

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:28.04.2018

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THE HONOURABLE MR.JUSTICE P.VELMURUGAN

**CRP(PD)No.1501 of 2018
and
C.M.P.No.7998 of 2018**

Paul

.. Petitioner

Vs.

V.Arumugam

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, against the order dated 09.03.2018 made in I.A.No.77 of 2018 in O.S.No.51 of 2010 passed by the learned Principal Subordinate Judge, Puducherry.

For Petitioner :M/s.R.Thiagarajan

ORDER

This Civil Revision Petition has been filed by the petitioner/plaintiff against the order dated 09.03.2018 made in I.A.No.77 of 2018 in O.S.No.51 of 2010 passed by the learned Principal Subordinate Judge, Puducherry.

2. It is to be stated that the revision petitioner filed a suit for specific performance against the respondent in the year of 2010. During the pendency of the suit, the petitioner filed an application in I.A.No.35 of 2011 for impleading the beneficiary of the settlement deed, that was dismissed by the trial Court and he already filed a revision before this Court in CRP (PD) No.2398 of 2013. The same was dismissed by this Court. Subsequently, the revision petitioner filed yet another application before the trial Court in I.A.No.77 of 2018 to amend the prayer. After hearing both sides, application was dismissed by the trial Court. Aggrieved against the said order, the present revision petition is filed.

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

4. The suit is the year of 2010, the respondent has filed written statement in the above suit even as early as on 06.12.2010 itself and he would state in the said written statement that the suit schedule property is not with the defendant and the suit property was settled in favour of his wife and registered on 08.03.2010 bearing document No.807 of 2010. Thereafter, the revision petitioner filed an application

to implead the settle in the suit as second defendant. The said application was dismissed against which he preferred a revision before this Court and the same was also dismissed by observing that the petitioner filed the suit for specific performance and the same cannot be converted as title suit. Therefore, the proposal party was neither proper nor necessary party to decide the suit. Admittedly, the eviction order of this Court in CRP (PD) No.2398 of 2013 dated 21.07.2017 was not challenged and therefore, the said order is final.

5. Thereafter, the revision petitioner filed another application to amend the prayer in the plaint in A.No.77 of 2018, the same was resisted by the respondent. After hearing the Court below, dismissed the application against which the revision petitioner is once again before this Court by way of filing the present revision petition. The suit is filed only based on the alleged sale agreement. The respondent stoutly denied the execution of the sale agreement. Once the defendant denied the execution of sale agreement itself, then it is the duty of the petitioner to prove the execution of sale agreement. Admittedly it was an unregistered agreement. This Court in earlier occasion, while dealing in the Civil Revision Petition in the very same subject matter of the suit, it is observed in para 17 of the order that

the suit for specific performance cannot be converted into a suit for declaration of title of the suit property. Therefore, the amendment sought for in the prayer would certainly alter the nature of the suit. Therefore, no reason to interfere with the order passed by the Court below. There is no merits in the revision and hence, the revision petition is liable to be dismissed.

6. The Civil Revision Petition is dismissed. No costs. Consequently connected miscellaneous petition is closed.

28.04.2018

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To
The learned Principal Subordinate Judge,
Puducherry.

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P.VELMURUGAN, J.
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