



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.04.2018
(Reserved on 09.02.2018)

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP (PD) (MD) No.807 of 2016

and

CMP (MD) Nos.4064 of 2016 and 5192 of 2017

Aruldoss ... Petitioner/Respondent/Defendant

vs.

Thobidoss ... Respondent/Petitioner/Plaintiff

Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order passed in I.A.No.149 of 2015 in O.S.No.57 of 2010 dated 16.02.2016 on the file of the Hon'ble III Additional District Judge, Thanjavur.

For Petitioner : Mr.K.K.Ramakrishnan
For Respondent : Mr.P.Velmurugan

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order passed in I.A.No.149 of 2015 in O.S.No.57 of 2010 dated 16.02.2016 on the file of the Hon'ble III Additional District Judge, Thanjavur.

2.The revision petitioner is the defendant and the respondent is plaintiff. The plaintiff filed O.S.No.57 of 2010 on the file of III Additional District Judge, Thanjavur, for specific performance of the alleged sale agreement dated 09.04.2009 executed by the defendant or alternatively for refund the advance amount of Rs.7,50,000/- with interest @ 12% per annum. It is alleged by the respondent in the plaint that the petitioner is the owner of the property situated in Survey No.95A/9C to an extent of 44 2/3 cents and the petitioner agreed to sell the property to the respondent for a total sale consideration of Rs.11,13,250/- and received the advance amount of Rs.7,50,000/- on executing a sale agreement dated 09.04.2009 and one year period was fixed in the agreement for execution of sale deed. When the petitioner refused to adhere to the terms of agreement, the respondent filed the above suit. The petitioner would contend that the respondent is a professional money lender and he has obtained signatures in a unfilled stamp papers, cheques and pro-notes and by fabricating the same, the alleged sale agreement has been prepared and the present suit has been filed.



3. According to the petitioner, after filing written statement on 19.04.2013, the respondent filed reply statement on 21.10.2013 and thereafter, necessary issues were framed and trial was conducted. After closing the plaintiff side evidence, the case was posted for cross examination of DW1. After the examination of DW1, the plaintiff has filed the present amendment application to include the relief of recovery of possession by taking contrary stand in the original plaint that except the house standing in the suit property, surrounding vacant site has been handed over to him on the date of agreement itself and therefore, it is necessary to amend the plaint by including the relief of possession of the house standing in the suit property. According to the petitioner, the amendment application has been filed without satisfying Order 6 Rule 17 CPC, but the learned Judge without considering the said provision, allowed the amendment application, against which, the present revision petition has been filed.

4. In support of his contention, learned counsel for the petitioner relied on the following decisions:-

(i) N.K.Jinnah vs. K.P.Krishnan reported in (2006) 2 MLJ 350.

(ii) M.Palanisamy vs. Valmoorthy and others reported in 2010-1-L.W.377.

(iii) Babu Lal vs. M/s. Hazari Lal Kishori and others reported in (1982) 1 SCC 525.

(iv) J.Samuel and others vs. Gattu Mahesh and others reported in (2012) 2 SCC 300.

(v) Mashyak Grihnirman Sahakari Sanstha Maryadit vs. Usman Habib Dhuka and others reported in (2013) 9 SCC 485.

(vi) Ram Niranjana Kajaria vs. Sheo Prakash Kajaria reported in 2016 (1) CTC 118.

(vii) K.Raheja Constructions Ltd., and another vs. Alliance Ministries and others reported in 1995 Supp (3) SCC 17.

(viii) South Konkan Distilleries and another vs. Prabhakar Gajanan Naik and others reported in (2008) 14 SCC 632.

(ix) Van Vibhag Karamchari Griha Nirman Sahkari Sanstha Maryadit (Registered) vs. Ramesh Chander and others reported in (2010) 14 SCC 596.

(x) Revajeetu Builders and Developers vs. Narayanaswamy and sons and others reported in (2009) 10 SCC 84.

5. Per contra, learned counsel for the respondent would submit that the properties mentioned in the sale agreement consist in two survey numbers namely, 95A/9c and 95A/10c and the extent of area in Survey No.95A/9c is 200 kuzhi with 53 coconut trees and one house and vacant site situated in Survey No.95a/10c. According to the respondent, possession of vacant site was handed over to him when the petitioner entered into the sale agreement and the petitioner also agreed to hand over possession of the house property to the respondent at the time of execution of sale deed. According to the respondent, sale consideration was Rs.11,13,250/- and the period for execution of sale deed was one year from the date of agreement. The petitioner also received advance amount of Rs.7,50,000/- and the

respondent has to pay the balance amount of Rs.3,63,250/- at the time of execution of sale deed.

