

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

IA NO. GA/15/2023
In CS/254/2008

ANJANA KHARKIA AND ANR.
Vs
SMT. KUSUM JAIN AND ORS

BEFORE:
THE HON'BLE JUSTICE SUGATO MAJUMDAR
Date: 24th January, 2024

Appearance:

Ms. Manju Agarwal, Adv.

Mr. Sarosij Dasgupta, Adv.

...for Plaintiffs

Mr. Rupak Ghosh, Adv.

Mr. Sankarsan Sarkar, Adv.

Mr. Rajesh Upadhyay, Adv.

Mr. Akshay Jain, Adv.

...for the Defendant

The Court: GA No. 15 of 2023 is filed by the Defendant praying for revocation of leave granted under Clause 12 of the Letters Patent 1865, stay of further proceeding of the suit and other prayers.

Sum and substance of the application is that the Plaintiffs have sought for delivery and cancellation of the deed of transfer dated 18.04.2007 in respect of flat no. 7B at 9B, Ballygunge Park Road, Kolkata – 700019 outside the jurisdiction of

this Court; two deeds of revocation both dated 24.05.2005 in respect of two flats being flat no. 7A and 7B at 9B, Ballygunge Park Road, Kolkata – 700019, outside the jurisdiction of this Court and the deed of gift dated 08.08.2007 in respect of flat no. 7B at Ballygunge Park Road, Kolkata – 700019 outside the jurisdiction of this Court.

It is further contended that the plaint contains prayer of perpetual injunction in respect of one of the properties located at 9B, Ballygunge Park Road, Kolkata – 700019, another at Sankrail, Howrah and the third one at Vrindaban, Uttar Pradesh. However, only one of the properties is located at 5 Vivekananda Road, Kolkata – 700007. Since all the properties except one are outside the jurisdiction of this Court. This Court has no jurisdiction to try or entertain the instant suit wherein specific prayers touching upon possession of immovable properties have been made in respect of properties outside the jurisdiction of this Court. Both the parties also reside outside the jurisdiction of this Court. In nutshell, it is contended that this Court has no territorial jurisdiction to entertain the suit. On that premises, leave under Clause 12 of the Letters Patent 1865 is sought to be revoked.

In Affidavit-in-Opposition the Plaintiffs challenged the application. It is contended that at no point of time issue of jurisdiction or maintainability of the suit was taken by the Defendant except bald allegation in Para 4. Territorial jurisdiction is not challenged. It is averred that the present suit is evidently a declaratory suit and not a suit for land as the Plaintiffs do not seek recovery of possession of any immovable property. It is a mixed question of law and fact which can be decided at the final hearing of the suit. According to the Defendants the application should be dismissed.

Mr. Ghosh, the Learned Counsel for the Defendant argued that the instant suit is definitely a suit for land. Since the Plaintiff has sought for right, title and interest in respect of immovable properties and since three properties out of four are situated outside the jurisdiction of this Court, this Court is bereft of jurisdiction to adjudicate upon the dispute. Therefore, according to Mr. Ghosh, the suit should be dismissed revoking the leave granted under Clause 12 of Letters Patent.

Mr. Ghosh relied upon **Bengal Glass & Silicate Works Vs. Lalit Mohan Bjlani & Anr. [AIR 1986 Cal 57]; Cityscope Developers Pvt. Ltd. Vs. Alka Builders Pvt. Ltd. [(2000) 1 CHN 381]; Excel Dealcomm Pvt. Ltd. Vs. Asset Reconstruction Company (India) Ltd. & Ors. [(2015) 8 SCC 219]; Sumer Builders Pvt. Ltd. Vs. Narendra Gorami [(2016) 2 SCC 582]**.

Per contra, Ms. Agarwal argued that the instant suit is one of the declaration and delivery of documents and restraining order on transfer of immovable properties. Cause of action partly arose within the jurisdiction and partly outside the jurisdiction of this Court which are explained in details in the plaint itself. As a result, leave of this Court was sought under Clause 12 of the Letters Patent. Therefore, according to Ms. Agarwal, this application itself is misconceived and liable to be rejected.

