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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 24.04.2018

DELIVERED ON : 28.08.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) (NPD) No.845 of 2016

and

CMP(MD)No.4300 of 2016

1.Subburaj

2.Kasi

3.Pushpam

... Petitioners

vs

Rangasamy

.. Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, against the order 22.12.2015 in I.A.No.994 of 2015 in A.S.No.37 of 2015 on the file of the VI Additional District Court, Madurai.

For Petitioners : Mr.H.Arumugam

For Respondent No Appearance

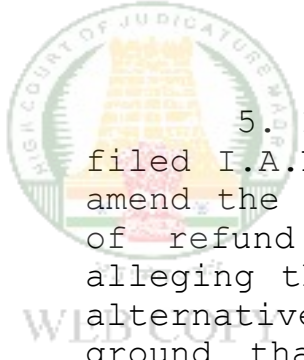
ORDER

This revision has been filed by the petitioner against the order dated 22.12.2015 passed in I.A.No.994 of 2015 in A.S.No.37 of 2015 on the file of the learned VI Additional District Court, Madurai.

2. The petitioners are defendants and the respondent is the plaintiff in the suit. The respondent had filed the suit being O.S.No.1246 of 2010 on the file of the I Additional Sub Court, Madurai for specific performance directing the petitioners to execute the sale deed in respect of the suit property in favour of the respondent after receiving the balance amount of Rs.2,01,575/- and for permanent injunction restraining the petitioners from alienating or encumbering the suit property to any other third party.

3. By the judgment and decree dated 26.02.2015, the suit came to be dismissed by the trial Court. While dismissing the suit, the trial Court, granted an alternative relief of refund of advance money of Rs.5,00,000/- by the petitioners to the respondent with interest at 6% per annum from 15.04.2005 till the date of realisation and directed to pay the amount within a period of two months.

4. Aggrieved by the judgment and decree, the petitioners have filed an appeal being A.S.No.37 of 2015 before the learned VI Additional District Court, Madurai.



5. Pending appeal, the respondent, who is the plaintiff has filed I.A.No.994 of 2015 under Order 6, Rule 17 C.P.C. seeking to amend the plaint by claiming the prayer for an alternative relief of refund of advance amount paid by him to the petitioners alleging that as against the judgment of the trial Court granting alternative relief, the petitioners have filed an appeal raising a ground that unless the respondent was specifically claimed an alternative relief of refund of advance money, such a relief cannot be granted. According to the respondent, the trial Court has granted the alternative relief under the law of equity and in the circumstances of the case. Since the petitioners have filed the appeal only to deny alternative relief granted by the trial Court and to withhold the advance money paid by the respondent, it was necessitated the respondent to seek an alternative relief of refund of advance money by way of amendment of the plaint.

6. Resisting the petition, the petitioners have filed a counter stating that the trial Court had wrongly granted the alternative relief of refund of advance money, which was not sought for by the respondent and if the respondent does not seek the alternative relief of refund of advance money, then it cannot be granted to the respondent as per Section 22 (1) (a) & (b) of the Specific Relief Act. According to the petitioners, the respondent had deliberately failed to take steps to amend the plaint before passing the decree and the proposed amendment is belated one and also barred by limitation.

7. Upon consideration of the rival submissions, the first Appellate Court allowed the petition for amendment. Assailing the same, the petitioners have filed this revision.

8. I heard Mr.H.Arumugam, learned counsel for the petitioners and also perused the materials available on record. No representation on behalf of the respondent.

9. The learned counsel for the petitioners submitted that the first Appellate Court has failed to consider that allowing the amendment application filed at the appellate stage would affect the right of the petitioners. According to the learned counsel, the first Appellate Court, by ignoring the settled principle of law allowed the amendment application and the proposed amendment was barred by limitation. In support of his contention, the learned counsel relied upon the decision of this Court in **S.Manoharan v. Karunamurthy, reported in 2013 (6) CTC 801.**

10. It appears that it was the say of the respondent before the first Appellate Court that the proposed amendment was most essential and vital one to overcome the mistake and the amendment ~~can be allowed at any stage of the proceedings and further, the proposed amendment was also not barred by limitation.~~ It also

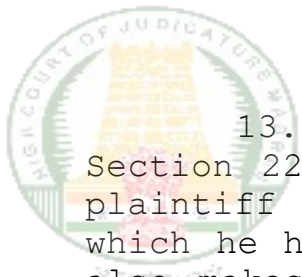


appears that before the first Appellate Court, both sides have referred to the decision in *S.Manoharan v. Karunamurthy*, supra.

