



C.R.P.(PD)No.1149 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2021

CORAM

THE HONOURABLE MR. JUSTICE S. S. SUNDAR

C.R.P (PD).No.1149 of 2019

and

C.M.P.No.7413 of 2019

Loganathan

... Petitioner

Versus

Srinivasan

...Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order in I.A.No.1001 of 2018 in O.S.No.30 of 2012, dated 24.01.2019 on the file of Principal Subordinate Judge, Vellore District.

For Petitioner : Mr.S. Bala Ganesh

For Respondent : No Appearance



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ORDER

This revision petition is directed against the order of the Principal Subordinate Judge, Vellore District, in I.A.No.1001 of 2018 in O.S.No.30 of 2012. The revision petitioner is the plaintiff in the suit in O.S.No.30 of 2012 which is filed for specific performance. The prayer is to direct the respondent/defendant to execute the sale deed in favour of the revision petitioner/plaintiff pertaining to the plaint schedule property and to deliver possession of the same to the plaintiff. The prayer is also for permanent injunction restraining the defendant from in any manner alienating the suit property to any other third parties in respect of the suit property. During the pendency of the suit, the petitioner filed an application in I.A.No.1001 of 2018 under Order VI Rule 17 and Section 151 of CPC for amendment of plaint. The prayer for amendment was to delete the first prayer in the suit and to introduce the following prayer which reads as under:-

"1) (a) directing the defendant to appear before the Sub-Registrar, office of the District Registrar, Vellore, and enable him to register the document, and deliver possession of the plaint schedule property in the event of is failure to do so, permitting the plaintiff to get the document registered in execution of the decree that may be passed in the suit by way of mandatory injunction" .



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2. The petitioner also seeks further amendment which is consequential to the amendment in relation to the first relief. He wants the valuation for the suit to be done under Section 25 (b) of the Tamil Nadu Court Fees and Suits Valuation Act, 1965, instead of Section 42 (2) of the Act. It is to be noted that the suit for specific performance is now sought to be converted as one for mandatory injunction by the proposed amendment of plaint. The application for amendment was contested by the respondent on many grounds. Since the agreement itself is disputed by the respondent, they contended that there is no necessity to amend the plaint. The Trial Court dismissed the application, holding that the amendment to introduce the prayer for mandatory injunction is not maintainable. The Trial Court also observed that the petitioner can seek either the relief of specific performance or the relief to return advance amount and not entitled to any other remedy. Though the order of the Lower Court is not perfectly in order, this Court is unable to find any *bona fide*, to amend the plaint. The existing plaint in its form and contents clearly indicate that the suit was filed for specific performance of an agreement of sale. By the amendment a



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suit for specific performance is sought to be converted as a suit for mandatory injunction. This Court is unable to find any *bona fide* in the application to amend the plaint. This Court is also unable to find any clue from the affidavit filed in support of the petition as to the reason or cause for filing a petition for amendment.

3. In the present case, it is stated by the petitioner that following the sale agreement, a sale deed was also executed by the defendant by signing the sale deed. However, it is stated that the plaintiff refused to come to the Registrar's Office to register the document. Merely because, the defendants executed the sale deed but refused to register the document, this Court cannot approve the conversion of the suit for specific performance into one for mandatory injunction. Every party to a document after execution can compel the other side to register the document. If the Sub Registrar refused to register, he is entitled to file an application before the Registrar to get an order to register the document. There are specific provision under the registration to deal with such circumstances. It is still open to the revision petitioner to file a suit for specific performance.



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However, the prayer cannot be different in case the defendant after executing the sale deed refused to come forward to register the document.

In the factual premises, this Court is unable to see any *bona fide* in the application filed in I.A.No.1001 of 2018 for amendment of plaint. This Court find no cause of action for filing an amendment to replace the prayer. No prejudice will be caused to the petitioner, merely because the petitioner is denied permission to amend the plaint as the existing prayer protects the rights of the plaintiff more effectively than the new prayer which is sought to be introduced by the application in I.A.No.1001 of 2018. Hence, this court find no merits and the Civil Revision Petition is dismissed as devoid of any merits.

4. Accordingly, the Civil Revision Petition stands dismissed. Consequently, connected civil miscellaneous petition is also closed. There shall be no order as to costs.

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Index: Yes/ No

Speaking/Non-speaking Order

nst/msm



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To
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The Principal Subordinate Judge,
Vellore District.



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S. S. SUNDAR, J.

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