

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: . 10.07.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(PD)No.3338 of 2012
and
M.P.No.1 of 2012**

Mariappan

.. Petitioner

Vs.

1.Chandran

2.Balaji

3.Saravanan

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and Decreetal order in I.A.No.352 of 2009 in O.S.No.161 of 2006 dated 19.06.2012, on the file of the Subordinate Court, Thiruvallur.

For Petitioner : Mr.M.Chidambaram

For Respondents : Mr.K.Balaji (for R2 and R3)
No Appearance (for R1)

ORDER

The plaintiff in O.S.No.161 of 2006, on the file of the Subordinate Judge, Thiruvallur, is the civil revision petitioner before this Court.

2.The case of the petitioner is that he has filed the suit in O.S.No.161 of 2006 for specific performance based on the sale agreement dated 19.09.2005. While pendency of the case, after entered appearance into between the petitioner/plaintiff and the 1st respondent/defendant related to the suit property, the petitioner has filed an application in I.A.No.43 of 2008 under Order 6 Rule 17 for amendment of the plaint. Accordingly, the learned Subordinate Judge, Thiruvallur, by order dated 19.06.2008, allowed the said application by permitting the petitioner to amend the plaint as follows:

"DETAILS OF AMENDMENT

1.After Paragraph 4 of the plaint to add a new paragraph "4-A. The plaintiff submits that the defendant, during the course of the trial, has taken up a new defence to the effect that the suit property does not belong to him and that the same cannot, therefore be, agreed to be sold

to the Plaintiff. The Plaintiff submits that there has occurred a mistake in the Survey Number of the suit Property in the agreement itself due to a bonafide mutual mistake on the part of the plaintiff and the defendant. In the original sale deed of the defendant itself such a mistake arisen because the vendor of the defendant namely Valliammal did not have any right to the property. Thus, it is obvious and apparent that there exists a mutual bonafide mistake on the part of both the plaintiff and the defendant in describing the suit property with reference to the survey no. and the eastern boundary".

2.To add another paragraph there after, '4B'. The plaintiff submits that such a mutual bonafide mistake came to the knowledge of the Plaintiff came to the knowledge of the plaintiff during trial only. In the interest of justice, it is necessary that the plaintiff should be granted a decree in respect of the correct property which was agreed to be purchased by the Plaintiff. The correct Survey No. of the suit property is S.No.182/2A. The boundaries of the eastern side is plot No.69. These are mistake which require to be rectified and the court is empowered to grant

a decree in respect of the correct suit property. The plaintiff is advised to submit that it is not necessary to seek any reliefs of rectification. Under the circumstances the plaintiff is entitle to a decree in respect of the suit property as amend".

3.In the plaint description of property, to correct the Survey No. as "Survey No.182/2A" and to correct in the boundary, the figure "65" as "69".

3.Thereafter, the respondents/defendants were challenged the said amendment by way of the civil revision petition in CRP(PD)No.3934 of 2008 before this Court and considering the respondents/defendants' case, this Court by order dated 27.11.2008 dismissing the petition by confirming the order passed in I.A.No.43 of 2008. The said revision order, this Court given liberty to the revision petitioner to file his subsequent pleading, if need be. Now at presently, after the order passing in the above civil revision petition, this petitioner has filed the present application in I.A.No.352 of 2009 for permitting the petitioner to amend the plaint as follows:

"PARTICULARS OF AMENDMENT

1.In the plaint, schedule of property the existing Survey

No:182/20 has to be amended as Survey No:182/2A and the plot No:64 has to be amended as plot No:70.”

4.In the affidavit, the petitioner/plaintiff states that the 1st respondent/1st defendant has erroneously furnish the Survey No. and Plot Number and prefer the sale agreement and based on the sale agreement, the suit has been filed in O.S.No.161 of 2006. When the petitioner came to know later about the wrong survey number, he has rectify the same by way of an amendment. The amendment was also carried out. But, later on the petitioner/plaintiff has come to know that the Plot number also given wrongly by the 1st respondent instead of Plot No.70, the 1st defendant has furnished the plot number only 64.