11. As rightly held by the first Appellate Court, in the aforesaid case, the plaintiff has sought the relief of specific performance without praying the relief of alternative relief of refund of advance money. The trial Court dismissed the suit for specific performance on 13.04.2007. As against the dismissal of the suit, the plaintiff therein had filed an appeal, wherein the plaintiff had filed amendment petition on 28.03.2012. In such view of the matter, the High Court held that the amendment petition was barred by limitation since it was not filed within three years.

12. In *S.Manoharan v. Karunamurthy*, supra, the learned Single Judge of this Court held as under:

"12. Keeping this in mind, if we take the case of Specific Performance Suit, the Plaintiff will normally seek for Specific Performance and in some cases there will be an alternative prayer also for refund of advance money. Such alternative prayer is sought for usually by contending that the same may be granted in case the Court declined the main relief of Specific Performance. Therefore, if the Suit for Specific Performance is filed within the period of limitation and got dismissed on the ground that the Plaintiff was not ready and willing, then the alternative relief for refund of advance money could be sought for at the Appellate stage by amending the Complaint, provided such Application for amendment is filed within the period of limitation from the date of dismissal of such Suit. Because of such dismissal, the Defendant gets a right to file an Appeal against the rejection of main relief and also a right to ask for an alternative relief. Applying this principle to the fact of the present case, it can be safely concluded that the alternative relief of refund of advance amount sought for by way of amendment is hopelessly barred by limitation. The Suit came to be dismissed on 13.4.2007 and the Appeal was filed on 3.12.2007. But the Amendment Petition was filed nearly after five years i.e. on 3.1.2012 when such right to seek alternative relief had accrued and further crystallised to the Plaintiff on the date of dismissal of the Suit itself. Thus, having not filed an Application within three years from the date of dismissal of the Suit, the relief sought in the Amendment Petition is undoubtedly barred by



13. As rightly observed by the first Appellate Court that Section 22 of the Specific Relief Act, 1963 clearly empowers the plaintiff to seek for a relief at any stage of the proceedings, which he has not claimed originally and the proviso to Section 22 also makes it clear that such plaintiff can be allowed to amend the plaint to include such relief which he has not claimed originally.

14. In the case on hand, the trial Court has granted alternative relief to the petitioner under the principal of law of equity and under the facts and circumstances of the case. The trial Court has got power to grant an alternative relief of refund of money in the event the trial Court declines the main relief of specific performance. Admittedly, in the case on hand, for declining the relief of specific performance by the trial Court, the respondent had not preferred any appeal.

15. As per the provisions of the Specific Relief Act, when the plaintiff has not claimed the relief of refund of any earnest money or deposit paid in case of his claim for specific performance is refused, the Court shall at any stage of proceedings allow the plaintiff to amend the plaint on such terms as may be just for including the claim for such relief.

16. It is settled that right to claim an alternative relief may commence or accrue to the plaintiff not only at the time of filing of the suit and also at the time when the Court declines the main relief to the plaintiff. Application for amendment seeking alternative relief has to be filed within the period of three years from the date of dismissal of such suit.

17. In the case on hand, the trial Court has passed a decree and judgment on 26.02.2015. The petitioners herein have filed A.S.No.37 of 2015 on 10.06.2015. The respondent had filed an amendment petition on 30.11.2015 well within the period of limitation. Therefore, the first Appellate Court was right in allowing the amendment petition. There is no illegality in the order of the first Appellate Court and the Civil Revision Petition is liable to be dismissed.

18. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(crl side)

/True Copy/



To

The VI Additional District Judge,
Madurai.

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+1cc to Mr.H.Arumugam, Advocate Sr.No.80810

VSV

VB/SKN/SAR3/05.10.2018/5P/3C

order made in
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and
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