IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(PD)No. 238 of 2018
and
C.M.P.No. 1380 of 2018

M.Arumugam ...Petitioner

Vs.

1.Mangaiyar Thilagam
2.Varalakshmi
3.Velmurugan
4.Rajesh ..Respondents

Prayer: Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the order dated 06.12.2017 passed by the learned Principal Sub-Judge at Puducherry in I.A.No.532 of 2017 in O.S.No. 119 of 2011.

For Petitioner : Mr.C.P.Sivamohan
For Respondents : Mr.S.Sudarshan

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O R D E R

The plaintiff in O.S.No.199 of 2011 has come up with this revision, challenging the order made in I.A.No.532 of 2017, which is an

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application for amendment of the counter claim filed by the defendants.

2. The suit is one for specific performance of an agreement of sale said to have been entered into on 04.01.2011 between the plaintiff and one Kandasamy, who is the husband of the second defendant and father of defendants 3 to 5.

3. The suit is being resisted by the defendants on various grounds and they have also filed a counter claim seeking a declaration that the agreement is false, fraudulent and void abinitio. Relief injunction was also sought for restraining the plaintiff from creating any document/s encumbering the suit property or from disturbing peaceful possession of the defendants 2 to 5.

4. P.W.1 and P.W.2 were examined and the suit was posted for cross-examination of the said witnesses. At this stage, the defendants came up with the instant application seeking amendment of the counter claim and written statement to incorporate more details regarding the ownership of Kandasamy and non-availability of a portion of the suit property for sale, since the same was not owned by Kandasamy. These facts were sought to be included the butress claim of the defendants that Kandasamy had no

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power to enter into an sale agreement. The learned Trial Judge, upon a consideration of the facts and circumstances of the case concluded that though the amendment is after the examination of P.W.1 and P.W.2, it does not alter the nature of the counter claim but only seeks to provide further details regarding the ownership of the property involved in the suit. On the said finding, the learned Trial Judge concluded that the amendment being sought for, for elucidtating the case of the defendants in a better manner, itcan be allowed and no would be caused to the plaintiff by allowing the amendment. On the said conclusions, the learned Trial Judge allowed the application. Hence, the plaintiff has come up with this revision.

5. Heard Mr.C.P.Sivamohan, learned counsel for the petitioner and Mr.S.Sudarshan, learned counsel for the respondents.

6. Mr.C.P.Sivamohan, learned counsel for the petitioner would vehemently contend that the amendment introduces a completely new case and the schedule of property is sought to be altered. Pointing out that the amendment is sought for after the chief-examination of P.W.1 and P.W.2, the learned counsel would submit that the proviso to Order 6 Rule 17 bars the application for amendment.

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7. Contending contra, Mr.S.Sudarshan, learned counsel for the respondent would submit that the proviso to Order 6 Rule 17 will not apply to amendment of the written statement. He would also draw my attention to the judgment of the Hon'ble Supreme Court in **2016 (2) CTC 442** wherein, the Hon'ble Supreme Court has held that the amendment of plaint and amendment of written statement cannot be treated on par and the Court should be liberal in matters relating to amendment of the written statement. I have considered the rival submissions.

8. From the details of the amendment set out and the proposed amendments, I find that the proposed amendments do not have the effect of changing the nature of the suit or the counter claim. It only seeks to provide better details and the amendment is more clarificatory in nature. In so far as the amendment of the written statement is concerned, the only ground which would enable the Court to reject the amendment is when the defendants seek to withdraw certain admission/s made in the pleading. The amendment of written statement is more liberally viewed by the Court as a defendant is entitled to take contradictory pleas.

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9. Having gone through the amendment, I do not find taht the defendants are seeking to withdraw any concession or admission made in the original written statement. The amendment only seeks to bring out better details of the pleadings and as such, I do not see any error in the order of the Trial Court in allowing the application for amendment. This revision is therefore, dismissed and confirming the order of the Trial Court. Consequently, connected miscellaneous petition is closed. No costs.

08.09.2020

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To:
The Principal Sub-Court,
Puducherry.

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R.SUBRAMANIAN, J.

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