

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2021

CORAM

THE HONOURABLE MR.JUSTICE **KRISHNAN RAMASAMY**

CRP(PD).No.2314 of 2018
anc C.M.P.No.14406 of 2018

S.Jayendran

... Petitioner

Versus

M.Gajanandam

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 07.04.2018 in I.A.No.773 of 2017 in O.S.No.18 of 2007 on the file of the Sub-Court, Ponneri.

For Petitioner : Mr.R.Munuswamy

For Respondent : Mr.R.Krishnaswamy

ORDER

This Civil Revision Petition has been filed challenging the order dated 07.04.2018 in I.A.No.773 of 2017 in O.S.No.18 of 2007 on the file of the Sub-Court, Ponneri.

2.The gist of the case is that, the respondent herein filed an application in I.A.No.616 of 2017 for amending the plaint. The said application for amendment was allowed to incorporate the following prayer.

“Relief a-1) Suit for partition and allotment of the plaintiff's 1/3rd share in the suit properties.”

3.According to the Revision Petitioner, the plaint was not valued properly. Therefore, he filed an application in I.A.No.773 of 2017 to reject the plaint. The Court below after hearing both the parties, dismissed the said I.A., against which the present Civil Revision Petition has been filed.

4.The learned counsel for the petitioner submitted that the only issue in this Civil Revision Petition is with regard to the payment of the deficit Court fee. After the amendment, the respondent has not valued the plaint properly. Since the plaint has been amended with the additional relief, the respondent has to pay the Court fee for the amended prayer.

5.Per Contra, the learned counsel for the respondent submitted that the suit was filed for specific performance and for that he paid Court Fees.

The relief sought by way of amending is only a consequential relief. Therefore, the Court Fee need not be paid under Section 22 of the Specific Reliefs Act. In support of his contention, he referred the Full Bench Judgment of the Calcutta High Court in the case of **Sm. Dhiraj Bala Karia vs Jethia Estate Pvt. Ltd.**, reported in **AIR 1983 Cal 166**.

6. For better appreciation, Section 22 of the Specific Reliefs Act is extracted hereunder:

“Sec.22. Power to grant relief for possession, partition, refund earnest money, etc - (1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 (5 of 1908), and person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case ask for,-

(a) possession or partition and separate possession, of the property, in addition to such performance; or

(b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or [made by] him in case his claim for specific performance is refused.

(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the Court unless it has been

specifically claimed:

Provided that where the plaintiff has not claimed any such relief 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 relief.

(3)The Power of the Court to grant relief under clause (b) of sub-section (1)shall be without prejudice to its powers to award compensation under Section 21."

7.A perusal of the Section 22 of the Specific Reliefs Act would show that in a specific performance suit, the plaintiff can ask for possession or partition and separate possession of the property, in addition to such performance or any other relief entitled including the refund of any earnest money or deposit paid or in case his claim for specific performance is refused.

8.In the present case, initially the respondent herein filed the suit for specific performance and paid the Court fee for the total consideration as stated in the agreement. The amendment in the plaint appears to be a consequential prayer, which does not requires any additional Court Fees.

9. At this juncture, it is appropriate to extract the paragraph 18 of the relevant portion of the judgment in the case of ***Sm.Dhiraj Bala Karia vs. Jethia Estate Pvt., Ltd.***, reported in ***AIR 1983 Cal 166***, is extracted hereunder:

“18. We, accordingly hold that **Section 22(1)** of the Specific Relief Act, 1963 is procedural in nature and the use of the expression "further relief in Sub-section (3) of **Section 28** of the said Act is a clear pointer that reliefs by way of delivery of possession or partition and separate possession of property mentioned in **Section 22(1)(a)** and in Clause (b) of Sub-section (3) of **Section 28** of the Specific Relief Act, 1963 are ancillary or consequential to the passing of a decree for specific performance of a contract to transfer immovable property. In other words, Sub-sections (1) and (2) of **Section 22** of the Specific Relief Act, 1963 prescribe the procedure or the manner in which the Court may grant such further relief by way of delivery of possession or partition and separate possession of the property on execution of such conveyance. Till the execution and registration of the conveyance, the vendee does not acquire title, but he is granted reliefs under **Section 22(1)(a)** of the Specific Relief Act, 1963 by enforcing the vendor's agreement to sell or to grant lease to him. In other words, at this stage, when he has not yet acquired title, the vendee's

claim for possession etc. is derived from and founded upon the agreement which is specifically enforced. Thus, possessory reliefs mentioned in Clause (a) of Sub-section (I) of Section 22 of the Specific Relief Act are dependent upon and flows from passing of a decree for specific performance of an agreement to transfer an immovable property. Even before the enactment of the said Section 22(1), it was almost settled by judicial decisions that the Court could grant such possessory reliefs in favour of a successful plaintiff in a suit for specific performance. The legislature by enacting Section 22 of the Specific Relief Act, 1963 has given statutory recognition to the said, power of the Court to grant delivery of possession and has also prescribed the procedure for obtaining such relief.

