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2008 eGLR\_HC 10005227

Before the Hon'ble MR M R SHAH, JUSTICE

**DAMJIBHAI LALJIBHAI PATEL - APPELLANT(S) Vs. GOVERNMENT OF INDIA THRO THE MINISTRY OF URBAN RESPONDENT(S)**

**APPEAL FROM ORDER No: 356 of 2006 , Decided On: 07/08/2008**

**H.S.Tolia, Nandish Chudgar, Nanavati Associates**

**MR.JUSTICE M.R. SHAH**

1. Present Appeal from Order is filed by the appellant - original plaintiff of Special Civil Suit No.12 of 2006 challenging the impugned order dated 01.09.2006 passed by the learned Principal Senior Civil Judge, Bhavnagar below Exh.11 in Special Civil Suit No.12 of 2006 in allowing the said application submitted by defendant No.3 under the provisions of Order VII Rule 10 of the Code of Civil Procedure returning the plaint to the plaintiff for its presentation before the Civil Court of original side at New Delhi holding that Court at Bhavnagar has no territorial jurisdiction to try the aforesaid suit.

2. The appellant herein - original plaintiff has preferred aforesaid Special Civil Suit No.12 of 2006 before the Court of learned Principal Civil Judge at Bhavnagar for following reliefs: that:

"18. Upon the premises, the plaintiff prays

(A) A decree for specific performance for contract dated 11.11.1996 may please be drawn in favour of the plaintiff;

(B) Defendant Nos.3 to 5 may be please be ordered to separate the portion of defendant No.3 and defendant No.3 may be directed to make sale deed in favour of plaintiff and further to get necessary permission from the concerned / competent authority / Government and if necessary, a Court Commissioner may also be appointed to get the said permission in the interest of justice;

(C) It may please be directed that the act of defendant Nos.3 to 5 to sale, transfer to to create any charge of whatsoever nature in respect of the suit

property situated at 5, Mansinh Road, New Delhi is void ab-initio, without any authority, right and ultra vires;

(D) It may please be declared that defendant Nos.1 and 2 are not empowered to transfer the suit property situated at 5, Mansinh Road, New Delhi without the consent of plaintiff;

(E) The defendant Nos.3 to 5 may please be permanently restrained from transferring, alienating or creating any right, interest or charge in respect of the suit property situated at 5, Mansinh Road, New Delhi;

(F) Any appropriate and ancillary relief may please be given in favour of the plaintiff;

(G) The cost of this suit may please be awarded to the plaintiff.

3. Having served with the summons of the aforesaid suit, original defendant No.3 submitted application Exh.11 under Order VII Rule 10 read with Section 151 of the Code of Civil Procedure praying to return the plaint to the plaintiff to present it before the Court of competent jurisdiction at New Delhi. It was submitted by original defendant No.3 that property in question is situated at New Delhi and therefore, as per section 16 of Code of Civil Procedure the Suit relating to the immovable property shall be instituted in the Court within the local limits of whose jurisdiction the immovable property is situated. It was further submitted that suit has been filed by the plaintiff seeking injunction for specific performance of agreement to sale dated 12.11.1966 with respect to the immovable property situated at 5, Mansing Road, New Delhi. Therefore, it was contended that the Court at New Delhi would have jurisdiction to try the entire aforesaid suit and the Court at Bhavnagar would not have any jurisdiction to adjudicate the dispute and therefore, the application was filed to return the plaint to the plaintiff for presenting it before the competent Court having territorial jurisdiction.

4. The application was opposed by the original plaintiff. It was submitted that two defendants i.e. defendant Nos.4 and 5 are residing at Bhavnagar and property is ancestral property and therefore, Section 20 of the C.P.C. would be applicable in the matter because no partition of ancestral property of defendant Nos.3 to 5 has taken place. Having heard the learned Advocates appearing on behalf of the respective parties and considering the submissions, the learned Principal Civil Judge, Bhavnagar by impugned order dated 01.09.2006 allowed the said application under Order VII Rule 10 of the C.P.C. by returning the plaint to the plaintiff for its presentation before the Civil Court of original side at New Delhi. Being aggrieved

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and dissatisfied with the impugned order passed by the learned trial Court in returning the plaint to the plaintiff for its presentation before the competent Court at New Delhi, the appellant herein - plaintiff has preferred the present Appeal from Order and Civil Application for interim relief therein.