5.It is the case of the petitioner/plaintiff that the Plot No.70 sold by the petitioner to the defendants 2 and 3. Therefore, the petitioner has took out an application to implead the defendants 2 and 3, since the suit property situated on the stipulated boundary. Therefore, the Plot Number has to be amended as 70 instead of plot No.64.

6.The petitioner/plaintiff also states that he has also amend the correct survey number as 182/2A by way of an application. During the

time of filing amended copy of the plaint inadvertently typed as 1820/20 and the mistake taken place is only due to a typographic error and the same has also been rectified. Therefore, he filed the present application to amend the survey number as 182/2A instead of 1820/20 and plot No.64 has to be amended as plot No.70 in the plaint. Therefore, he filed the application in I.A.No.352 of 2009 in O.S.No.161 of 2006 for the amendment.

7.On receipt of the notice, a counter affidavit has been filed by the 2nd respondent, which was adopted by the 3rd respondent. They denied the allegations that at the first instance the petitioner is totally unaware about the particulars of the suit property and that the 1st defendant erroneously furnished the correct survey number and plot number are all cock and bull story created for the purpose of strengthening this vexatious application. The 1st defendant also given the plot number as 64 instead of 70 is another imaginary allegation made for the purpose of frivolous applications. The typed as survey No.1820/20 is also totally false, since the agreement is only in respect of Plot No.64. The Plot No.70 was purchased by the respondents 2 and 3, who are the defendants 2 and 3 in the plaint. Therefore, they prayed for dismissal of the application in I.A.No.352 of 2009.

8.Considering both side arguments, the learned Subordinate Judge, Thiruvallur, was pleased to dismiss the application by order dated 19.06.2012. The learned Subordinate Judge has given the reason that though the suit has been filed only for the specific performance, which had arisen upon the sale agreement dated 19.09.2005 under which the 1st defendant Chandran had agreed to sell the property described therein under Survey No.782/9 and 782/24 Plot No.64. The property description therein do reveal that totally two items of property consist of 2115 sq. ft. Plot along with the two shops constructed therein. Nowhere in the sale agreement either S.No.182/2A or Plot No.70 is mentioned.

9.The learned Judge also states that the suit for specific performance and the suit has to confine only to, the suit sale agreement and cannot go beyond the same. The learned Judge also states that the document marked by the petitioner/plaintiff on the side of the petitioner as Ex.P1 and Ex.P2 are irrelevant. Ex.P1 is the registration copy of the sale deed in respect of some other property standing in the name of the first defendant. So also Ex.P2 is the registration copy of the sale deed in which the 1st defendant Chandran

has sold some other property to one R.Saravanan through his power agent. The petition lacks merits and accordingly the learned Judge dismissed the said application. Challenging the said application, the petitioner/plaintiff has filed the present civil revision petition before this Court.

10.I heard Mr.M.Chidambaram, learned counsel appearing for the petitioner and Mr.K.Balaji, learned counsel appearing for the respondents 2 and 3 and perused all the materials available on record. No representation on behalf of the 1st respondent.

11.It is the case of the petitioner/plaintiff is that it is the averment in the plaint, the suit has been filed based on the sale agreement dated 19.09.2005. The plaint in O.S.No.161 of 2006 in the prayer and the schedule of property has stated as follows:

“(1)For specific performance directing the defendant to execute the sale deed in favour of the plaintiff in respect of the suit properties. For Rs.1,42,000/- after deducting Rs.62,000/- from the plaint if in default this Honourable Court to do the same for and on behalf of the defendant.

(2)For a permanent injunction restraining the defendants, their men, agents, servants and relatives from interfering in any manner with the plaintiff peaceful possession and enjoyment of the suit property.

(3)For a permanent injunction restraining and his agent from alienating the suit property or creating any kind of encumbrance over the suit property.

(4)For the costs of the suit.

Schedule of property

All that part and parcel of vacant land and two shops in Iveli Agaram Village, comprised in Survey No.182/20, Vallal Nagar, Plot No:70, in Thiruvallore Taluk.

Boundaries:-

Est by plot No:69

West by Thalakanjeri to Thiruvallore Road

North by 20 feet Road

South by vacant plot.

