

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P. No.803 of 2019

O R D E R:

This Revision is filed under Article 227 of Constitution of India challenging the order dated 12.02.2019 in I.A.No.161 of 2018 in O.S.No.3 of 2008 of Principal District Judge at Khammam.

2. Petitioner is the 1st defendant in the suit. The 1st defendant/plaintiff filed the said suit for specific performance of an agreement of sale dated 05.05.2007 allegedly executed by the 2nd respondent/D.1 promising to sell the suit schedule property to him.

3. After the trial was concluded and the matter posted for arguments to 06.02.2018, the 1st respondent filed I.A.161/2018 seeking amendment of prayers in the plaint by adding the following 2 prayers:

“1.ii) a. Alternatively direct the defendant no.1 to refund an amount of Rs.22,50,000/- (Rupees Twenty Two Lakhs and Fifty Thousands only) with interest @ 24% p.a. from the date of the receipt of amount till the date of repayment.

2.ii) b. To declare the alleged cancellation of the sale agreement dated 5-5-2007 unilaterally by the defendant No.1 as null and void, illegal and non-est in the eye of law.”

4. In the affidavit filed in support of the said application, it was stated that due to confusion, these prayers were not included in the plaint, they would not alter the nature of the suit and so it is necessary to seek the said reliefs.

5. Counter affidavit was filed by the petitioner opposing the said prayer and contending that at the stage when the matter is posted for arguments, plaint cannot be amended to seek additional reliefs.

6. Initially the said I.A. was allowed on 19.02.2018. Petitioner and other defendants preferred CRP.No.1572 of 2018 which was allowed and the matter was remitted back to trial Court for fresh disposal to consider proviso to Order 6 Rule 17 CPC.

7. Thereafter, on 12.12.2019, the Court below passed a fresh order allowing both the amendments. As regards to the addition of the relief of the refund of amount sought as alternative relief, it observed that Section 22 of the Specific Relief Act, 1963 overrides proviso 6 Rule 17 C.P.C,

8. Section 22 (1) of the Specific Relief Act reads as under:

“(1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 (5 of 1908), any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for

(a) possession, or partition and separate possession, of the property, in addition to such performance; or

(b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or 1 (made by) him, in case his claim for specific performance is refused”.

9. Though counsel for the petitioner sought to contend that order passed by Court below is incorrect, having regard to Section 22(1) of the Specific Relief Act giving overriding effect to Section 22 over the provisions of the CPC, proviso to Order 6 Rule 17 CPC cannot be made applicable and no fault can be found with the order of the Court below.

10. However, coming to the relief of declaration sought by the 1st respondent regarding cancellation of sale agreement dated 05.05.2007 by the 2nd defendant is concerned, the proviso to Order 6 Rule 17 CPC would be attracted particularly because a plea was raised in the written statement itself by the 1st defendant about cancellation of agreement of sale dt.05.05.2007 through a notice. It cannot be said that due diligence was exercised by the 1st respondent in not seeking amendment of the plaint for the said relief before the trial commenced. Therefore, to that extent, the order passed by the Court below cannot be sustained.

11. Accordingly, the CRP is partly allowed; the order dt.12.02.2019 in O.S.No.161 of 2018 is set aside in part, insofar as the said Court had permitted the amendment of plaint, permitting the 1st respondent to also challenge

cancellation of sale agreement dated 05.05.2007 unilaterally by the petitioner. No costs.

12. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

02.04.2019

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