5. Mr.M.C.Bhatt, learned Advocate appearing on behalf of the appellant has vehemently submitted that part of the relief prayed for in the suit can be considered by the Civil Court at Bhavnagar i.e. prayer in terms of para 18(E) and therefore, relying upon the decision of this Court in the case of Gulabchand Makanji v/s. Motaponda Vibhag Tenants Cooperative Agricultural Society Ltd. reported in AIR 1962 Gujarat 296, it is submitted that the plaintiff may be permitted to amend the suit by deleting prayer / relief for which there is no territorial jurisdiction and the relief for which territorial jurisdiction would be there, which can be granted by the Civil Court at Bhavnagar be continued and the suit with respect to the aforesaid relief be also continued. If thereafter also the suit is not amended in that case the suit can be dismissed. It is submitted by Mr.Bhatt, learned Advocate appearing on behalf of the appellant that in the Suit before the Civil Court at Bhavnagar, the plaintiff has also prayed for injunction restraining defendant Nos.3 to 5 from transferring, alienating and/or interest with respect to the suit property situated at New Delhi and when defendant Nos.4 and 5 are residing at Bhavnagar and the plaintiff is also residing at Bhavnagar, relief sought is in persona and therefore, for that relief, Bhavnagar Court would have jurisdiction. It is submitted that it is true that so far as another prayer is concerned i.e. prayer for specific performance of Satakhat with respect to the property situated at New Delhi. The same cannot be granted by the Civil Court at Bhavnagar. However, relief in terms of para 18(E) the suit would be maintainable. Therefore, it is requested to pass an appropriate order in light of the decision in the case of Gulabchand (supra).

6. Present Appeal from Order is opposed by Mr.Chudgar, learned Advocate appearing on behalf of M/s.Nanavati Associates for respondent Nos.3 to 5. He has heavily relied upon the decision of the Honble Supreme Court in the case of Harshad Chimam Lal Modi v/s. DLF Universal Ltd. and Anr. reported in (2005) 7 SCC 791. It is submitted by Mr.Chudgar, that prayer in terms of para 18(E) with respect to injunction is required to be read along with other reliefs sought in the suit and necessary averments / pleadings in the suit / plaint. It is submitted that as such there are no independent pleadings with respect to injunction prayed in terms of para 18(E) and therefore, there is no independent cause of action for relief in terms of para 18(E) with respect to permanent injunction. It is submitted that in the facts and circumstances of the case and necessary pleadings in the suit, prayer in terms of Para 18(E) is not in a position to be separated. Therefore, entire plaint is required to be returned to the plaintiff for presentation before the appropriate Court having territorial jurisdiction. It is submitted that considering Section 16 of the C.P.C. and as Suit is for specific performance of agreement with respect to the property situated at New Delhi and agreement to sale was executed at New Delhi and defendant No.3 is residing at New Delhi, the learned trial Court has not committed any error in allowing the application under Order VII Rule 10 of the C.P.C. by returning the plaint to the plaintiff for presentation before the Court having

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jurisdiction i.e. at New Delhi. By making above submissions, it is requested to dismiss the present Appeal from Order.

7. Heard the learned Advocates appearing on behalf of the respective parties.

8. At the outset it is required to be noted that in Special Civil Suit No.12 of 2006 filed in the Court of learned Principal Senior Civil Judge, Bhavnagar, the appellant herein - original plaintiff has prayed for decree for specific performance of agreement to sale dated 12.11.1966 with respect to immovable property situated at 5, Mansing Road, New Delhi. It appears that even agreement to sale was entered into at New Delhi and defendant No.3 is residing at New Delhi. At this stage Section 16 of the C.P.C. is required to be considered. Section 16 of the C.P.C. Reads as under :

"Section 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 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."