Measurement

East west on the northern side 46 feet

East west on the southern side 48 feet

North south on the eastern side 40 feet

North south on the western side 33 feet

Total = 1,715 Square feet

Another extent measuring 400 square feet situated
in western side of in Plot No:65.

Boundaries

East by plot No:69

West by Plot No:64

North by 20 feet Road

South by vacant Plot

East to west 10 feet

North to south 40 feet

Total 400 square feet

Total extent 2115 including two tiled shops."

12. When the suit itself has been filed for the specific performance, pursuant to the sale agreement dated 19.09.2005 in respect of S.No.182/20, Vallal Nagar, Plot No.64 in Thiruvallur Taluk, the petitioner/plaintiff now cannot come and say that the 1st defendant has wrongly given the survey number as well as the plot number. If at all he has having any case in respect of the agreement, it is the

bounden duty of the petitioner to approach the 1st defendant for the amendment of the survey number as well as the plot number in the agreement itself at the relevant point of time. But, in this case, the sale agreement was executed on 19.09.2005 and the plaint was filed on 08.12.2006 and the 1st amendment was filed on 16.04.2007, but, after four years, the present application in I.A.No.352 of 2009 was filed on 10.08.2009 for the amendment as follows:

"PARTICULARS OF AMENDMENT

1.In the plaint, schedule of property the existing Survey No:182/20 has to be amended as Survey No:182/2A and the plot No:64 has to be amended as plot No:70."

13.Originally the petitioner has filed I.A.No.43 of 2008 for the prayer of amendment to correct the survey number as S.No.182/2A and correct in the boundary the figure "65 as 69" and the said application was allowed by the learned Subordinate Judge, Thiruvallur on 19.06.2008, which was challenged by the 1st defendant by way of civil revision petition before this Court in CRP(PD)No.3934 of 2008 and considering the case, this Court by order dated 27.11.2008 dismissed the civil revision petition by confirming the order passed in I.A.No.43 of 2008 dated 19.06.2008 by giving liberty to the defendants to file

the additional written statement, if any.

14. When the petitioner has filed to amend the plaint in I.A.No.43 of 2008 in respect of S.No.1820/20 instead of 182/2A and plot No.65 instead of 69, that was considered by both the Subordinate Judge, Thiruvallur and this Court, how the present application has been filed by the petitioner to amend the survey No.1820/20 as S.No.182/2A, since the earlier order passed by the learned Subordinate Judge on 19.06.2008 permitting the petitioner to amend the survey number instead of S.No.1820/20 as original survey No.182/2A. There was no appeal filed by the defendants before the Hon'ble Supreme Court by the respondents/defendants. Therefore, while filing the amendment petition, it is the case of the petitioner that again he wrongly typed as S.No.1820/20 instead of S.No.182/2A, which was accepted by the learned Subordinate Judge, Thiruvallur as well as by this Court. It is my considered view that though it is wrongly typed while filing the amendment application in carry out the same as per the order passed by the learned Subordinate Judge and by this Court, this amendment can be allowed in respect of survey number only as correct survey No.182/2A instead of S.No.1820/20 since both the learned Subordinate Judge, Thiruvallur as well as this Court has accepted the

case of the petitioner/plaintiff. Therefore, the petitioner/plaintiff is permitted to amend the plaint in Survey as Survey No.180/2A instead of Survey No.1820/20. But, it is the case of the petitioner/plaintiff that he wants the 2nd part of the amendment to amend as plot No.70 instead of 64.

15.It is my absolute view that the petitioner/plaintiff cannot sought for the prayer to amend the plot Number as 70 instead of 64, since it is introduction of new cause of action. Because the agreement itself has states that the plot No.64 only. Thus being the case, the petitioner/plaintiff cannot say that after 4 years that plot number should be amend as 70 instead of 64 since it is barred by limitation.

16.Apart from this, when the plot No.70 in survey No.180/2A purchased by the defendants 2 and 3, the petitioner/plaintiff cannot now and say that the agreement was executed by the 1st defendant in respect of only plot No.70, since he has also not raised the said point in the earlier application for amendment, Plot No.70 is the correct plot number, he has no right to raise this amendment after four years.

