

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:06.04.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

CRP (PD) No.1260 of 2017

and

CMP.No.5890 of 2017

D.C.Elangovan

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Petitioner

Vs.

1. N.Madhu

N.Shanmugam (Died)

2. N.Balamurugan

3. A.Muthukannu

4. Padmavathi

5. Thulasi

6. Marriyammal

7. Minor Jeeva

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respondents

Prayer : Revision Petition is filed under Article 227 of the Constitution of India, against the order of the District Munsif cum Judicial Magistrate Court at Pappireddipatti dated 10.08.2016 in I.A.No.536 of 2016 in O.S.No.530 of 2008.

For Petitioner : Mr.P.Valliappan

ORDER

This Civil Revision Petition has been filed against the order dated 10.08.2016, passed by the learned District Munsif cum Judicial

Magistrate, Pappireddipatti in I.A.No.536 of 2016 in O.S.No.530 of 2008, dated 10.08.2016.

2. The petitioner is the eighth defendant and the first respondent is the plaintiff and the respondents 2 to 7 are the defendants 1 to 7 in O.S.No.530 of 2008. The first respondent herein filed a suit in O.S.No.530 of 2008, for specific performance of the agreement of sale dated 16.07.1997. The first respondent described the property in the schedule of the plaint as per the agreement of sale. The defendants contested the suit by filing the written statements.

4. At the time of trial, the first respondent filed I.A.No.536 of 2016 to amend the schedule of the plaint by incorporating sub division effected after filing of the suit.

5. According to the first respondent, he purchased 95 cents in total extent of the property by the sale deed dated 12.06.1991 and entered into agreement of sale dated 16.07.1997 for purchase of balance extent of 2 acre 45 cents. After filing of the suit in the year 1998, the particular extent of the property was sub divided on 09.11.1999, by the proceedings bearing Ref No.T.K.8A/38/1409 and for the property purchased by the first respondent Survey No.155/2B was allotted and for the suit property Survey No.155/2A was allotted. In such

circumstances, he prayed for amendment of the schedule of the plaint.

6. The petitioner, by filing the counter affidavit opposed the said application on the ground that the amendment sought for is a belated one. The first respondent has not given any reason for delay in filing the application. The amendment cannot be ordered as a matter of right.

7. The learned Judge, on considering the averments in the affidavit, the counter affidavit and the arguments of the learned counsel appearing on either side has allowed this application, on 10.08.2016, on the ground that the amendment sought for is to incorporate the Survey number after sub division and therefore no prejudice would be caused to the petitioner.

8. Aggrieved against the said order, the present Civil Revision Petition has been filed.

9. The learned counsel for the petitioner reiterating the averments in the counter affidavit filed before the trial Court as well as the grounds raised in the present revision petition submitted that the first respondent has not given any reason for application filed after the delay of 18 years. It is not correct to state that the amendment would

not prejudice the petitioner and the amendmant cannot be ordered as a matter of right. The learned Judge failed to consider the scope and ambit of Order 6 Rule 17 of Civil Procedure Code.

10. Heard the learned counsel for the petitioner and perused the materials on record.

11. The suit is for specific performance of agreement of sale dated 16.07.1997 and the first respondent/plaintiff described the property in the plaint schedule as mentioned in the agreement of sale dated 16.07.1997. Subsequent to the filing of the suit, the suit property was sub divided and new Survey number was given. The first respondent seeking to incorporate the new Survey number given after the sub division, has filed the application for amendment and allowing this will not change the character of the suit. In the suit for specific performance, the description of the property must be properly described, then only a decree for specific performance, if granted can be executed. The learned Judge by giving cogent and valid reasons has allowed the application. There is no irregularity or illegality in the said order warranting interference by this Court.

12. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

06.04.2017

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To

The District Munsif cum Judicial Magistrate Court at Pappireddipatti

V.M.VELUMANI, J

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