

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

C.R.P. (PD) No. 2438 of 2018

&

C.M.P.Nos.14965 & 16862 of 2018

S.Raja MohamedPetitioner

Vs

1. Member Secretary,
Chennai Metropolitan Development Authority,
No.1,Gandhi Irwin Road,
Egmore, Chennai - 600 008.

2. Chief Executive Officer,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai - 600 008.

3. R.RamiahRespondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decretal order dated 31.07.2018 and made in I.A.No.16438 of 2017 in O.S.No.3925 of 2015 on the file of the Learned II Additional City Civil Court, Chennai.

For Petitioner : Mr.M.Rajasekhar

For Respondents : S.Thiruvengadam (for R.1 & 2)
A.S.Kailasam Associates (for R.3)

ORDER

The petitioner's application seeking for amendment of the original relief in the plaint was rejected by an order dated 31.07.2018, which is impugned in the present Civil Revision Petition.

2. According to the learned counsel for the petitioner, he had earlier sought for relief of specific performance against all the three defendants. Subsequently, the second respondent had rejected the request of the third respondent to execute a sale deed in his favour by an order dated 18.08.2011. It is his further submission that during the course of the trial, DW1 had taken a contrary stand that the execution of the sale deed in favour of the Power Agent has not been implemented due to the involvement of fraudulent transactions in execution of the deed of power of attorney, which necessitated the petitioner to file an application. As such, the learned counsel would submit that in view of the statement made by DW1 during the cross examination, he was constrained to file the present amendment application.

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3. The learned counsel for the third respondent herein, on the other hand, submitted that the petitioner herein was a party to the sale agreement dated 13.11.2007 and as such he was aware of the alleged arrangement for the

same transaction. He would also submit that in the written statement filed in the year 2015, he had categorically pleaded that there was no conduct between defendants 1 and 2 and the plaintiff inspite of these facts being brought to the notice of the petitioner at an earlier point of time, had not exercised due diligence and as such, filing of the application after the trial had commenced cannot be appreciated. As such, the learned counsel submitted that there was no infirmity in the order passed by the Trial Court rejecting the amendment application.

4. The learned counsel for the first and second respondent reiterated their stand taken in the counters to the amendment application filed before the trial Court.

5. I have given careful consideration of the submissions made by the respective counsels.

6. The main reason on which the petitioner's application for amendment came to be rejected was that the trial had commenced and that there is no explanation in the amendment application that the petitioner could not file the said application at an earlier point of time inspite of due diligence.

7. It is the specific case of the petitioner herein that he had earlier filed a relief against all the three defendants, in view of the arrangement between them that the third defendant would execute a deed of power of attorney in favour of the plaintiff and as such, it has necessitated to file a suit against all the three defendants. Subsequently, in view of the deposition of DW1 in the cross examination, he had sought for amendment of the relief. It is also seen that the petitioner herein had not sought for the amendment of the pleadings. As a matter of fact, there are specific averments in the pleadings relating to the amended relief now sought for.

8. As pointed out by the learned counsel for the petitioner, the deposition of DW1 during the course of cross examination necessitated him to file an application and as such, it cannot be said that the plaintiff could have sought for this relief at an earlier point of time. In view of the same, I do not find any justification on the observations made by the trial Court stating that the plaintiff had not filed this application at an earlier point of time.

9. In the light of the foregoing reasons, the order passed by the trial Court rejecting the petitioner's application in I.A.No.16438 of 2017 dated 31.07.2018 is set aside. Consequently, the amendment sought for by the

petitioner in the said application in I.A.No. 16438 of 2017 stands allowed. The Trial Court is called upon to carry out the necessary amendments in the pleadings.

10. It is seen that the suit was filed in the year 2015 and the trial had also commenced. As such, the trial Court shall endeavour to complete the trial as expeditiously as possible, in any event, atleast by 30.04.2019.

11. Accordingly, this Civil Revision Petition stands ordered. No costs. Consequently, the connected Civil Miscellaneous Petitions are closed.

08.01.2019

Index:Yes/No
Speaking Order: Yes/No
mrm/hvk

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To
The II Additional Judge,
City Civil Court,
Chennai.

M.S.RAMESH.,J

mrm/hvk



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