



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 05.04.2019

DELIVERED ON : 30.04.2019

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD) No. 2548 of 2015

and

M.P. (MD) No. 1 of 2015

Karuppannan .. Petitioner/Respondent/Defendant

Vs.

Murugesan .. Respondent/Petitioner/Plaintiff

Prayer: This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 04.09.2015 passed in I.A.No.347 of 2015 in O.S.No.45 of 2014 by the learned Principal Sub Judge, Karur.

For Petitioner : Mr.Karthikeya Venkitachalapathy

For Respondent : Mr.S.J.Chakkaravarthy

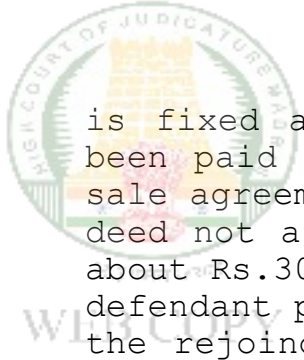
ORDER

Heard Mr.Karthikeya Venkitachalapathy, learned counsel appearing for the petitioner and Mr.S.J.Chakkaravarthy, learned counsel appearing for the respondent.

2.This Civil Revision Petition has been filed against the order passed in I.A.No.347 of 2015 in O.S.No.45 of 2014 dated 04.09.2015 on the file of the learned Principal Sub Judge, Karur.

3.The petitioner herein is the defendant and the respondent herein is the plaintiff in the suit. The respondent herein has filed a suit in O.S.No.45 of 2014 for specific performance and for permanent injunction and in that suit, the respondent herein has filed a petition in I.A.No.347 of 2015 for amendment of the plaint and the trial Court allowed the petition. Against which, the petitioner filed the present revision petition.

4.On the side of the petitioner, it is stated that the suit is filed for a prayer of specific performance. Two properties are mentioned as the suit properties. In the suit, it is stated that four months time is fixed for execution of sale and the sale price



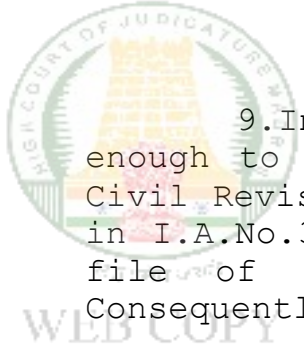
is fixed as Rs.2,00,000/-. A sum of Rs.10,000/- was said to have been paid as an advance. But it is wrong to state that there is a sale agreement. The revision petitioner has executed only a mortgage deed not a sale agreement. The house in the suit property is worth about Rs.30,00,000/- which is not mentioned in the agreement and the defendant purchased the properties in the year 1983 to 1986. Even in the rejoinder notice, the plaintiff denied the construction of the house in the suit property. The plaintiff filed a written statement and the Commissioner who visited the property also admits that there is a house in the 1st schedule property and the plaintiff filed the amendment petition to delete the 1st schedule property and that petition was allowed by the trial Court by deleting the 1st schedule property. The amendment will change the nature and character of the case and prayed this petition to be allowed.

5. On the side of the respondent, it is stated that there is an agreement between the plaintiff and the defendant. In the written statement, the petitioner has raised a plea that the description of the suit property is not correct. Hence, the plaintiff filed a petition for appointment of the Commissioner and the Commissioner has found out that only a lesser amount of land is available. On the basis of the Commissioner report, the plaintiff want to amend the description of the property to a lesser extend of the land. The definite claim of the defendant is not affected by this amendment.

6. The sale deed is only in the name of the defendant not in the name of his family and he cannot claim the property as his ancestral property. An amendment can be carried out only before the commencement of the trial. The trial in this case is not yet commenced. The plaintiff want to mention the correct boundary and measurement in the suit. Since the defendant is not willing to sell the property, he is trying to drag on the case by filing several petitions.

7. It is seen that there is a specific performance suit pending between the revision petitioner and the respondent. The suit was filed for the relief of specific performance with regard to two items of suit properties. The contention of the plaintiff is that on the basis of the Commissioner report, the plaintiff have to amend the description of property and he want to delete one of the suit properties. The case of the defendant is that there is a house in the first schedule property which is not stated in the suit property. The Commissioner has pointed out the construction of the house in the suit property and the plaintiff suppressed the fact and filed this suit.

8. In what way the petitioner will be prejudiced by allowing the amendment is not stated in the petition. By deleting one of the suit properties, no prejudice will be caused to the defendant. The trial is not yet commenced and the amendment sought to be carried out will not change the character of the suit.



9. In the above circumstances, there is nothing sufficient enough to interfere in the order passed by the trial Court. This Civil Revision Petition is **dismissed** by confirming the order passed in I.A.No.347 of 2015 in O.S.No.45 of 2014 dated 04.09.2015 on the file of the learned Principal Sub Judge, Karur. No Costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

The Principal Sub Judge, Karur.

+1 CC to M/s.S.J.CHAKKKARAVARTHY, Advocate SR-64310.

+1 CC to M/s.M.KARTHIKEYA VENKITACHALAPATHY, Advocate SR-65126.

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CS: (07/06/2019) 3P 4C