

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD) No.2459 of 2018 and
CMP No.15032 of 2018

S.Sudha

... Petitioner

Vs.

1. S.Sathyanarayanan @ Vijayakumar

2. Minor.S.Padmavathi

3. Minor.S.Raghavan

(Minors represented by their
guardian and father Sathyanarayana
@ Vijayakumar)

... Respondents

Prayer: The Civil Revision petition filed under Article 227 of the Constitution of India, against the fair and decreetal order of the Principal District Court, Dharmapuri, dated 27.04.2018 in I.A.No.225 of 2017 in O.S.No.51 of 2016.

For Petitioner : Mr.P.Valliappan

For Respondents : Mr.Arun Anbumani

ORDER

The plaintiff in O.S.No.51 of 2016 has come up with this revision aggrieved by a dismissal of her application to amend the plaint to include the prayer for specific performance.

2. The suit was filed by the plaintiff seeking refund of a sum of Rs.10,61,998/- being the advance amount paid by her under an agreement dated 09.06.2016. The suit was instituted on 23.12.2016. The plaintiff claims that she had entered into an agreement of sale with one S.Gayathri, wife of the 1st defendant and mother of defendants 2 and 3, agreeing to purchase the suit property for a total consideration of Rs.17,60,000/- and has paid an advance of Rs.10,00,000/-. It is stated that the said Gayathri died soon after the agreement. It is also claimed that the plaintiff issued a notice demanding performance on 31.08.2016. The defendants sent a reply denying the very agreement and claimed that the agreement is fraudulent. On receipt of the reply, the plaintiff sent a re-joinder on 05.12.2016 and

sued for refund of advance. The plaintiff came up with the present application in I.A.No.225 of 2017 seeking to include the relief of specific performance in the suit.

3. This is resisted by the defendants contending that once the plaintiff had elected to sue for refund of advance on an alleged breach of contract on the part of the defendant, cannot go back on such election and claim specific performance.

4. The learned trial Judge who heard the application upon consideration of the facts and circumstances, concluded that the plaintiff cannot seek the relief of specific performance since she has given up the right and has elected to sue for refund of advance. Upon such conclusion, the learned trial Judge dismissed the application for amendment. Hence, the revision.

5. I have heard Mr.P.Valliappan, learned counsel appearing for the petitioner/plaintiff and Mr.Arun Anbumani, learned counsel appearing for

the respondents/defendants.

6. Mr.P.Valliappan, learned counsel appearing for the petitioner would vehemently contend that the very allegations in the plaint would go to show that all the necessary pleadings for the relief of specific performance are available and therefore the plaintiff should be allowed to amend the plaint and include the prayer, more so, when the amendment has been sought for before commencement of trial.

7. Contending contra, Mr.Arun Anbumani, learned counsel appearing for the respondents/defendants would vehemently argue that the plaintiff having elected to sue for refund of advance, cannot seek the relief of specific performance. In support of his submission, he would also rely upon the Judgement of the Division Bench of this Court in ***K.S.Sundaramayyar - Vs - K.Jagadeesan and anr.*** reported in ***AIR 1965 Mad 85*** and a Judgment of the Hon'ble Justice R.S.Ramanathan in ***Kochukunjan Pillai Vs Sathiadhas*** reported in ***(2002) 2 MWN Civil 168***

8. Considering a similar situation, the Division Bench had

concluded that the petitioner who had assumed a breach on the part of the respondents and had sued for refund of advance cannot seek specific performance. While doing so, the Bench observed as follows:

“But the question in the present case is not, whether the appellant had not availed himself of one remedy or another, it is even more fundamental than that. The appellant had, as we said, put an end to the contract and demanded the return of the advance amount paid by him and made a further claim for damages. If the contract were to be held as subsisting, he would have no right to insist upon return of the advance amount. We are unable to find anything in the decision in Culcutta Improvement Trust v. Surbarnabala Debi, 44 Cal WN 541 to support the contention that, notwithstanding the election by a party to a contract to accept the breach by another he could still revive, at his choice, the contract and insist upon specific performance thereof. We are, therefore, of the opinion that the learned Subordinate Judge was correct in his view that the appellant was not entitled to relief by way of

specific performance.”

9. This Judgment of the Division Bench was referred to and followed by Hon'ble Justice R.S.Ramanathan in ***Kochukunjan Pillai's case reported in 2002 2 MWN Civil 168***. The learned Judge after referring to almost all decisions on the questions concluded that the plaintiff who had chosen to sue for refund of advance, cannot go back and seek specific performance of the contract.

