

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE:26.10.2015

CORAM

**THE HONOURABLE MR.JUSTICE T. MATHIVANAN**

**C.R.P.PD.No.4007 of 2012**

**and**

**M.P.No.1 of 2012**

Ramasamy

... Petitioner

Versus

1.Subramani  
2.Palaniammal  
3.Nallammal  
4.Mani

..Respondents

**Prayer:** Revision petition is filed against the fair and decretal order, dated 21.8.2012 and made in an interlocutory application in I.A.No.515 of 2009 in O.S.No.75 of 2009 on the file of the Sub Court, Tiruchengode.

For Petitioner: M/s.N. Manokaran

For Respondents Nos.1 to 3 : Mr.T. Dhanyakumar

For Respondent No.4 : No appearance

**ORDER**

This memorandum of civil revision has been directed against the fair and decretal order, dated 21.8.2012 and made in I.A.No.515 of 2009 in O.S.No.75

of 2009 on the file of the learned Subordinate Judge, Tiruchengode.

2.The revision petitioner herein is the plaintiff in the suit, whereas the respondents are the defendants.

3.It is manifested from the records that the revision petitioner has filed a suit in O.S.No.75 of 2009 on the file of the learned Subordinate Judge, Tiruchengode, as against the respondents/defendants seeking the relief of specific performance of contract of sale and to direct the respondents 1 to 3/defendants 2 to 4 to deliver the possession of the suit property.

4.Pending trial of the suit, the revision petitioner being the plaintiff has come forward with an application in I.A.No.515 of 2009 under Order 6 Rule 17 of C.P.C., to amend the plaint in the manner as detailed in the petition.

5.This petition was contested strenuously by the respondents/defendants and after hearing both sides, the learned Subordinate Judge, Tiruchengode had proceeded to dismiss that application on the ground that the prayer for amendment of the plaint is not

sustainable.

6.Having been aggrieved by the impugned order, the present revision is filed.

7.Heard Mr.N.Manokaran, learned counsel appearing for the petitioner and Mr.T. Dhanyakumar, learned counsel appearing for the respondents 1 to 3. The fourth respondent has not chosen to appear when the matter is taken up for hearing.

8. As admitted by both the parties, an agreement of sale was entered into between them on 10.03.1995.

9.In their written statement, the respondents/defendants 1 and 2 have stated that there are two wells, one of which is fitted with an electric motor pump, a tiled house and a powerloom factory, which are having separate electric service connections, in S.F.No.138/1. However, these are all not found place in the agreement of sale.

10.The revision petitioner has admitted that it is true that there is a tiled house and also a powerloom factory under the roof of asbestos sheet and that the total area of those two buildings are 80 feet

in breadth and 22 feet in length.

11. According to the revision petitioner/plaintiff, since the respondents/defendants 1 and 2 wanted to have open space around the building for their enjoyment, an area of 115 feet east-west and 50 feet north-south including the buildings shall be retained by the respondents/defendants 1 and 2 and that they shall not form part of the property to be sold.

12. It is obvious to note here that the agreement was only to purchase the land, excluding the house, power loom factory and the surrounding vacant land, but while describing the property in the suit sale agreement, it was omitted to exclude the area covered by the house and the power loom factory comprised in S.No.138/1.

13. Only for this purpose, the revision petitioner has filed the above petition to amend the plaint in the manner as detailed in the petition. But the trial Court, without appreciating the reasons behind the filing of the petition has straight away proceeded to dismiss that application on the ground that the application itself is not sustainable.

14. Mr. N. Manokaran, learned counsel appearing

for the revision petitioner has argued that since the well merges with the land it was not specifically mentioned in the suit sale agreement and that there was only one well in the property and not two wells.

15.He has also maintained that if there were mistakes on both sides in executing the agreement of sale, the law permits them to amend the agreement itself.

16.He has also submitted that when the suit for specific performance of contract of sale was filed, it was not necessary to file a separate suit for rectification of the agreement and therefore, he has argued that the petitioner might be permitted to rectify the mistake found place in the agreement as well as in the plaint.