I have heard rival submissions.

The suit is filed with prayers of declaration that deeds are null and void, delivery and cancellation of those deeds; perpetual injunction, restraining transfer of immovable properties one of which is within this jurisdiction of this Court whereas the others are outside the jurisdiction. It is averred in the plaint that deeds

were executed by misrepresentation and alleged fraudulent acts and conducts were carried out at 129 Cotton Street, Kolkata – 700001 and at 3A, Hare Street, Kolkata – 700001. As such, the plaint reveals that the part of cause of action arose within jurisdiction of this Court.

Clause 12 of Letters Patent may be looked into in this connection:

“12. And we do further ordain that the said High Court of Judicature at Fort William in Bengal in the exercise of its ordinary original civil jurisdiction shall be empowered to receive, try and determine suits of every description, if, in the case of *suits for land* or other immovable property, such land or property shall be situated, or, in all other cases, if the cause of action shall have arisen either wholly, or in case the leave of the court shall have been first obtained, in part, within the local limits of the ordinary original jurisdiction of the said High Court, or if the defendant at the time of the commencement of the suit shall dwell or carry on business, or personally work for gain, within such limits; except that the said High Court shall not have original jurisdiction in cases falling within the jurisdiction of the Small Cause Court at Calcutta, in which the debt or damage, or value of the property sued for does not exceed one hundred rupees.”

In **Adcon Electronics Pvt. Ltd. Vs. Daulat & Anr. [(2001) 7 SCC 698]** referred to by Mr. Ghosh, the Supreme Court of India examined what is the suit for land. A suit for land, as observed, is a suit in which the relief claim relates

to title or to delivery of possession of land or immovable property. Whether a suit is one 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 land or immovable property, it will be a suit for land. The Court agreed with the view expressed by Mahajan, J in **Mooli Jaitha & Co. Vs. Khandesh Spg. & Wvg. Mills Co. Ltd.** [AIR 1950 FC 83]:

“15. 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* [AIR 1950 FC 83 : 1949 FCR 849].”

Although cancellation of documents, delivering up the same in respect of immovable properties are sought to be enforced in the suit, in course of adjudication title of the immovable properties may be looked into. This question, whether the suit is one for land is kept open. What is important to notice is that one of the properties is situated within the jurisdiction of this Court. Even assuming without deciding that the instant suit is one of land, observation of the Supreme Court of India in **Excel Dealcomm Pvt. Ltd. Vs. Asset Reconstruction**

Company (India) Ltd. & Ors. [(2015) 8 SCC 219], referred to by Mr. Ghosh, clarifies the issue. The relevant part may be quoted here:

“11. A plain reading of the provision suggests that ordinary original civil jurisdiction of the High Court of Calcutta will extend in the following cases:

(a) In a suit for land or other immovable property—

(i) where such land or property is wholly situated in the territorial jurisdiction of the High Court of Calcutta;

(ii) where such land or property is situated in part only within the said territorial jurisdiction of the court, if the leave of the court shall have been first obtained.

(b) In suits other than suit for land—

(i) if the cause of action has arisen wholly within the said limits;

(ii) where the cause of action has arisen in part only within the said limits, if the leave of the court shall have been first obtained;

(iii) if the defendant at the time of the commencement of the suit dwells or carries on business or personally works for gain within such limits.”

Even if it is assumed for the time being that the instant suit is a suit for land then also this Court has jurisdiction in view of leave obtained by the Plaintiff to have the suit under Clause 12 of the Letters Patent. Since immovable properties covered by

the suit is partly located within the jurisdiction of this Court. This apart, part of cause of action arose within jurisdiction of the Court, as averred in the plaint.

In view of discussions aforesaid, there is no justified reason to revoke the leave granted under Clause 12 of the Letters Patent. Accordingly, the instant application stands dismissed.

GA No. 15 of 2023 stands disposed of.

Fix the suit will appear in the list under heading “Witness Action” on 19th February, 2024.

(SUGATO MAJUMDAR, J.)