

**THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**

**CIVIL REVISION PETITION No.2619 of 2017**

**ORDER:**

This revision is filed assailing the order dated 31.01.2017 in I.A.No.157 of 2016 in O.S.No.68 of 2012 passed by the Senior Civil Judge, Parvathipuram.

The brief facts of the case are that the petitioner is the plaintiff and the respondents are the defendants in O.S.No.68 of 2012 filed for specific performance of agreement of sale. In the said suit, the petitioner filed I.A.No.157 of 2016 under Order VI Rules 17 and 28 of CPC for amendment of plaint and consequential amendment in para VI(a) of the plaint. The amendment is that to add 'to return the advance sale consideration of Rs.50,000/-' in the place of 'to return the advance sale consideration of Rs.3,00,000/-'. The trial Court, on consideration of the arguments of both the counsel, dismissed the petition.

It is also the case of plaintiff that one Ambati Erukanaidu is the representative of the defendants. The defendants agreed to sell the plaint schedule property to the plaintiff at Rs.9,00,000/- per acre, and further agreed to execute a regular sale deed within 15 months, and accordingly both the defendants have executed an agreement of sale on 21.09.2009. The plaintiff gave three cheques for Rs.1,80,000/- as an earnest money. At the time of negotiations, plaintiff paid an amount of Rs.50,000/- to Erukanaidu. He paid Rs.50,000/- to the 1<sup>st</sup> defendant, and a sum of Rs.2,00,000/- to Erukanaidu in three instalments viz., Rs.50,000/-, Rs.50,000/- and Rs.1,00,000/-.

Learned counsel for the petitioner submits that the plaintiff paid Rs.50,000/- to the 1<sup>st</sup> defendant, but in the plaint, an amount of Rs.3,00,000/- was mentioned instead of Rs.50,000/- and it is a *bona fide* mistake crept in the plaint. Therefore, plaintiff sought for amendment of plaint. It is further submitted that in the entire pleadings, it is stated that the plaintiff paid Rs.50,000/- to the 1<sup>st</sup> defendant and therefore, he sought for amendment of para VI(a) of the plaint to that extent.

The amendment sought for reads as follows:

In para VI(a) of the plaint after the words 'to return the advance sale consideration of Rs.3,00,000/- (Rupees three lakhs only)' is to be amended as 'to return the advance sale consideration of Rs.50,000/- (Rupees fifty thousand only)'.

Learned counsel for the respondents submits that the plaintiff is not entitled to amend the relief portion as sought for and therefore, the order passed by the trial Court does not require any interference.

At the outset, it is the case of the plaintiff that he entered into an agreement of sale with the 1<sup>st</sup> defendant and paid an amount of Rs.50,000/- to the 1<sup>st</sup> defendant. It is born by records. Therefore, the plaintiff seeks for refund of an amount of Rs.50,000/-. In fact it is obvious that the amount mentioned in para VI(a) of the plaint is Rs.3,00,000/-, which appears to have contains the amounts said to have been paid by the plaintiff to Erukanaidu.

Therefore, considering the facts and circumstances of the case, the petitioner can be permitted to amend the plaint. Consequently, the Civil Revision Petition is allowed. The petitioner

is directed to make necessary amendment as prayed for before the trial Court. No costs.

The Miscellaneous Petitions, if any, pending in this petition shall stand closed.

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**GUDISEVA SHYAM PRASAD,J**

Date : 11.08.2017  
ssp

