

C.M.P.No.8274 of 2019
in
A.S.SR.No.48455 of 2019

S.M.SUBRAMANIAM, J.

The miscellaneous petition is filed to amend the prayer in the plaint. Admittedly, the suit was instituted for the relief of specific performance. The Trial Court dismissed the suit against which the appellant preferred the present appeal suit.

2. The learned counsel appearing on behalf of the appellant made a submission that the plaintiff had failed to seek for an alternative relief of return of advance amount paid by him pursuant to the suit sale agreement. Therefore, it is necessary for him to amend the relief in the plaint so as to seek the alternative relief of refund of advance amount with interest.

3. The learned counsel appearing on behalf of the respondent opposed the contention by stating that once the alternative relief was not sought for in the suit, the appellant cannot seek such a relief in the appeal suit.

4. This Court is of the considered opinion that there is no bar or

impediment in respect of considering the amendment of relief in the first appeal and the Courts have settled that even at the appeal stage, the prayer can be amended in the plaint. This apart, seeking an alternative relief in the suit for specific performance is a consequential one. When the suit for specific performance is denied by the Trial Court, then the plaintiff would be entitled for an alternative relief of return of advance amount and the said compensation is also decided by the Courts. Therefore, the amendment now sought for would not change the character of the suit or affect the merits of the suit. Seeking alternative relief of return of advance amount would not in any manner affect the merits of the case or cause prejudice to the interest of the parties to the suit. This being the factum, this Court is inclined to consider the amendment petition. Accordingly, the miscellaneous petition filed in C.M.P.No.8274 of 2019, seeking amendment of prayer in the plaint so as to include the alternative relief of return of advance amount as per the suit sale agreement is ordered and consequently, the civil miscellaneous petition is allowed.

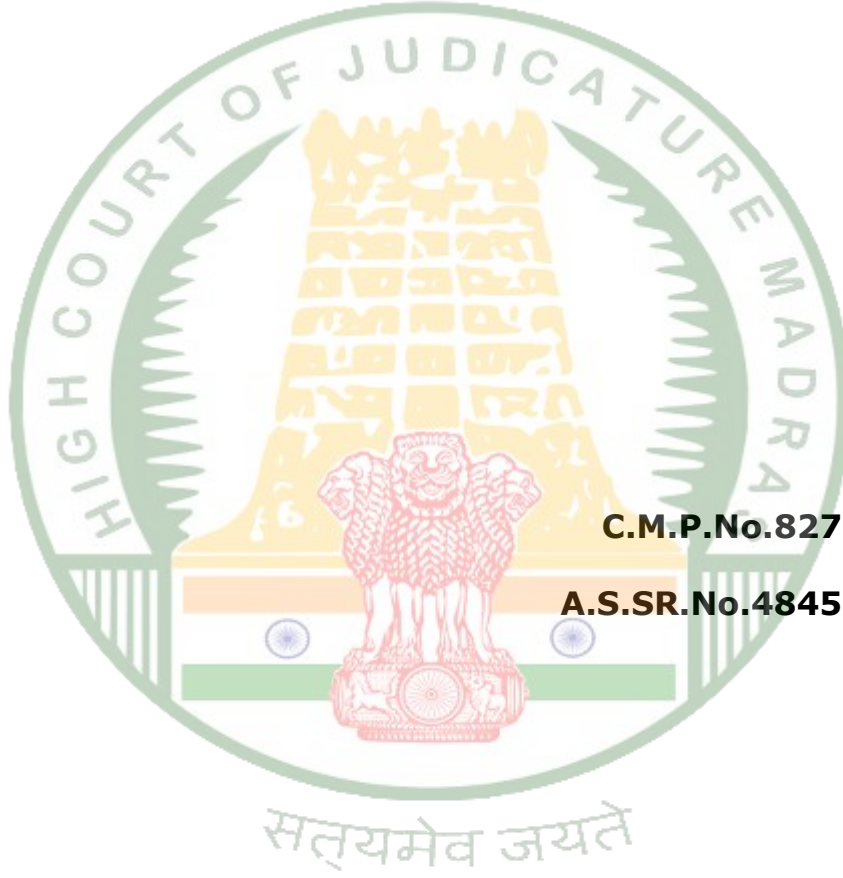
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