17.In support of his contention, he has placed reliance upon the decision of the Apex Court in ***Puran Ram vs. Bhaguram and another* (2008 (2) CTC 224)**.

18.In this case, the plaintiff therein had filed a suit for specific performance of an agreement for sale relating to agricultural lands in Chak No.3 SLM. But in the agreement, the property was wrongly mentioned as Chak No.3 SSM etc. When the description of

the suit property was found to be a mutual mistake, the plaintiff filed an application to amend the plaint regarding the description of the property and also to amend the underlying agreement.

19. Opposing the amendment, the defendant had contended that the amendment would change the nature of the suit and under Section 26 of the Specific Relief Act, a separate suit should be filed to rectify the agreement for sale.

20. The Trial Court allowed the amendment but the High Court had set aside the order. In the appeal preferred by the plaintiff, a Division Bench of the Supreme court has held as under:-

*"Section 26 clearly says as to when a contract or other instrument can be rectified and provides that when through fraud or a mutual mistake of the parties, the agreement in writing does not express their real intention, it is open to the parties to apply for amendment of the instrument. It provides that when such a situation arises, then -*

*(a) either party or his representative in interest may institute a Suit to have the instrument rectified, or*

*(b) the plaintiff may, in any Suit in which any right arising under the instrument is in issue, claim in his pleading that the instrument be rectified.*

In our view, it is only a correction or rectification of a part of the description of the suit property, which cannot involve either the question of limitation or the change of nature of suit. In our view, the Suit shall remain a Suit for specific performance of the contract for sale and a separate independent suit is not needed to be filed when the Proviso to Section 26 itself clearly permits either party to correct or rectify the description of the suit property not only in the plaint but in the agreement itself.

The views expressed by us find support in a decision of the Madras High Court in **Rajpur Manufacturing Co. Ltd. Vs. Joolaganti Venkatasubbu Rao Veerasamy & Co.** AIR 1921 Mad. 664, wherein it was held that where in the course of a Suit for damages for breach of contract, the plaintiff contends that there is a clerical error in the document embodying the contract, it is not always necessary that a separate suit should have been brought for rectification of the document and it is open to the Court in a proper case to allow the plaintiff to amend the Plaint and ask for the necessary rectification. As noted herein earlier, the learned counsel for the respondent contended before us that the appellant could not get specific performance of the contract for sale unless he sued for rectification.

It is sufficient to observe that it was not necessary for the appellant to file a separate Suit for that purpose as contended by the learned counsel for the respondent. It is open to the appellant to claim the relief of rectification of the instrument in the instant Suit. The amendment, in our view, in the agreement was a formal one and there was no reason why such amendment could not be allowed."

21.On the other hand, Mr.T.Dhanya Kumar has vehemently objected to allow the revision petition and also submitted that the order of the trial court was well within the bounds of law and therefore, it did not require any disturbance.

22.This Court has considered the submissions of both the learned counsels and perused the grounds of revision petition including the impugned order.

23.Having given careful consideration to the submissions of both sides, this Court finds that by allowing the amendment both in the plaint as well as in the instrument, viz., suit sale agreement, the structure of the suit will not be altered and the respondents/defendants will not be prejudiced in any way.

24.As observed by the Apex Court in the decision cited supra, the question of limitation also will not be an obstacle in the process of amendment.

25.Keeping in view of the above facts, the revision petition is allowed and the impugned order is set aside. The petition in I.A.No.515 of 2009 is allowed and the revision petitioner is permitted to

amend the plaint as well as the suit sale agreement,  
dated 10.3.1995 as specified in the petition . However,  
there will be no order as to costs. Connected M.P. is  
closed.

rnb

26.10.2015

Index:Yes.

Internet:Yes.

To

The Sub Court, Tiruchengode

**T. MATHIVANAN, J.**

RNB

Order in

C.R.P.PD.No.4007 of 2012  
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