

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2019

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.R.P. (NPD) Nos.2820 & 2821 of 2013 &
M.P.No.1 of 2013 in C.R.P.2820 of 2013

Mr.Vaidvel

.. Petitioner

Vs.

1. Mr.Jothimoorthy
2. Mr.Duraisamy
3. Mrs.Subbayal
4. Ms.Easwari

.. Respondents

PRAYER: Civil Revision Petitions filed under section 115 of Code of Civil Procedure against the Fair and Final Order passed in I.A.Nos.493 and 494 of 2013 in A.S.No.30 of 2012 dated 11.07.2013 on the file of the I Additional District, Erode.

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For Petitioner : Mr.A.K.Kumaraswamy

For Respondents : Mr.V.Raghupathi – R1
R2 to R4 given up

COMMON ORDER

These revision petitions have been filed as against the Order of the first appellate Court for amendment of the prayer seeking specific performance for 50 cents, though the contract deed is for 2 acres.

2. It is to be noted that originally the agreement was in respect of two acres. The plaintiff has filed the suit for enforcement of the agreement in entirety. The suit has been dismissed for specific performance. However, the suit has been decreed in part for return of the advance amount as against the defendants 1 to 3. As against which, an appeal has been filed before the first appellate Court. When the appeal was pending, the plaintiff filed an application to amend the prayer restricting enforcement of the contract only in respect of 50 cents and an application to amend the grounds of the appeal. The first appellate Court has allowed both the applications as against which the present revisions have been filed.

3. Heard the learned counsel for the revision petitioner and the learned counsel for the first respondent and perused the materials available on record.

4. It is to be noted that specific performance of part of contract cannot be

enforced. There is a clear bar under section 12 of the Specific Relief Act. The only condition for enforcement of such contract is that the applicant should have pleaded relinquishment of all the claims and compensation, deficiency or further loss or damage. Whereas, the pleading of the appellant clearly indicate that he has reduced the sale consideration and willing to purchase only 50 acres. Such part of contract is certainly unenforceable and such amendment will definitely change the nature of the suit itself. Hence, the Order of the first appellate Court is liable to be set aside.

5. Accordingly, this Civil Revision Petitions are allowed and the Order of the first appellate Court in I.A.Nos.493 and 494 of 2013 in A.S.No.30 of 2012 is set aside. Consequently, the connected miscellaneous petition is closed. No cost.

12.02.2019

vrc

To

The I Additional District Judge,
Erode.

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N.SATHISH KUMAR, J.

vrc



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of 2013

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