

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND
THE HONOURABLE MR.JUSTICE P.D.AUDIKESSAVALU

O.S.A.No.55 of 2021
and
C.M.P.No.1911 of 2021

1.Mr. Tanveer Ahmad
2.Mr. Tanseer Ahmad
3.Mr.Mohammed Fouzi
4.Ms.Shadan Simin
5.Mr.Mohamamad Shazi
6.Mr.Fazlur Rahman
7.Ms.Laila Rahman
8.Ms.T.Zarina Begum

...Appellants

Vs

M/s.Cordell Estates Pvt. Ltd.,
Rep. by its Chairman & Managing Director,
Director, Mr.N.G.George,
#7 Kader Nawaz Khan Road,
Chennai - 600 006.

...Respondent

PRAYER : Original Side Appeal filed under Order XXXVI Rule 1 of the Madras High Court Original Side Rules read with Clause XV of the Letters Patent, praying to set aside the Order and Decreeal Order dated 19.11.2020 passed in Application No.7906 of 2019 in C.S.No.878 of 2005.

For Appellants : Mr.M.K.Kabir, Senior Counsel for
Mr.Jayaraman.

For Respondent : Mr.George Cheriyan.

J U D G M E N T

(Judgment of the court was made by N.KIRUBAKARAN.J.,)

The matter was heard through "Video Conference".

2.This Appeal has been filed against the order of the

Learned Single Judge by which the Application for amendment of Plaint to include the additional relief of payment of Rs.3,75,00,000/- by the Defendants 1 to 5 to the Plaintiff or its nominee along with interest at the rate of 15% per annum till date of payment, has been allowed.

3.It is evident from the records that there was an agreement between the Respondent and Appellants in respect of the Suit property in the year 1995 to purchase the property by the Appellants. Subsequently, Appellants executed a fresh sale agreement in favour of the Respondent on 28.04.2001 and 30.04.2001. Since the Appellants have not come forward to execute the Sale deed, the Respondent filed a Suit in C.S.No.878 of 2005 seeking to pass a decree for specific performance in favour of the Respondent or its nominee for Rs.1,24,60,000/- after receiving the balance consideration of Rs.75,00,000/-. The Appellants filed their Written Statements and both the parties adduced evidence. When the matter was posted for arguments, the Respondent filed an Application in A.No.7906 of 2019 seeking amendment of plaint to incorporate the additional prayer, by including the additional relief of payment of Rs.3,75,00,000/- by the Defendants 1 to 5 to the Plaintiff or its nominees along with interest at the rate of 15% per annum till date of payment on the ground that the market value has gone up and the Respondent is unable to enjoy the property as the Appellants are in occupation of the property. The said Application, on contest, was allowed, against which the Present Appeal has been filed.

4.Mr.M.K.Kabir, Learned Senior Counsel appearing for the Appellants submitted that there are statements in the Plaint itself stating that the Respondent/Plaintiff does not want compensation as stated in the proof affidavit and in Paragraph No.7 of the Plaint. However, the Learned Single Judge, without noting these statements, has allowed the Application.

5.However, Mr.George Cheriyan, Learned Counsel for the Respondent submitted that the Respondent has got right to amend the Plaint at any time under Section 21 (5) of the Specific Relief Act, 1963.

6.Heard Mr.M.K.Kabir, Learned Senior Counsel appearing for the Appellants and Mr.George Cheriyan, Learned Counsel for the Respondent and perused the materials available on record.

7.It is evident that the Plaintiff has got every right to amend the prayer in the Suit. Section 21(5) of the Specific Relief Act, 1963 reads as follows:

"21.Power to award compensation in certain

cases -

(5) No compensation shall be awarded under this Section unless the plaintiff has claimed such compensation in his plaint.

Provided that where the plaintiff has not claimed any such compensation 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 compensation."

Though Learned Senior Counsel appearing for the Appellants submitted that there is a delay on the part of the Respondent, since the Respondent has chosen to amend the Plaint, when the matter was posted for arguments after the completion of trial, there might have been some delay. But, it would not preclude the Respondent to file an Application for amendment of Plaint. Merely, because the Respondent filed the Application for amendment of Plaint and it has been allowed, it does not mean that the prayer would be automatically granted. Everything would depend upon the evidence adduced by the parties.

8. In this case, the Application seeking for amendment of Plaint has been allowed and the additional written statement has been filed and when the matter was posted for filing of additional proof affidavit, the Respondent filed an affidavit, which was withdrawn by the respondent subsequently. The Respondent stated before the Learned Master that the Respondent is not going to file any proof affidavit or any further additional documents and the matter has been posted before the Learned Single Judge for orders. When the Respondent has taken a decision, not to file additional proof affidavit and additional documents, it is always open to the Appellants to take advantage of that position.

9. In view of the reasons stated above, this Appeal is dismissed. No costs. Consequently, connected miscellaneous Petition is closed. It is made clear that the reasoning given by this Court is only with regard to the disposal of this Original Side Appeal and this decision will not have any bearing on the Suit.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ay/Maya

To

The Sub Assistant Registrar,
Original Side Section,
High Court of Madras,
Chennai.

+2cc to Mr.George Cheriyan, Advocate, S.R.No.11049 & 10910

O.S.A.No.55 of 2021
and
C.M.P.No.1911 of 2021

VBM(CO)
RN(10/05/2021)