 3241 of 2014

Kiran Devi v. Philomena

2019 SCC OnLine Mad 2177

In the High Court of Madras
(BEFORE ABDUL QUDDHOSE, J.)

Kiran Devi Petitioner in both CRPs;

v.

Philomena and Another Respondents in both CRPs.

CRP (PD) Nos. 3240 and 3241 of 2014

And

M.P. No. 1 of 2014

Decided on June 26, 2019

Advocates who appeared in this case :

For Petitioner: Mr. Sandeep S. Shah in both CRPs

For respondents: Mr. R. Karunakaran for R1 in both CRPS No appearance for R2

Prayer in CRP (PD) No. 3240 of 2014

Civil Revision Petitions filed under Article 227 of Constitution against the decretal order dated 04.02.2014 of the learned XIV Assistant Judge, City Civil Court, Chennai made in I.A. No. 317 of 2003, in O.S. No. 7009 of 2011

Prayer in CRP (PD) No. 3241 of 2014

Civil Revision Petitions filed under Article 227 of Constitution against the decretal order dated 04.02.2014 of the learned XIV Assistant Judge, City Civil Court, Chennai made in I.A. No. 318 of 2003, in O.S. No. 7009 of 2011

The Order of the Court was delivered by

ABDUL QUDDHOSE, J.:— These Civil Revision Petitions have been filed challenging the common order, dated 04.02.2014 passed by the learned XIV Assistant City Civil Court, Chennai made in I.A Nos. 317 of 2013 and 318 of 2013 in O.S. No. 7009 of 2011.

Brief facts leading to the filing of the instant Civil Revision Petition:—

2. The petitioner in both Civil Revision Petitions is the first defendant in the suit O.S. No. 7009 of 2011 filed by the first respondent/plaintiff. The suit was filed for the following relief against the petitioner:

For declaration that the sale deed dated 03.01.2006 and registered as document 42/2006 is null and void and not binding on the plaintiff.

3. A written statement was filed by the petitioner in the suit, wherein the petitioner has categorically pleaded that since, the suit schedule property is outside the jurisdiction of the Corporation of Chennai, City Civil Court, Chennai does not have territorial jurisdiction as it is against the provisions of sections 15, 16 and 17 of the Code of Civil Procedure. Further, it has been pleaded that the first respondent/plaintiff has deliberately undervalued the suit and has not paid the proper court fee.

4. During the pendency of the suit I.A. No. 317 of 2013 was filed by the petitioner under Section 16(d) read with Section 151 CPC and order XIV, Rule 5 CPC to decide whether the Trial Court has got jurisdiction to try, entertain and prosecute the suit as a preliminary issue.

5. I.A. No. 318 of 2013 in O.S. No. 7009 of 2011 was also filed by the

petitioner/first defendant under Section 27(D) of the Tamil Nadu Court Fees and Suit valuation Act seeking for a direction to determine the correct court fee payable for the prayer sought in the plaint filed in O.S. No. 7009 of 2011.

6. A common counter was filed by the first respondent/plaintiff in I.A. Nos. 317 and 318 of 2013. In the said common counter, the first respondent has pleaded that the suit is very much maintainable, before the City Civil Court at Chennai, since no transfer of title to the property has taken place in favour of the petitioner/first defendant and the property is still in her possession and therefore, the Trial Court has got the jurisdiction to try the suit and Sections 15, 16, and 17 of CPC are not attracted, even though the suit schedule property is situated outside the jurisdiction of the Court.

7. By a common order, dated 04.02.2014, the Trial Court dismissed both the Interlocutory Applications viz., I.A. Nos. 317 and 318 of 2013 filed by the petitioner. Aggrieved by the dismissal of I.A. Nos. 317 and 318 of 2013 in O.S. No. 7009 of 2011, the instant Civil Revision Petitions have been filed under Article 227 of the Constitution of India.

8. Heard Mr. Sandeep S. Shah, learned counsel for the petitioner and Mr. R. Karunakaran, learned counsel for the first respondent. Despite service of notice on the 2nd respondent and his name having been printed in the cause list today, there is no appearance on his side.

9. According to the learned counsel for the petitioner, since the subject property is situated at Kanukulapattam Village, Chengalpet Taluk, Kancheepuram district, which is outside the jurisdiction of City Civil Court, Chennai, the Trial Court does not have jurisdiction to entertain the suit. He drew the attention of this Court to the latest Division Bench Judgment of this Court reported in the case of *K. Paranthaman, Proprietor, American Organic Food Products Inc. v. C. Padmanabhan* reported in 2019 (3) CTC 228, in which I was a Member of the said Bench and in particular, he referred to various principles laid down in the said judgment as to when the suit can be held to be a suit for land.

