



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.12.2016

CORAM:

**THE HONOURABLE MS.JUSTICE V.M.VELUMANI**

C.R.P. (MD) No.1514 of 2013 (NPD)

&

M.P. (MD) No.1 of 2013

K.P.Gopalan

.. Petitioner

**Vs.**

1.N.Nalina

2.Muthuraj, S/o.Perumal

3.Dhamotharan @ Velankanni, S/o,Perumal

4.Rajendran @ Arockiasamy, S/o.Perumal

5.Abraham, S/o.Savarimuthu

.. Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order, dated 15.07.2013, made in I.A.No.112 of 2012 in A.S.No.120 of 2006, on the file of the Additional Subordinate Court, Dindigul.

For Petitioner : Mr.S.Ramesh

For Respondents : No Appearance

**ORDER**

This Civil Revision Petition has been filed against the fair and decretal order, dated 15.07.2013, made in I.A.No.112 of 2012 in A.S.No.120 of 2006, on the file of the Additional Subordinate Court, Dindigul.

**2. Facts of the case:-**

(i) The petitioner is the plaintiff in the suit in O.S.No.302 of 2004 on the file of the Principal District Munsif Court, Dindigul and appellant in A.S.No.120 of 2006 on the file of the Subordinate Court, Dindigul.

(ii) The petitioner filed the suit for specific performance of agreement of sale, dated 10.06.2000.

(iii) The respondent filed written statement and resisted the same.

(iv) The Trial Court framed necessary issues and after trial, dismissed the suit.

(v) Against the said judgment and decree, dated 30.11.2006, the petitioner has filed A.S.No.120 of 2006 before the Subordinate Court, Dindigul.

(vi) Pending appeal, the petitioner also filed I.A.No.112



of 2012 before the Additional Subordinate Court, Dindigul, for amendment of the plaint. The petitioner sought amendment for including the boundaries of the property in the schedule to the plaint and also to amend the date of agreement of sale as 10.05.2000 instead of 10.06.2000.

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(vii) The respondent filed counter affidavit and opposed the same stating that the Trial Court framed specific issues with regard to description of the property and after elaborately considering the issue, the Trial Court held the said issue against petitioner and dismissed the suit after considering the materials on record. The petitioner filed A.S.No.120 of 2006 in the year 2006. He filed I.A.No.95 of 2010 for amendment in the year 2010 and also filed I.A.No.24 of 2011 to re-open in the year 2011. After taking number of adjournments, he withdrew I.A.No.95 of 2010 on 05.11.2012, as not pressed and the said applications were dismissed. Now, again he has come out with the present petition for amendment. The petitioner has not given for any reason for not filing amendment in the Trial Court itself and also has not given any reason for not proceeding with the earlier application filed by him in I.A.No.24 of 2011.

(viii) The first appellate Court has considered all the facts and after giving cogent and valid reason, dismissed the application.

3. Against the said order of dismissal, dated 15.07.2013, the petitioner has filed present Civil Revision Petition.

4. The learned counsel for the petitioner submitted that the learned Additional Subordinate Judge, Dindigul, failed to see that the amendment sought for in the present petition will not change the nature of the suit. The learned Subordinate Judge failed to see that the first respondent did not object to the amendment. He further submitted that the learned Subordinate Judge failed to see that the amendment is necessary to decide the issue properly and render justice. It is well settled that the Courts must be liberal in considering the petition for amendment. The learned Subordinate Judge failed to see that the date of agreement of sale was given as 10.05.2000 instead of 10.06.2000 wrongly due to the typographical error. The respondent will not be prejudiced, if the amendment petition is allowed. The learned Subordinate Judge failed to see that the amendment petition can be filed in the appeal suit also and in the interest of justice, the learned Subordinate Judge ought to have allowed the application for amendment.

5. In support of his submissions, the learned counsel for the petitioner relied on the judgment of the Hon'ble Apex Court in Usha Devi Vs. Rijwan Ahmad and others [AIR 2008 SC 1147] and submitted that proposed amendment was necessary for the purpose of bringing to the real question in controversy between the parties and refusal to permit the amendment would create needless complications at the stage of the execution in the event of the plaintiff-appellant succeeding in the suit.



6. Notice sent through Court was served on the second respondent and notices sent through Court to the respondents 1 and were returned with an endorsement "No Residence". The petitioner has filed proof of service, dated 07.10.2013 stating that the respondents 2 to 5 have received the notices and the notices sent to the first respondent returned with an endorsement "Left". There is no representation on behalf of any of the respondents.

7. I have heard the learned counsel for the petitioner and perused the materials available on record.

8. From the records, it is seen that a specific issue has been raised with regard to description of the property as contended by the respondent in the counter. The petitioner has not denied the said averments. The Trial Court considered the issues framed in this regard and dismissed the suit on 30.11.2006. When the suit was pending, the petitioner did not take any steps to amend the plaint to include the boundaries and also the date of agreement of sale. The learned Subordinate Judge has considered Ex.A3, which is a registered document and based on which, the respondent has filed the suit for specific performance of agreement of sale. In Ex.A.3 specific boundaries have been given and the date of agreement of sale has been mentioned as 10.06.2000. The learned Subordinate Judge also took note of the fact that the petitioner has not given any valid reason for not filing the petition for amendment, when the suit was pending. It is seen from the records that the petitioner also subsequently filed I.A.No.95 of 2010 for amendment and also filed I.A.No.24 of 2011 to re-open and subsequently, he did not press I.A.No.95 of 2010 and the said applications were dismissed as not pressed. Considering these facts, the present application is filed only to drag on the proceedings and the petitioner has not given any valid and acceptable reason for not filing the petition, when the suit was pending and the appeal was filed in the year 2006 as well as for not pressing the application in I.A.No.95 of 2010 in the year 2012. The learned Subordinate Judge has considered all these aspects in proper perspective and dismissed the I.A. In the circumstances, there is no illegality or irregularity in the order passed by the learned Additional Subordinate Judge warranting interference by this Court.

9. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

/True copy/

Sub Assistant Registrar



To

The Additional Subordinate Judge,  
Dindigul.

**Copy to :**

The Section Officer,  
VR Section,  
Madurai Bench of Madras High Court,  
Madurai.

+1 cc to Mr.V.Raghavachari, Advocate, SR.NO.82363

SMN2

AAM-GSV-SV:23.01.2017/4P/4C

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