

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.06.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.2623 of 2016
& C.M.P.No.13526 of 2016

A.Valarmathi

.. Petitioner

Vs.

1.Gunasundari

Ananthaai(died)

2.G.Periyasamy

3.Dhanapal Chinnasamy

4.G.Edward

5.G.Saradha

6.Gowriammal

7.Gandhimathi

8.Anandraj

Vinoth kumar(died)

9.Gunasekaran

10.M.Chandran

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 13.06.2016 made in I.A.No.37 of 2013 in O.S.No.138 of 2006 on the file of the learned District Munsif cum Judicial Magistrate, Perundurai.

For Petitioner : Mr.V.P.K.Gowtham

For Respondents : Mr.P.Saravana Sowmiyan

ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated 13.06.2016 made in I.A.No.37 of 2013 in O.S.No.138 of 2006 on the file of the learned District Munsif cum Judicial Magistrate, Perundurai.

2. The petitioner is the sixth defendant, first respondent is the plaintiff and respondents 2 to 10 are the defendants in O.S.No.138 of 2006. The first respondent initially filed suit for permanent injunction restraining the petitioner and respondents 2 to 10 from interfering with the first respondent's peaceful possession and enjoyment of the suit property. The petitioner filed written statement on 22.01.2007 and is contesting the suit.

3. According to the first respondent, first defendant/deceased Ananthaai entered into an agreement of sale with the first respondent on 29.01.2006 to sell the suit property for a total sale consideration of Rs.1,50,000/-. According to her, the second respondent borrowed a sum of Rs.1,00,000/- from the first

respondent. The said amount was made over as sale consideration, first respondent paid Rs.25,000/- as an advance and agreed to pay the balance sale consideration of Rs.25,000/- within six months from the date of sale agreement and get the sale deed executed. First respondent is the daughter-in-law of the second respondent. Even before the agreement of sale, the first respondent was in possession of the suit property from the year 1994 onwards and she was permitted to continue the possession, even after the agreement of sale. The petitioner and others tried to evict the first respondent from the suit property and therefore, first respondent filed the present suit for permanent injunction.

4. The first respondent filed I.A.No.456 of 2006 for permission to file a separate suit for specific performance of the agreement of sale dated 29.01.2006 and obtained leave from the Court. In that suit, the petitioner filed written statement and the suit is pending trial.

5. At that stage, the first respondent filed I.A.No.37 of 2013 to amend the plaint to include the relief of specific performance. According to the first respondent, the petitioner claims to have

purchased the suit property from the deceased Ananthaai and the respondents 2 to 5 and the sale deed kept pending due to insufficiency of the stamp duty paid by the petitioner. In view of the same, the first respondent could not file suit for specific performance earlier.

6. The petitioner filed counter affidavit and opposed the said application.

7. The learned Judge considering the averments made in the affidavit, counter affidavit and materials available on record, allowed the application.

8. Against the order dated 13.06.2016 made in I.A.No.37 of 2013, the present civil revision petition is filed by the petitioner/sixth defendant.

9. Heard the learned counsel appearing for the petitioner and respondents and perused the materials available on record.

10. According to the first respondent, she has filed the present application in order to avoid multiplicity of proceedings. The reason given by the first respondent for not filing the separate suit for specific performance earlier, even after obtaining leave in I.A.No.456 of 2006 for amendment is not valid reason. By seeking amendment to include the relief of specific performance, the first respondent is introducing a new cause of action and a new case. This issue has been decided in the judgment relied on by the learned counsel for the petitioner reported in **(2010) 14 SCC 596 (Van Vibhag Karamchari Griha Nirman Sahkari Sanstha Maryadit (Registered) v. Ramesh Chander and others)**, wherein the Hon'ble Apex Court held that if amendment is ordered to include the relief of specific performance introduced new case, changes pecuniary jurisdiction, the relief of specific performance is the discretionary relief and amendment sought for after 11 years is barred by limitation.