10. Further, he would point out that in the said judgment also, the plaintiff in that suit had sought for execution of a sale deed pertaining to the property at Tirchirapalli, outside the jurisdiction of the Original Side of this Court and the Division Bench held that the relief sought is also a suit for land and directed the return of the plaint to the plaintiff to enable him to file the same before the appropriate court at Tiruchirappalli. Relying upon the aforesaid Division Bench judgment, the learned counsel for the petitioner submitted that admittedly the subject property is outside the jurisdiction of the City Civil Court at Chennai and hence, the Trial Court ought to have allowed the application filed by the petitioner in I.A. No. 317 of 2013.

11. Insofar as the second application is concerned viz. I.A. No. 318 of 2013, the petitioner has filed the same seeking for a direction to determine the correct Court fee payable in respect of the prayer sought for in the plaint.

12. The learned counsel for the petitioner referred to the prayer sought for in the plaint and the Court fee paid by the first respondent. According to him, since the petitioner/first defendant is in possession the suit ought to have been valued under Sections 25 (b) and 27(d) of the Tamil Nadu Court Fees and Suit valuation Act, but however, the first respondent/plaintiff has improperly valued the suit under Section 25 (d) and 27(c) of the said Act and has paid a meagre Court fee.

13. The learned counsel for the petitioner also drew the attention of this Court to the findings of the Trial Court in the impugned order and submitted that the Trial Court has erroneously come to the conclusion that the suit is not a suit for land, since the suit has been filed only to decide the validity of the sale deed registered in the name of the first respondent/plaintiff. He also submitted that as regards the court fee

issue, also the Trial Court has also erroneously held that the relief does not involve the title of the suit property and only a mere declaration to declare the sale deed as null and void is sought for, the valuation of the suit under Section 25 (d) of the Tamil Nadu Court Fees and Suit valuation Act is correct.

14. Per contra, the learned counsel for the 1st respondent would contend that the suit is not a suit for land, as the first respondent has only sought for a declaration that the sale deed dated 03.01.2006, registered as document No. 42 of 2006 in favour of the petitioner as null and void and not binding upon the first respondent/plaintiff. According to him, the relief sought for in the plaint will neither directly or indirectly affect the title of the property and hence, according to him the Trial Court has rightly rejected I.A. No. 317 of 2013 filed by the petitioner.

15. Insofar as I.A. No. 318 of 2018 is concerned, according to the learned counsel for the first respondent, the valuation of the suit for the purpose of court fee is correct as the first respondent/plaintiff is in possession of the property and further the second respondent as early as on 21.10.2002 has executed a registered general Power of Attorney in favour of the first respondent/plaintiff and the first respondent/plaintiff continues to be in possession of the suit schedule property and that being the case, the valuation of the suit is in accordance with the provisions of the Tamil Nadu Court Fees and Suit valuation Act.

Discussion:—

16. Admittedly the suit schedule property is situated at Plot Nos. 1, 2 and 3, Raja Rajeswari Nagar, Part III Layout situated at No. 3/111, Kanukula Pallam Village, Chenglepet Taluk, Kancheepuram district, which is outside the territorial jurisdiction of the City Civil Court at Chennai.

17. The relief sought for in the plaint by the first respondent/plaintiff is to declare the sale deed executed in respect of the aforementioned property in favour of the petitioner/first defendant as null and void and also for permanent injunction, restraining the petitioner/first defendant from alienating the aforementioned property.

18. Section 16 of the Code of Civil Procedure Code, reads 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.? In this section "property" means property situate in India.

19. As seen from Section 16(d) CPC for the determination of any right or interest in immovable property, the suit will have to be instituted where the subject matter of the property is situated.

20. A Division Bench of this Court in the case of *K. Paranthaman, Proprietor,*

American Organic Food Products Inc. v. C. Padmanabhan reported in 2019 (3) CTC 228, following another Division Bench Judgment in the case of *Harsha Estates v. Dr. P. Kalyana Chakravarthy*, reported in 2018 (4) CTC 721 held that where the suit schedule property is situated outside the territorial jurisdiction of the court and the plaintiff seeks reliefs in respect of the said property and if granted will directly or indirectly affect the title or possession of the said property, the said suit is a suit for land. The earlier Division Bench judgment in the case of *Harsha Estates v. Dr. P. Kalyana Chakravarthy*, reported in 2018 (4) CTC 721 which was followed by the latest Division Bench judgment in *K. Paranthaman, Proprietor, American Organic Food Products Inc. v. C. Padmanabhan* reported in 2019 (3) CTC 228, had extracted the principles for consideration as to what suits are suits for land. The principles are as follows:

