



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.10.2016

CORAM

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

C.R.P. (NPD) No. 1885 of 2016

and

C.M.P. (MD) No. 9017 of 2016

Rathinavel

... Petitioner/Respondent/
Defendant

-Vs-

Deena Dhayabaran

... Respondent/Petitioner/
Plaintiff

Prayer: Petition filed under Section 115 of Code of Civil Procedure to set aside the fair and decreetal order dated 06.06.2016 made in I.A.No.118 of 2011 in O.S.No.28 of 2008 on the file of the learned Principal District Judge, Ramanathapuram.

For Petitioner : Mr.K.Vellaisamy

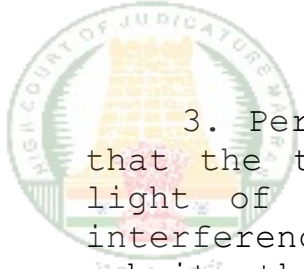
For Respondent : Mr.N.Tamilmani

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ORDER

This Civil Revision petition is filed by the petitioner against the order passed in I.A.No.118 of 2011 dated 06.06.2016 in O.S.No.28 of 2008 on the file of the learned Principal District Judge, Ramanathapuram.

2. The suit filed by the respondent/plaintiff was decreed by the learned Principal District Judge, Ramanathapuram, on 07.07.2010. Thereafter, the petitioner filed an application in I.A.No.118 of 2011 in O.S.No.28 of 2008 to amend the plaint on the ground that instead of '22 Jadiyahadi', it was wrongly recorded in the plaint and also wrongly mentioned the door number in the schedule property as 2/412 instead of 2/421. Originally, the said application was dismissed by the Principal District Court, against which, the respondent filed a revision before this Court in C.R.P. (NPD) (MD) No. 807 of 2012. After hearing the arguments of the learned Counsel for the parties, by an order dated 24.07.2015, this Court allowed the civil revision petition by relying upon the various decision of this Court and directed the trial Court to consider the application in I.A.No.118 of 2011, afresh, on merits and as per law with notice to the respondent. Thereafter, the said application was taken on file and by an order dated 06.06.2016, the Principal District Court, Ramanathapuram, allowed the application without going into the merits of the case. In this case, the revision petitioner has filed this revision before this Court.



3. Per contra, the learned Counsel for the respondent submits that the trial Court has rightly allowed the application in the light of the earlier decision of this Court. Therefore, no interference is warranted with the impugned order. He further submits that if the amendment application is allowed, no prejudice would be caused to the petitioner. The respondent herein filed a suit for specific performance under the provisions of the Specific Relief Act. Therefore, in the interest of justice, the lower Court allowed the petition otherwise the petitioner could not be able to enjoy the fruits of the decree passed by the trial court. Hence, he prays for dismissal of the civil revision petition.

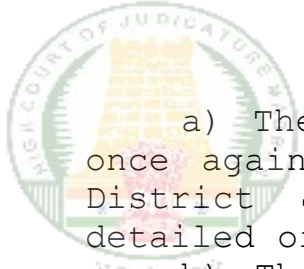
4. Heard the learned Counsel appearing for the petitioner and the learned Counsel appearing for the respondent and also perused the materials available on record.

5. It is an admitted fact that the respondent herein filed a suit in O.S.No.28 of 2008 for specific performance against the petitioner therein and the aforesaid suit was decreed on 07.07.2010 and the above said decree has become final and no appeal is preferred by the revision petitioner. The respondent filed I.A.No.118 of 2011 to amend the plaint under Section 151(3) of Code of Civil Procedure, to amend the clerical mistakes which included in the plaint. The said application was dismissed by the trial Court, which resulted in the respondent filing a Civil Revision Petition before this Court in C.R.P(MD)No.807 of 2012 and this Court by an order dated 24.07.2015, allowed the application by considering the decision in **Abdul Kader -vs- Chinnasawamy Padayachi** reported in **AIR 1980 Madras 116** and in the **Niyamat Ali Molla -vs- Sonargon Housing Co-operative Society Ltd.**, reported in **AIR 2008 SC 225** and in another judgment in **R.Srinivasan -vs- M.Thambusamy reported in 1996 (2) CTC 66.**

6. In the light of the above said decision, this Court directed the trial Court to consider the application in I.A.No.118 of 2011 afresh after issuing notice to the respondent and further directed the learned Principal District Judge, Ramanathapuram, to consider the facts of the case in the light of the decision rendered by the Honourable Supreme Court as well as this Court. However, the trial Court passed order without any reasons, allowed the application as discussed by this Court in C.R.P(MD)No.807 of 2012.

7. The learned Counsel for the revision petitioner has rightly contended that the trial Court has not passed detailed orders while allowing the said application. The impugned order passed in the instant application is a non-speaking order and requested that the matter may be reconsidered afresh.

8. The trial Court has not considered the facts of the case as well as the counter statement filed by the revision petitioner, while simply allowing the application which is erroneous and unsustainable in law. Therefore, in the interest of justice I am passing the following order:



a) The order passed in I.A.No.118 of 2011 is set aside and once again, the same is remitted back to the learned Principal District Judge, Ramanathapuram, to consider afresh and pass detailed orders after providing opportunity to the respondent.

b) The learned Principal District Judge, Ramanathapuram, is directed to consider the application within a period of six weeks from the date of receipt of a copy of this order.

c) The learned Counsel on both parties shall co-operate for the disposal of the said application.

9. With the above directions, this Civil Revision Petition is allowed. Consequently, connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-I)

/True copy/

Sub Assistant Registrar

TO

The Principal District Judge, Ramanathapuram.

GSR
ANR-KP-SAR.3/1.11.2016-3P:2C

C.R.P (NPD) (MD) No.1885 of 2016
19-10-2016