11. The ratio in the said judgment is applicable to the facts of the present case. In the present case, agreement of sale is dated 29.01.2006. The first respondent filed suit in the year 2006 for permanent injunction. At that time itself, first respondent was

aware of the claim of the petitioner that she has purchased the property vide sale deed dated 15.03.2006. The first respondent did not claim all the reliefs in the suit i.e., relief of specific performance, but obtained leave to file a separate suit for specific performance.

12. Having obtained such an order, first respondent ought to have filed the suit for specific performance at that time itself within a period of limitation. Having failed to do so, it is not open to the first respondent to seek amendment of the plaint to include the relief of specific performance.

13. The learned Judge failed to consider all these facts in proper perspective. The finding of the learned Judge that the first respondent not introducing a new cause of action or new case and no prejudice would be caused to the petitioner and others is erroneous. The learned Judge has not properly exercised his power conferred on him and committed irregularity in allowing the application for amendment.

14. In the result, this civil revision petition is allowed by

setting aside the fair and decretal order dated 13.06.2016 made in I.A.No.37 of 2013. The suit is of the year 2006 and the learned District Munsif-cum-Judicial Magistrate, Perundurai, is directed to dispose the suit on merits and in accordance with law, as expeditiously as possible, in any event, not later than three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

23.06.2017

Index : Yes/No

dm/kj

To

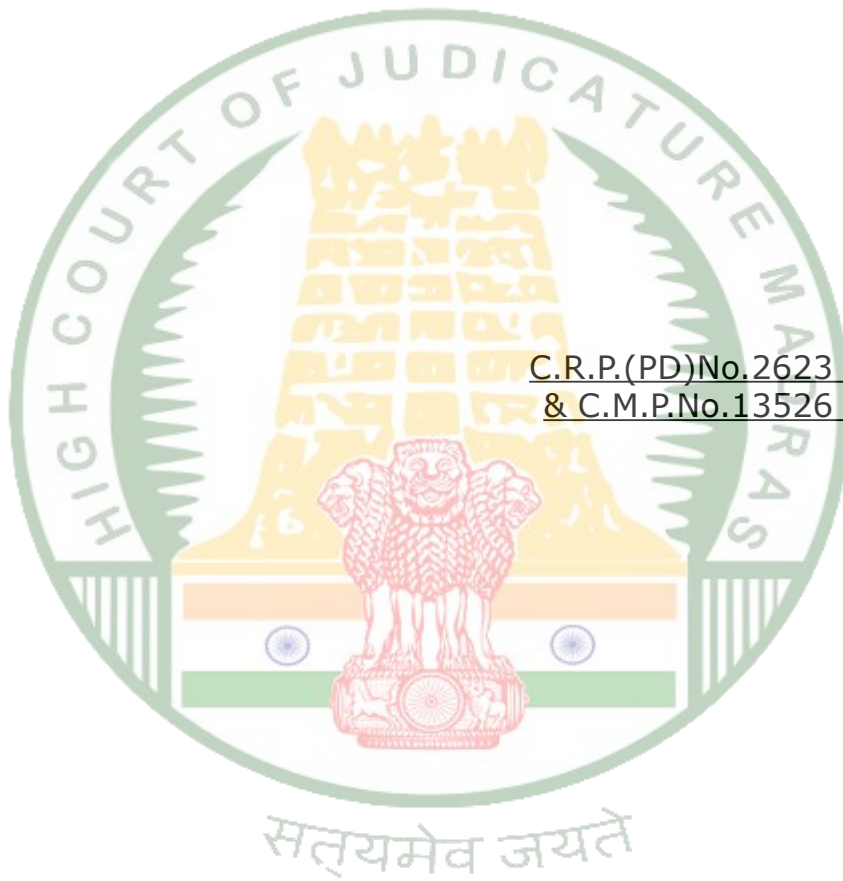
The District Munsif cum Judicial Magistrate,
Perundurai.



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V.M.VELUMANI, J.

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