- (i) In a Suit the reliefs claimed, if granted, would directly affect title to or possession of the land it will be "Suit for land".
- (ii) If the object of the Suit is something different, but involves the consideration of the question of title to land indirectly, it will also be "Suit for land".
- (iii) A Suit where the claim is for recovery of possession or control of land, it will be "Suit for land".
- (iv) In a Suit, where determination of any right or interest over an immovable property is involved, it will be "suit for land".
- (v) A Suit for bare injunction restraining the Defendant from interfering with the possession and enjoyment of the property by the Plaintiff, will be "Suit for land".
- (vi) In a Suit for bare Injunction where the Plaintiff seeks to restrain the Defendant from dealing with the Suit property by creating a charge or alienating or encumbering the property, will also fall within the ambit of a "Suit for land". This Court in *Raja Holdings, Financiers and Merchants, Partnership Firm*, rep. by its Partner-Lalitha Raja, O.S.A. No. 2/2018, dated 10.7.2018 has considered this issue in detail.
 - (vi) (a) In a Suit for Specific Performance of an Agreement of Sale wherein the relief of delivery of possession of the Suit property has been specifically claimed, it will be "Suit for land".
 - vi(b) In a Suit for Specific Performance where the Suit is only for enforcement of the Agreement simpliciter without seeking for any other relief, the same will also fall within the ambit of "Suit for land" since the relief of possession is inherent in the relief of Specific Performance.
 - vi(c) In a Suit for Specific Performance, where the Suit is only for enforcement of the Agreement simpliciter and the Plaintiff specifically claims to be in possession of the Suit property and there is no denial of the said fact by the Defendant, the said Suit will not come within the ambit of "Suit for land".
 - vi(d) In a Suit for Specific Performance where the Plaintiff apart from seeking to enforce the Agreement also seeks a relief of Injunction against the Defendant, not to interfere with his possession and enjoyment or not to create any charge or encumbrance or not to alienate the Suit property, such Suits will also come within the ambit of "Suit for land".

21. The instant case squarely falls in the first principle of law enumerated in the said judgment, wherein the Division Bench held that in a suit, the reliefs claimed if granted would directly or indirectly affect the title or possession of the land, it will be a suit for land.

22. In the instant case, the first respondent/plaintiff has sought for a declaration that the sale deed executed in favour of the petitioner/first defendant by the second respondent is null and void in respect of a property situated at Kanchipuram district, outside the territorial jurisdiction of the City Civil Court, Chennai. This being the case,

the Trial Court does not have the territorial jurisdiction to entertain the suit. The relief if granted will certainly affect the title of the property, as according to the petitioner/first defendant she is the absolute owner of the property pursuant to a sale deed executed by the second respondent in his favour and on the other hand, petitioner/first defendant claims that he is the absolute owner. The relief if granted in favour of the first respondent/plaintiff in the suit will determine the title and possession and therefore, the suit is certainly a suit for land and hence, the City Civil Court, Chennai does not have territorial jurisdiction to hear the suit under Section 16(d) of the Civil Procedure Code.

23. Insofar as the Court fee issue is concerned, since it has been held by this Court that the court lacks territorial jurisdiction, the court fee issue will have to be decided by the appropriate court, which is having jurisdiction to decide the suit as and when the first respondent re-presents the suit before the appropriate court, after getting the return of the suit papers from the court below. The issue of court fee is left open and it is for the appropriate court to decide the same on merits and in accordance with law.

24. In the result, the impugned common order, dated 04.02.2014 passed by the Trial Court in I.A. Nos. 317 of 2013 and 318 of 2013 in O.S. No. 7009 of 2011 are hereby set aside and the Trial Court is directed to return the suit papers pertaining to the suit O.S. No. 7009 of 2011 to the petitioner/first respondent, within a period of four weeks from the date of receipt of a copy of this order to enable her to re-present the suit before the appropriate court having jurisdiction. On such representation of the suit papers before the appropriate Court by the first respondent/plaintiff, the appropriate court shall decide the dispute in accordance with law. Insofar as the court fee issue is concerned, the appropriate court having jurisdiction shall hear the application filed by the petitioner in I.A. No. 318 of 2013 as a preliminary issue under Order XIV Rule 2 CPC and pass appropriate orders in accordance with law. It is made clear that this Court is not deciding the suit on merits, but it is deciding the suit only on its maintainability, as the court below lacks territorial jurisdiction.

25. With the aforesaid directions, the Civil Revision Petition stands partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Note to Registry:

26. The Registry of this Court is directed to send a copy of this order to all the learned Principal District Judges who shall direct the respective Courts in the said district to follow the principles of law as laid down by the Division Bench Judgment of this Court in *Harsha Estates v. Dr. P. Kalyana Chakravarthy*, 2018 (4) CTC 721 (DB) followed by another Division Bench Judgment of this Court in the case of *K. Paranthaman, Proprietor, American Organic Food Products Inc. v. C. Padmanabhan*, 2019 (3) CTC 228 while entertaining the suits for land.

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