

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :03.11.2020

CORAM

THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

CRP (NPD)No.3842 of 2015
and
MP.No.1 of 2015

R.Appusamy

.. Petitioner/Plaintiff

vs.

1.Sithaiyan

2.Mathammal

3.Venkatesan

4.Kumaresan

5.Minor Jothi

.....Respondents

(Represented by her Guardian/Father 1st respondent Sithaiyan)

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Fair & Decreeal order of the District Munsif Court, Sankari, dated 10.07.2015 in I.A.No.802 of 2014 in O.S.No.235 of 2013.

For Petitioner

... Mr.P.Valliappan

For Respondents

... No appearance

ORDER

This Civil Revision Petition has been filed by the petitioner/plaintiff against the dismissal of his application in I.A.No.802 of 2014 in O.S.No.285 of 2013 on the file of the District Munsif, Sankari, dated 10.07.2015.

2. The petitioner herein had filed a suit in O.S.No.235 of 2013 on the file of the District Munsif, Sankari, for the relief of specific performance of the sale agreement dated 16.11.2012 alternatively asked for the refund of the advance amount. During pendency of the said suit, before commencement of the trial, the petitioner/plaintiff had filed an application in I.A.No.802 of 2014 under Order 6 Rule 17 of CPC seeking permission of the court to amend the plaint as follows:-

"1. In the plaint para 14, line 3,5,21 delete "1st defendant" and add in that place, "defendants".

"2. In the plaint para-14 after the main relief "(b)" add, "(c) directing the defendants to deliver vacant possession of the suit properties to the plaintiff and in case of failure of the same making provision for the plaintiff to get delivery through the process of this Honourable court"

3. The learned District Munsif by the order dated 10.07.2015 had allowed the said petition partly in respect of the proposed Amendment No.1 alone on payment of costs of Rs.500/- (Rupees Five Hundred Only) whereas, she dismissed the petition in respect of the proposed Amendment No.2. Feeling aggrieved, the petitioner/plaintiff has filed the present Civil Revision Petition.

4. Notice to the first respondent served. Notice to the respondents 2 to 4 which was sent by RPAD returned as "unclaimed". Hence, it is declared as "service sufficient" for respondents 2 to 4. Though the name of the respondents were printed in the cause-list, they have not appeared either in person or through counsel and hence, after hearing the arguments of the learned counsel for the petitioners and perusing the materials filed along with the petition, Order is being passed in this Civil Revision Petition.

5. The learned counsel for the petitioner has submitted that the petitioner has filed the suit for specific performance of the sale

agreement, but inadvertently, he failed to ask for the relief of possession of the property and hence, the petitioner, before commencement of trial, had filed an application in I.A.No.802 of 2014 seeking permission of the court to incorporate the prayer for delivery of possession of the suit property in the plaint, but the learned District Munsif, had erroneously dismissed the said petition on the ground that the petitioner has not paid separate court fees for the relief of delivery of possession. He further submitted that since the relief of delivery of possession is a consequential one, separate court fees need not be paid. He further submitted that as per Section 22 of the Specific Relief Act, in a suit for Specific Performance of a Contract, the plaintiff could ask for the relief of possession also as additional relief and for that, separate court fees need not be paid. He further submitted that the said provision enables the plaintiff to amend the plaint at any stage of the suit, but ignoring the said position of law, the learned District Munsif had dismissed the petition and therefore, he prayed to allow this Civil Revision Petition and set aside the order passed by the learned District Munsif in I.A.No.802 of 2014 in respect of rejection of the prayer for incorporating the delivery of possession of the suit property.

6. Section 22 of the Specific Relief Act, 1963 reads thus:

"22. Power to grant relief for possession, partition, refund of earnest money, etc.—

(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.

(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed: Provided that where the plaintiff has not claimed any such relief in the plaint, the Court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

(3) The power of the Court to grant relief under clause (b) of sub-section (1) shall be without prejudice to its powers to award compensation under section 21.

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7. A perusal of the aforesaid provision of law would show that the any person suing for a specific performance of a contract for the

transfer of immovable property may also ask for possession, partition, or a separate possession, of the property, in addition to such performance, of contract. Further, it is also clear that where the plaintiff filed any petition seeking amendment, the court shall at any stage of the proceeding, allow him to amend the plaint. In this case, it appears that the learned District Munsif ignoring the aforesaid provision of law had rejected the request of the petitioner to amend the plaint seeking delivery of possession. Therefore, the order passed by the trial court is liable to be set aside.

8. In the result, this Civil Revision Petition is allowed. Consequently, the connected miscellaneous petition is closed. No costs. The order passed by the learned District Munsif, Sankari, in I.A.No.802 of 2014 in respect of the dismissal of the application for amendment of plaint to incorporate the relief of delivery of possession, is set aside and the said application is allowed. No costs.

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Index: Yes/No
Speaking/Non-speaking Order
gv

To

The District Munsif Court,
Sankari.



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P. RAJAMANICKAM,J.
gv



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