

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2017

CORAM

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

CRP(PD)No.3756 of 2011

&

M.P.No.1 of 2017

Ponnusamy

.. Petitioner

..Vs..

Thangavel

.. Respondent

Prayer:-

Civil Revision Petition filed under Article 227 of Constitution of India against the fair and decreetal order of the learned Additional District Munsif, Tittakudi, dated 30.05.2011 passed in I.A.No.150/2011 in O.S.No.76/2008.

For Petitioner : Mr.J.Antony Jesus

सत्यमेव जयते

ORDER

This civil revision petition is filed against the fair and decreetal order dated 30.05.2011, made in I.A.No.150/2011 in O.S.No.76/2008 on the file of the Additional District Munsif, Tittakudi.

2. The petitioner is the plaintiff and the respondent is the defendant in O.S.No.76 of 2008 on the file of Additional District Munsif, Tittakudi. The petitioner filed the suit for specific performance of agreement of sale dated 27.04.2005. Respondent filed written statement and is contesting the suit. The petitioner filed I.A.No.150 of 2011 to amend the plaint to include alternate prayer namely in case the court is not inclined to grant the relief of specific performance, the respondent may be directed to refund the advance amount of Rs.75,000/- together with interest at 12% per annum totally Rs.1,01,725/-. The petitioner also paid Court fee for the alternate claim of Rs.1,01,725/-. The petitioner also sought for amendment of the Court fee clause by deleting Section 42 and substituting Section 22 of the Tamil Nadu Court Fees and Suit Valuation Act.

3. The respondent filed counter and submitted that by deleting Section 42 and substituting Section 22, it is not clear whether the petitioner has given up his claim of specific performance. The petitioner is not entitled to claim interest for advance amount. The claim of return of advance amount is barred by limitation. By the said amendment, the entire nature of the suit will be changed.

4. The learned Trial Judge considering the averments in the

affidavit, counter affidavit and materials on record, dismissed the application holding that by substituting Section 22 in the place of Section 42, it is not clear that the petitioner has given up claim for specific performance and claiming only refund of advance amount and claim of refund of amount changes the entire character of the suit.

5. Against that order dated 30.05.2011 made in I.A.No.150 of 2011 in O.S.No.76 of 2008, the present civil revision petition has been filed by the petitioner.

6. Heard the learned counsel appearing for the petitioner. Though notice was served on the respondent and his name is printed in the cause list, there is no representation either in person or through counsel.

7. From the affidavit filed by the petitioner in I.A.No.150 of 2011 and from the amendment sought for, it is seen that the petitioner has sought for only alternate prayer of refund of advance amount of Rs.75,000/- paid by him together with interest. The petitioner has not given up his claim for specific performance. By amending the Section under which Court fee was paid, it cannot be said that the petitioner has given up his claim for the relief of

specific performance.

8. The learned Trial Judge has not properly considered the relief sought for by the petitioner. The amendment sought for is only an alternate prayer for refund of the advance amount, if the Court declines to grant decree for specific performance. The learned Trial Judge has committed an irregularity by not properly exercising the power conferred on him.

9. For the above reasons, the Civil Revision Petition is liable to be allowed and the order of the learned Judge passed in I.A.No.150 of 2011 is set aside.

10. In the result, the civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते

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Index :Yes / No

Internet:Yes / No

Speaking Order/Non Speaking Order

To

The Additional District Munsif, Tittakudi.

V.M.VELUMANI,J

sjj



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