



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

**CRP(MD)No.131 of 2020****and****CMP(MD)No.743 of 2020**

WEB COPY

Ramayammal (Died)

1. D.Soundaram
2. Gandhimathi
3. Indumathi
4. Minor Nalini
5. Minor Alagappan @ Nallu
6. Minor Keerthana

...Petitioners/Defendants 1 to 7

versus

1. P.Ganesan

... 1<sup>st</sup> respondent/Plaintiff

2. Meenakshiammal

... 2<sup>nd</sup> respondent/8<sup>th</sup> defendant

Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 25.09.2019 passed in I.A.No.1 of 2019 in A.S.No.69 of 2016 on the file of the Fast Track Mahila Court, Dindigul.

|                 |   |                          |
|-----------------|---|--------------------------|
| For Petitioners | : | M/s.T.C.S.Thillainayagam |
| For R1          | : | No appearance            |
| For R2          | : | No appearance            |

**ORDER**

The Civil Revision Petition has been filed against the order dated 25.09.2019 passed in I.A.No.1 of 2019 in A.S.No.69 of 2016 on the file of the Fast Track Mahila Court, Dindigul.

2. The first respondent filed a suit in O.S.No.174 of 2007 before the Additional Sub Court, Dindigul, against the revision petitioners for specific performance. After the trial, the trial Court dismissed the suit vide Judgment and decree dated 21.01.2016. Challenging the same, the first respondent herein filed an appeal in A.S.No.69 of 2016, before the Fast Track Mahila Court, Dindigul. During the pendency of the appeal, he also filed an application in I.A.No.1 of 2019 in A.S.No.69 of 2016 to amend the prayer in the plaint filed by him in O.S.No.174 of 2007, stating that due to ~~concessions to the~~ alternative prayer of refund of advance amount with



subsequent interest has been omitted in the relief sought for in the original plaint. After enquiry, the Appellate Court has allowed the application, vide order dated 25.09.2019. Aggrieved over the same, the revision petitioners are before this Court.

3. Though notice was sent to the respondents 1 and 2, service is awaited.

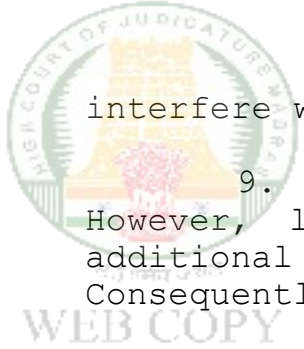
4. The learned counsel for the revision petitioners submitted that the trial Court dismissed the suit on the ground that the agreement was a forged one and no advance amount was paid. Further, the suit was filed in the year 2007, however, the first respondent herein/plaintiff belatedly filed the application to amend the plaint in the year 2019 that too at the appellate stage, therefore, he is not entitled to ask for such relief. Moreover, the said application was filed with the intention to drag on the proceedings. But, the Court below, without considering said aspect, allowed the said application. Therefore, the Civil Revision Petition has been filed.

5. Heard the learned counsel appearing for the revision petitioners and perused the records.

6. Admittedly, the first respondent herein filed the suit in O.S.No.174 of 2007 on the file of the Additional Sub Court, Dindigul, against the revision petitioners, for specific performance. After the trial, the learned Additional Subordinate Judge, Dindigul, vide Judgment and Decree dated 21.01.2016, dismissed the suit, against which, the first respondent herein filed appeal in A.S.No.69 of 2016 before the Fast Track Mahila Court, Dindigul. During the pendency of the appeal, he also filed the application in I.A.No.1 of 2019 in A.S.No.69 of 2016 to amend the prayer in the plaint. The Appellate Court, after the enquiry, held that as per Section 13(1)(d) of the Specific Relief Act, the plaintiff/vendor is having a right to get back the advance with subsequent interest and allowed the said application,

7. Now, it is the contention of the learned counsel for the revision petitioners that after the lapse of 11 years, the plaintiff/first respondent herein filed the said application to amend the plaint.

8. The suit in O.S.No.174 of 2007 was dismissed on the ground that the agreement is a forged one. However, in case, the Appellate Court finds that the agreement is a genuine one and payment of advance amount is established, the plaintiff/first respondent herein cannot claim the relief of specific performance on the ground of readiness and willingness, then, he can claim only the relief of return of advance amount. Further, if the alternative prayer is added, no prejudice would be caused to the revision petitioners. Therefore, this Court does not find any reason to



interfere with the order passed by the Court below.

9. Accordingly, the Civil Revision Petition is dismissed. However, liberty is given to the revision petitioners to file additional written statement after amending the plaint. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1. The Sessions Judge,  
The Fast Track Mahila Court,  
Dindigul.

+1 CC to M/s.C.VAKEESWARAN, Advocate ( SR-10111[F] )

**CRP (MD) No.131 of 2020**

**04.03.2020**

SP (07.05.2020) 3P-3C