19. Therefore, in our view, relief for possession in favour of the successful plaintiff in a suit for specific performance cannot be considered as a separate and distinct one. The same is only an ancillary or consequential one. Accordingly, the said prayer for delivery of possession of the property agreed to be transferred cannot be treated as an additional relief chargeable with court-fees under Clause (v) of Section 7 of the West Bengal Court-fees Act, 1970. We have already held that when an agreement for transfer of an immovable property is enforced by the Court, upon the plaintiff fulfilling his part of the obligation, the defendant vendor is

bound not only to execute necessary documents in favour of the plaintiff-vendee and to register the same but also to put the said vendee in possession in discharge of the vendor's obligations under the said agreement. The said obligation of the vendee (vendor ?) has been recognised both in [Section 55\(1\)\(f\)](#) and [Section 108\(b\)](#) of the Transfer of Property Act.”

10.A perusal of the above judgment would clearly shows that when the suit is filed seeking for a specific performance, the plaintiff can ask for revision of Court fee, delivery of possession and partition as a consequential relief. In such case, the plaintiff need not pay any additional Court fees. The reliefs sought by the respondent are only consequential relief which was allowed by the Court below. As held by the Full Bench of Calcutta High Court, this court is also of the view that if the plaintiff paid the Court fees for total consideration of the sale agreement, the plaintiff need not to pay any additional Court fees for any further relief sought as a consequential relief. The Court below has considered all these aspect in the proper perspective which does not require any interference by this Court. Therefore, this Court is of the opinion that the Civil Revision Petition deserves for dismissal.

11.The learned counsel appearing for the petitioner insist to permit the petitioner to raise all these points at the time of trial. In view of the submission, in case, if the petitioner raised these points during the trial, the Court below shall consider the same on merits as per the law.

12.Accordingly, with the above direction, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No
Internet: Yes/No
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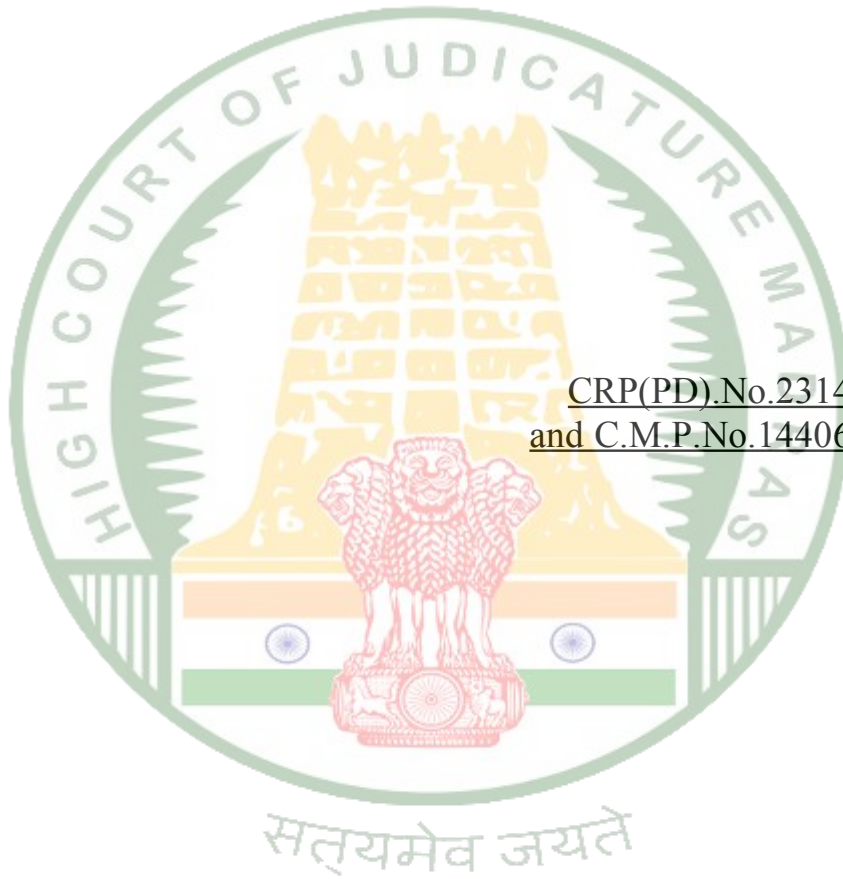
To:
The Sub-Court, Ponneri.

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KRISHNAN RAMASAMY.J.,

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