6.It is further submitted that when the respondent approached the petitioner for execution of sale deed, the petitioner was evading to execute the sale deed. Hence, the respondent filed the above suit. The respondent contended that the petitioner was all along maintained that possession was never given to the respondent and the agreement itself is a forged one and also disputed his signature in the agreement. Therefore, to protect and safeguard the interest and the right of the respondent, the respondent filed I.A.No.149 of 2015 for amendment to include the prayer for possession. The petitioner filed counter disputing the very sale agreement itself. After hearing the arguments, the Trial Court allowed I.A.No.149 of 2015. According to the respondent, as per Section 22(2) of the Specific Relief Act, amendment can be allowed at any point of time and therefore, the order passed by the learned Judge does not warrant any interference.

7.Heard the learned counsel for the petitioner as well as the respondent and perused the materials available on record.

8.Perusal of the record shows that the respondent has claimed that except the house property situate in S.No.95A/9c with 63 coconut trees and one house, possession of the vacant site in S.No.95a/10c was handed over to the respondent and therefore, he sought for amendment of the prayer for recovery of possession of the house-site. Perusal of the record further shows that the petitioner has filed written statement seriously disputing the very agreement dated 09.04.2009.

9.The only issue to be decided in this case is, when the respondent himself claims that except the house in the suit property, vacant site has been handed over to him at the time of execution of sale agreement and when the petitioner denies the very sale agreement dated 09.04.2009 itself, whether the learned Judge was right in allowing the amendment application.

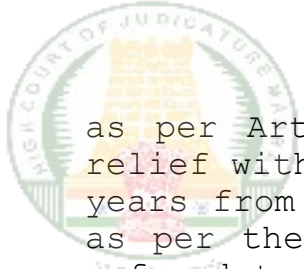
10.It is relevant to extract below Order 6 Rule 17 CPC:-

'17.Amendment of pleadings- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.'

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11.The petitioner has filed the written statement as early as on 19.04.2013 claiming the very sale agreement to be forged. Even



as per Article 54 of Limitation Act, 1963, the suit for specific relief with necessary relief ought to have been filed within three years from the repudiation of the terms of contract. In this case, as per the plaint averment, on 06.02.2010, the revision petitioner refused to adhere to the terms of sale agreement. Therefore, in my considered opinion, amendment application for including the relief of recovery of possession has to be filed within three years from 06.02.2010 i.e., before 06.02.2013 or on the date when the petitioner filed the written statement stating that the very sale agreement itself is fabricated.

12.It is also relevant to extract below Section 22 of the Specific Relief Act:-

'22. Power to grant relief for possession, partition, refund of earnest money, etc.-(1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 (5 of 1908), any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for-

(a) possession, or partition and separate possession, of the property, in addition to such performance; or

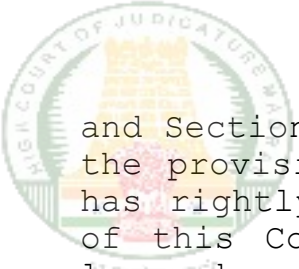
(b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or made by him, in case his claim for specific performance is refused.

(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed: Provided that where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

(3) The power of the court to grant relief under clause (b) of sub-section (1) shall be without prejudice to its powers to award compensation under section 21.'

13.It is held in a catena of judgments that Section 22 of the Specific Relief Act has an overriding effect over the provisions contained in Order 6 Rule 17 CPC. It is amply clear that when the plaintiff has a right to seek amendment claiming possession in a suit for specific performance, the Court has no option except to allow the said amendment. The proviso to sub-section (1) of section 22 of the Specific Relief Act enables the plaintiff who has not claimed the relief of possession in the plaint to seek an amendment and claim the same at any stage of the proceedings and the said right of the plaintiff casts an obligation on the court to allow the said amendment. The relevant words used in the proviso 'the Court shall', clinches the issue. The word 'shall' used in the proviso is mandatory.

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 14.It is held in the petitioners has disputed the very execution of the sale agreement, that can be decided only in the final hearing of the suit. Admittedly, the suit has been filed for specific performance



and Section 22 of the Specific Relief Act has overriding effect over the provision Order 6 Rule 17 CPC and therefore, the learned Judge has rightly allowed the amendment application and the interference of this Court is not necessary. The judgments relied on by the learned counsel for the petitioner are not applicable to the present case.

Accordingly, this Civil Revision Petition is dismissed. No costs. The interim order already granted is vacated. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (W)

/True Copy/

Sub Assistant Registrar

To

The III Additional District Judge,
Thanjavur.

COPY TO:

The Section Officer, **(2 COPIES)**
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.P.Velmurugan, Advocate, SR.No.60405

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RL/5C/5P/SKN/RSK/SAR1/20/4/2018

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