9. Considering Section 16 of the C.P.C., actions against res or property should be brought in the forum where such res is situate. A Court within whose territorial jurisdiction the property is not situate has no power to deal with and decide the rights or interest in such property. In other words the Court has no jurisdiction over a dispute in which it cannot give an effective judgment. Even proviso to Section 16 would not be applicable to the present case. It is the contention on behalf of the plaintiff that so far as the prayer in terms of Para 18(E) with respect to permanent injunction restraining defendant Nos.3 to 5 from transferring, alienating and/or in whatsoever property in question is concerned, said prayer is in personam and therefore, for the said

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relief suit within territorial jurisdiction of Bhavnagar would be maintainable. Learned Advocate appearing on behalf of the plaintiff has heavily relied on the decision of this Court in the case of Gulabchand (supra) and relevant observations in para - 1 of the said judgment. It is to be noted that in the case before this Court case was found to be triable partly by the Civil Court and partly by Revenue Court and plaint was filed in Civil Court. It is the contention on behalf of the learned Advocate appearing on behalf of the appellant - plaintiff that in the aforesaid decision, the learned Single Judge of this Court has observed that the procedure of returning the plaint to be presented in another Court is applicable, only when the whole suit is triable by another Court. In any case where only part of the plaint is triable by a Civil Court, if the plaintiff does not file two separate plaints but files only one plaint, he himself is responsible for consequences of his action. It is submitted that as held in such a case, the plaintiff should be asked to amend the plaint so as to make it wholly triable by the Civil Court by deleting the portion of the plaint which is triable by the Civil Court and if such amendment is made the plaint would be triable by the Civil Court. But if the plaintiff does not do so then the whole plaint is to be rejected as a plaint which is not wholly triable by the Civil Court. Making above submissions it is requested to adopt such procedure. Aforesaid submissions seems to be attractive but has no application to the facts of present case. Relief sought in the plaint is required to be considered in light of the pleadings in the suit. It is the contention on behalf of the plaintiff that prayer in terms of para 18(E) with respect to permanent injunction would be within the territorial jurisdiction of learned Principal Senior Civil Judge, Bhavnagar, however, necessary pleadings in the suit / plaint are also required to be considered. On considering the pleadings / averments in the suit, it appears that there are no independent pleadings with respect to such a relief. There is no independent separate cause of action averred / pleaded in the suit. Therefore, it appears that relief in terms of para 18(E) is required to be read along with other prayers and necessary pleadings in the suit. Therefore, it appears that such a relief is prayed along with other reliefs in the suit by way of interim injunction so as not to make the suit infructuous and decree, if any, be not become ineffective. Therefore, the contention on behalf of the plaintiff to adopt procedure as held / observed by the learned Single Judge of this Court in the case of Gulabchand (supra) is not required to be adopted / followed in the facts and circumstances of the present case.

10. Considering above, when admittedly immovable properties are situated at New Delhi and even agreement to sale is entered into at New Delhi and when the learned trial Court has allowed the application submitted by the original defendant No.3 by returning the plaint to the plaintiff for presenting it to the appropriate Court having jurisdiction at New Delhi, it cannot be said that the learned trial Court has committed any error and/or illegality which calls for interference of this Court. There is no substance in the present Appeal from Orders, same deserves to be dismissed and accordingly it is dismissed. In view of dismissal of Appeal from Order, no order in Civil Application.

At this stage, Mr. Bhatt, learned Advocate appearing on behalf of the plaintiff has requested to grant some time to the plaintiff to present the plaint before the appropriate Court having territorial jurisdiction at New Delhi. In view of the

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fact that present Appeal from Order is pending and which is dismissed today, appellant - original plaintiff is granted time upto 05th September, 2008 to present the plaint before the appropriate Court having territorial jurisdiction at New Delhi.

*Appeal allowed*