17.This Court and the Hon'ble Apex Court very categorically held

that the Court shall permit the plaintiff at any stage of the proceedings to include one or more of the reliefs, by means of an amendment of the plaint on such terms as it may deem proper. But, both this Court and the Hon'ble Apex Court very categorically stated that when the amendment comes with new cause of action, the Court should not entertain the application of amendment and the only remedy available to the parties are to file separate suit.

18.It is my absolute view that the amendment of Plot No.70 instead of Plot No.64 is definitely introducing a new cause of action. Therefore, the plaintiff is not entitled for amend the 2nd part of the amendment petition prayed the amendment in respect of Plot No.70 instead of Plot No.64, in the plaint is not maintainable.

19.During the course of arguments, the learned counsel appearing for the petitioner/plaintiff has produced the judgment reported in the case of **R.Srinivasan v. M.Thambusamy** reported in **1996 (II) CTC 66**, it is held as follows:

"Code of Civil Procedure, 1908, Sections 104, 115 and 152 – Revision – Application made under Section 152, C.P.C. for correction of clerical or arithmetical errors –

Appeal does not lie – Revision alone is proper remedy – Appellate Authority's order set aside as without jurisdiction – Matter decided by Revisional Court and reached same conclusion.”

The other judgment in the case of **Babu Lal v. M/s.Hazari Lal Kishori Lal and others** reported in **AIR 1982 SUPREME COURT 818**, it is held as follows:

“Specific Relief Act (47 of 1963), Ss.22, 21 and 28 – Civil P.C. (1908), S.47 and O.2, R.2 – Agreement to sell – Vendor selling property to another in defiance of previous agreement – Suit for specific performance – Relief of possession can be granted at appellate stage. (T.P.Act (1882), S.55).

.... the Court shall permit the plaintiff at any stage of the proceedings, to include one or more of the reliefs, by means of an amendment of the plaint on such terms as it may deem proper.”

20. When the above judgments were gone through by this Court, it is made clear that this Court held that the amendment can be filed

at any stage, but the said amendment cannot be create new cause of action and the same should not be entertained by the Courts. Therefore, the petitioner/plaintiff is entitled to amend the survey number 182/2A instead of 1820/20 since the earlier application in I.A.No.43 of 2008, the learned Subordinate Judge, Thiruvallur, has permitted the plaintiff to amend the Survey number which was confirmed by the Court, but the petitioner/ plaintiff is not entitled for the 2nd part of the amendment of Plot No.70 instead of Plot No.64.

21.In the above circumstances, the order in I.A.No.352 of 2009 in O.S.No.161 of 2006, dated 19.06.2012, on the file of the Sub-Court, Thiruvallur, is partly allowed by permitting the petitioner/plaintiff to amend the Survey Number as 182/2A instead of 1820/20 and the other part of the order in respect of Plot No.70 instead of Plot No.64 in the petition is dismissed.

22.In the result:

(a) this civil revision petition is partly allowed by setting aside the order in first part in I.A.No.352 of 2009 in O.S.No.161 of 2006, dated 19.06.2012 and in respect of 2nd part, the order is confirmed;

(b) the petitioner/plaintiff is entitled for amend the
plaint in respect of Survey No.182/2A instead of 1820/20;

(c) the petitioner/plaintiff is not entitled for
amendment of plot No.70 instead of Plot No.64;

(d) the respondents/defendants are permitted to file
any additional written statement if any, within a period of
30 days from the date of receipt of a copy of this order;

(e) on filing the additional written statement, if any,
within the time stipulated by this Court, the learned
Subordinate Judge, Thiruvallur, is directed to dispose of the
suit within a period of three months thereafter. No costs.
Consequently, connected miscellaneous petition is closed.

10.07.2017

Note:Issue order copy on 04.08.2017
Speaking Order
Index:Yes

vs

To

The Subordinate Judge,
Thiruvallur.

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M.V.MURALIDARAN, J.

VS



**Pre-Delivery order made in
CRP(PD)No.3338 of 2012
and
M.P.No.1 of 2012**

10.07.2017

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