

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2019

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P(PD).No.2503 of 2018
&
C.M.P.No.15282 of 2018

1.R.Thangavel
2.T.Sasikumar
3.T.Sivaprakash

...Petitioners

Vs

1.A.Muthusamy
2.S.Kanagaraj

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of Constitution of India against the fair and decretal order dated 07.07.2017 in I.A.No.166 of 2016 in O.S.No.108 of 2013 passed by the learned Camp Subordinate Judge, Mettupalayam.

For Petitioners

:

Mr.T.S.Sivakumar

ORDER

The above Civil Revision Petition is filed challenging the order passed by the learned Camp Subordinate Judge, Mettupalayam in allowing I.A.No.166 of 2016 in O.S.No.108 of 2013 in and by which the learned Judge as allowed the amendment of the entire plaint schedule property. The facts in brief which are necessary for disposing of the above Civil Revision Petition are as follows:

2.The 1st respondent herein had filed the suit O.S.No.108 of 2013 on the file of the III Additional Subordinate Judge, Coimbatore (Camp at Mettupalayam) for specifically enforcing a registered agreement of sale dated 13.12.2010. The said agreement of sale has been executed pursuant to a power of attorney executed by defendants 1 to 3 in favour of the 4th defendant which is registered as Document No.239/2010 on the file of the Sub-Registrar, Punjaipuliampatti on 24.05.2010. It is on the strength of this power of attorney that the agreement of sale had been entered into by the 4th defendant, representing defendants 1 to 3, in favour of the plaintiff.

3.It is also seen from the pleadings that prior to the suit a legal notice dated 31.05.2011 has been issued by the plaintiff calling upon the defendants 1 to 3 to execute the sale deed as committed by them

under the sale dated 13.12.2010. When the suit was originally filed the description of properties which was detailed in the schedule to the plaint was with reference to the property which is situate at Saravanampatty Village, Mettupalayam Taluk, which is not the property covered under the agreement of sale which is the subject matter of the suit.

4.The defendants had entered appearance and filed their written statement and even in the written statement the defendants have not raised any defense that the schedule of property given in the plaint does not tally with the schedule of properties that was given in the agreement of sale. On the contrary the entire written statement proceeds on the footing that the power of attorney has been fraudulently obtained and based on that fraudulent power of attorney the agreement of sale has been executed in favour of the plaintiff. In fact in Paragraph No.14 of the written statement the defendants have narrated in detail the circumstances under which the power of attorney had been executed in favour of the 4th defendant and therefore the defendants was also in the clear about the property that was the subject matter of the agreement of sale dated 13.12.2010 and that the suit was filed in respect of the property covered under the

agreement of sale.

5.It is seen that when the suit was posted for trial this error has been noticed and immediately the application has been filed to amend the schedule of properties to be in consonance with the agreement of sale dated 13.12.2010. The learned Subordinate Judge, Camp Mettupalayam has allowed the application on the ground that there was no change in the cause of action or the subject matter of the suit and no prejudice has been caused to the defendant. Challenging the said order the revision has been filed.

6.Heard Mr.K.T.S.Sivakumar, learned counsel appearing on behalf of the 1st defendant would argue that the amendment is hit by limitation and further the Court which has passed the order does not have Jurisdiction to consider the same. He would rely upon the Judgement of the Honourable Supreme Court in ***K.Raheja constructions Ltd., Vs. Alliance Ministeries & others*** reported in ***1996 (1) CTC 178*** where the amendment after the lapse of seven years which is beyond the limitation period was rejected by the Honourable Supreme Court. The other Judgement relied upon by the counsel is the Judgment in ***J.Samuel & Others Vs. Gattu Mahesh & Others*** reported in ***2012 (2) CTC 94*** wherein the amendment filed by

the plaintiff to include the mandatory averments contemplated under Section 16 (c) of the Specific Relief Act after a delay had been rejected by the Courts below and upheld by the Honourable Supreme Court.

7. Heard the counsel and perused the papers. The suit in question is one for enforcing an agreement of sale dated 13.12.2010. There is no change in the same, the schedule in the agreement of sale is different from the schedule that has been included in the plaint originally. It is clear that the same is nothing but an oversight, considering the fact that the document has also been filed as a first document in the list of document filed under Provisions of Order VII Rule 14 of the Code of Civil Procedure.

8. Be that as it may, the suit is one for enforcing the agreement of sale. There is of course no doubt a prayer for injunction but however that prayer has also been qualified to state that it should be in keeping with the terms of the sale agreement dated 13.12.2010. Therefore the entire suit has been based only on the agreement of sale dated 13.12.2010 and the schedule of property is only incidental to the said relief. The fact that the defendants have also not raised a counter that the property in the plaint does not match the property in

the agreement of sale would clearly indicate that parties have gone to trial being aware about the property that was the subject matter of the agreement of sale and are in consensus thereof.

9.It is also to be noted that the trial is yet to commence in the above proceedings and the amendment has been taken even before that. The Judgement ***K.Raheja Constructions Ltd., Vs. Alliance Ministeries & others*** reported in ***1996 (1) CTC 178*** was a case where an amendment was sought to include the relief of specific performance after a period of seven years which was clearly barred by limitation and therefore the Honourable Supreme Court had held that the amendment should not be allowed as the amendment that sought for was clearly barred by limitation. In the instant case the suit itself is with reference to the enforcement of the an agreement of sale.

10.The second Judgement which was relied upon by the learned counsel is the case where the mandatory ingredient contemplated under Section 16 (c) of the Specific Relief Act had not been included and the same was sought to be included at the time when the matter was posted for argument. The courts below including the High Court

therein had rightly dismissed the application stating that the amendment was nothing but an attempt to get over the lacuna since the pleading with reference to the readiness and willingness was a mandatory requirement in a suit for specific performance and therefore was rightly dismissed. As pointed out in the instant case there is no change in the relief or cause of action and the same is taken even before the trial had commenced. The question of limitation cannot be applied in the instant case since the suit has been filed for enforcing an agreement of sale dated 13.12.2010 and the suit has been filed originally in 28.07.2011 within the period of limitation.

11. The learned counsel has argued on the issue of Jurisdiction, when the suit was filed the same has been filed before the appropriate Court having Jurisdiction over the property which has described in the schedule of properties and amendment petition has also been filed in the said Court. Now by reason of the amendment since the property which is shown in the schedule is situate in Avinashi the learned Subordinate Judge, Camp Mettupalayam is directed to transfer the suit to the Sub Court, Avinashi.

12.I find no infirmity in the order passed by the learned Camp Subordinate Judge, Mettupalayam. The Civil Revision Petition is dismissed with the above direction to the Sub Court, Camp Mettupalayam. Considering the fact that the suit was at the stage of trial when the amendment was sought for the Transferee Court shall within two months from the date of receipt of the papers from the Sub Court, Camp Mettupalayam, conclude the trial and pass Judgement. The Civil Revision Petition is dismissed on the above lines. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is also closed.

19.02.2019

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Index : Yes/No
Speaking order/non-speaking order

To

Subordinate Judge,
(Camped at Mettupalayam)

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P.T.ASHA, J.,

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