

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2016

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

C.R.P.(PD) No. 828 of 2013

&

M.P. No. 1 of 2013

K.A. Gopal

..Petitioner

Vs.

1. P. Srinivasan

2. Sabreesh

..Respondents

Prayer: Civil Revision Petition as against the fair and decretal order dated 06.02.2013 passed in I.A. No. 66 of 2013 in O.S. No.12 of 2006 by the Subordinate Judge, Gobichettipalayam.

For Petitioner :: Mr.A.K.Kumaraswamy

For Respondents :: Mr.T. Lakshmipathy for R2

O R D E R

This civil revision petition has been filed as against the dismissal of I.A. No. 66 of 2013 in O.S. No. 12 of 2006 by order dated 06.02.2013, which was filed to amend the plaint in accordance with the details furnished in the

said petition.

2. The suit in O.S.No. 12 of 2006 on the file of Sub Court, Gobichettipalayam, was filed by the petitioner herein, as plaintiff, seeking the relief of specific performance of contract entered between him and the respondents/defendants. Pending the suit, the petitioner filed I.A. No. 66 of 2013 under Order 6 Rule 17 and Section 151 CPC to amend the plaint stating that by oversight, the alternative relief of refund of advance amount with interest was not sought for and that the proposed amendment will not change the nature of the suit. However, the Trial Court, by the impugned order, dismissed the said I.A. Challenging the same, the petitioner has filed the present revision.

3. Heard Mr.A.K. Kumaraswamy, learned counsel for the petitioner and Mr.T.Lakshmipathy, learned counsel for the 2nd respondent.

4. It is an admitted fact that a sale agreement has been entered into, between the petitioner and the respondents. Though the suit is ripe for trial, it is the bounden duty of the petitioner/plaintiff to seek an alternative prayer of refund of money paid to the respondents, in case, the agreement entered into between the parties, is found to be incapable of performance. In

the event of dismissal of the suit, there would be no scope for the petitioner to get back the money as he would be prohibited from filing a suit for recovery of money separately. In such circumstance, interest of justice requires that the amendment petition be allowed so as to enable the petitioner to incorporate the alternative prayer in the plaint.

5. Therefore, the order of the Trial Court dismissing I.A. No. 66 of 2013 is set aside and the said I.A. stands allowed. The petitioner is directed to carry out the amendment within a period of two weeks from the date of receipt of a copy of this order and the respondents are directed to file their additional written statement, within two weeks, thereafter. The Trial Court shall frame additional issues, within a period of one week thereon, proceed with the trial and dispose of the matter, on or before 30th April, 2016. Both the parties are directed to co-operate in the disposal of the matter. The Trial Court shall send a compliance report by first week of June, 2016. The civil revision petition is disposed of accordingly. No costs. Connected M.P. is closed.

26.02.2016

nv

To

The Sub Court, Gobichettipalayam.

N. KIRUBAKARAN, J.

nv

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