10. In view of the law laid down by this Court as above, I do not find any irregularity or illegality in the order of the trial Court so as to enable me to interfere with the same. Hence, the Civil Revision petition fails and it is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Speaking order

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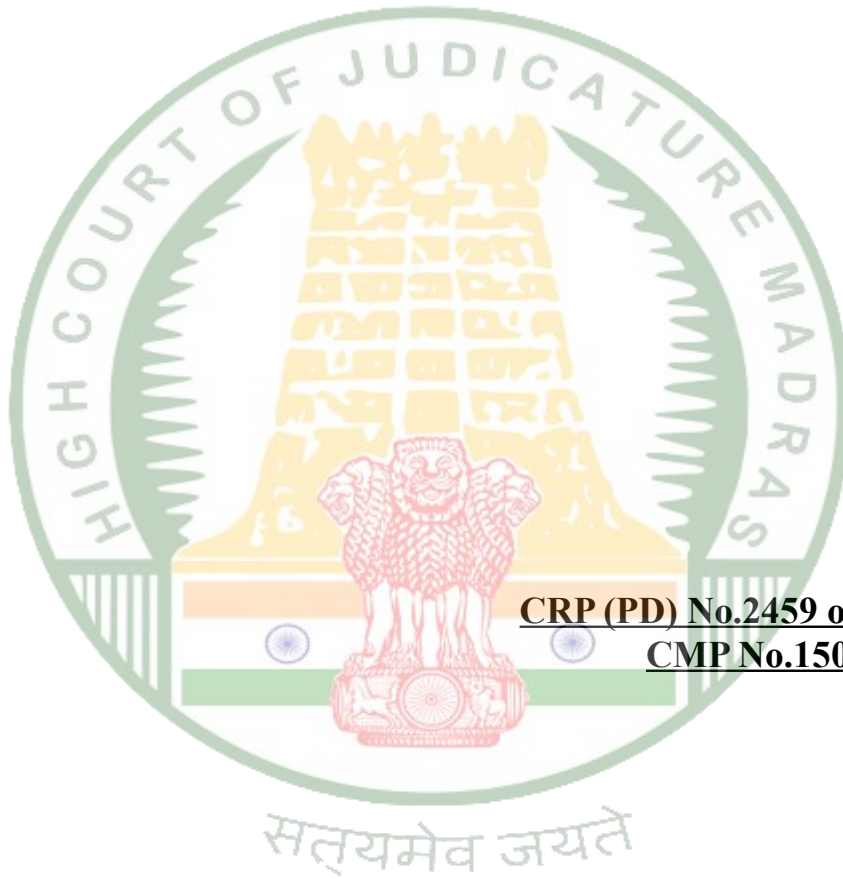
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The Principal District Court, Dharmapuri

R.SUBRAMANIAN, J.

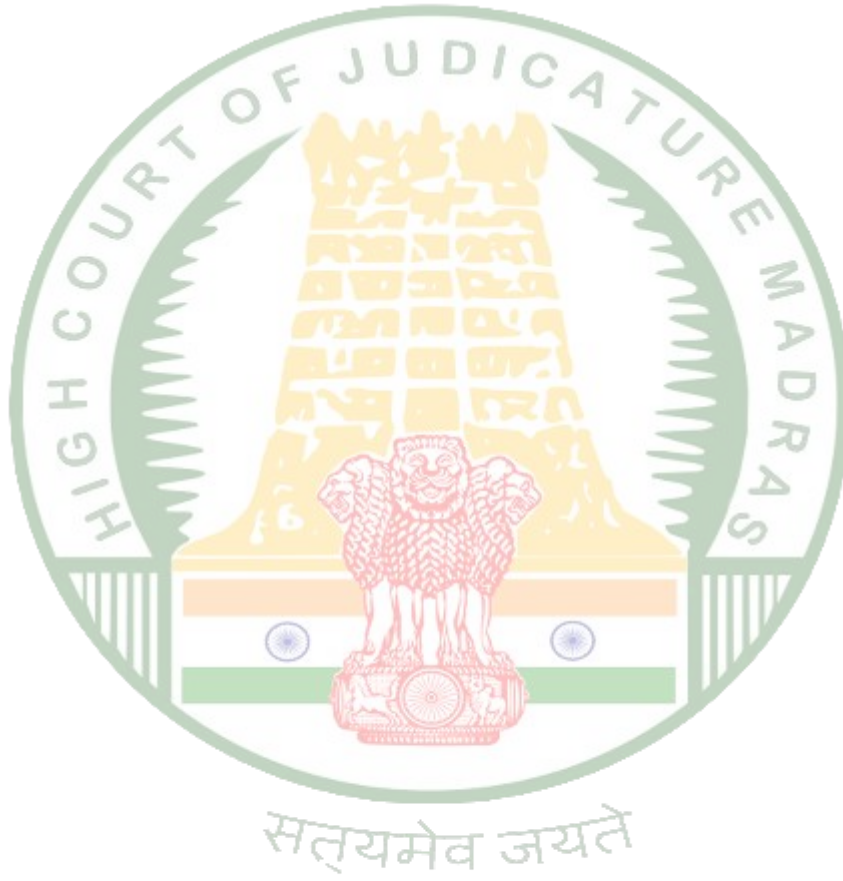
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