

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **18.01.2017**

CORAM

THE HON'BLE MRS.JUSTICE **PUSHPA SATHYANARAYANA**

CRP PD No.297 of 2015
and
M.P.No.1 of 2015

Dipti Patel
rep.by her Power Agent
Mr.Sunilrai Kanubhai Patel

.. Petitioner

vs

1. S.Murugavel

2. Dr.M.A.S.Subramanian

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 17.10.2014 passed by the learned Principal District Judge, Puducherry in I.A.No.635 of 2014 in O.S.No.3 of 2007.

For Petitioner : Mr.C.A.Diwakar

For Respondents : Mr.S.Joel for R2
R1- Served-No appearance

ORDER

The plaintiff is the revision petitioner, who has filed this revision, aggrieved by the order passed by the Court below in dismissing the application filed by him under Order VI Rule 17 of the Code of Civil Procedure to amend the plaint reliefs.

2. The suit is one for specific performance. The second respondent impleaded himself as a second defendant in the suit having purchased the suit property from the first respondent, pending lis. As the subsequent purchaser has been added as a party to the suit, in whose favour today, the title stands, the plaintiff has filed the application to amend the pleadings and the prayer seeking re-conveyance and delivery of possession of the suit property. The said application was dismissed. Challenging the same, the present revision is filed.

3. Heard the learned counsel for the petitioner and the learned counsel appearing for the second respondent. Despite notice being served on the first respondent, there is no

representation on his behalf either in person or through the counsel.

4. Admittedly, the second respondent is the purchaser, pending lis. Therefore he was impleaded in the suit as the second defendant. In the event of the plaintiff succeeding in the suit for specific performance, which was originally filed against the first defendant alone, the relief as against the second defendant has to be sought for, in conveying the suit property in favour of the plaintiff. The reason being that the suit property is conveyed in favour of the second defendant, *pendente lite*. If the said amendment sought for by the plaintiff is not allowed, the purpose for which the second defendant was sought to be impleaded in the suit, will lose its significance.

5. At this juncture, my mind is reminiscent of the judgment of the Hon'ble Supreme Court reported in **(2009)10 SCC 84 [Revajeetu Builders and Developers vs. Narayanaswamy and Sons and Others]**. The relevant portion reads as follows:

"64. The decision on an application made under Order VI Rule 17 is a very serious judicial exercise and the said exercise should never be undertaken in a casual manner. We can conclude our discussion by observing that while deciding applications for amendments the courts must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide, worthless and/or dishonest amendments."

6. In the case on hand, the Court below has declined the relief sought for by the plaintiff merely because the suit was filed in the year 2007 and that cannot be a reason for rejecting the amendment application. Further, if the amendment sought for is not allowed, the rights of the plaintiff will be defeated, in the event of her succeeding in the suit, ultimately.

7. Considering the facts and circumstances of the case and following the principles laid down by the Hon'ble Supreme Court, this court is inclined to set aside the order passed by the Court below. Accordingly, the order dated 17.10.2014 passed by the learned Principal District Judge, Puducherry in I.A.No.635 of 2014

in O.S.No.3 of 2007 is set aside. This Civil Revision Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed. Since the suit is of the year 2007, the trial court is directed to dispose of the suit on or before 30.04.2017.

18.01.2017

vj2

Index: yes/No

Internet: yes

To

The Principal District Judge, Puducherry.

PUSHPA SATHYANARAYANA,J.,

vj2

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