

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P. (PD) No.1555 of 2021
and C.M.P.No.12176 of 2021

Devadass

...

Petitioner /
Plaintiff

versus

1.Krishnamoorthy

2.The Sub Registrar,
Office of the Sub Registrar,
Avalurpettai, Gingee Taluk,
Villupuram District.

....

Respondents /
Defendants

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the order dated 19.03.2021 passed in I.A.No.573 of 2019 in O.S.No.299 of 2008 on the file of the learned Principal District Munsif, Gingee.

For Petitioner : M/s.R.Padmapriya

ORDER

This Civil Revision Petition is filed for setting aside the order passed by the learned Principal District Munsif, Gingee in I.A.No.573 of 2019 in O.S.No.299 of 2008 dated 19.03.2021.

2. I.A.No.573 of 2019 was filed under Order 6 Rule 17 of C.P.C., for amending the Survey Number of the suit property. It is claimed that the sub division given in the suit property as "J" should be amended as "I".

3. The case of the petitioner in support of the amendment petition is that, the first respondent agreed to sell his property to the petitioner. With a view to cheat the petitioner, he had deliberately given a wrong Survey Number. On that basis, the Sale Agreement was executed. This fact came to the knowledge of the petitioner only during his cross examination. Therefore, it is absolutely necessary that the Survey Number of the suit property has to be amended as 15/II instead of 15/IJ.

4. This petition was contested by the first respondent. It is seen from the written statement filed by the first respondent that he totally denied the claim of the petitioner that, the property in Survey No.15/IJ belongs to the first respondent. It is his case that the property in Survey No.15/IJ belongs to the petitioner and one Loganathan. It is specifically pleaded in the written statement that the description given in the suit

property, is not correct and the suit was filed with a wrong description of property.

5. It is the further case of the first respondent that the property in Survey No.16/4P was settled in favour of the first respondent's children. The first respondent is the guardian of the minor children. The petitioner wanted to buy this property and the first respondent agreed for the proposal. In this regard, the first respondent had given unsigned document. Subsequently, the petitioner asked the first respondent to sell the property in Survey No.15/1J in the place of property in Survey No.16/4P, the first respondent refused to accept this request. The Sale Agreement based on which, the present suit was filed, was not executed by the first respondent. Therefore, it is claimed by the first respondent that the petitioner, is not entitled for the relief of specific performance.

6. Considering the submissions made by both the parties, the learned Principal District Munsif, Gingee, has dismissed the petition on the ground that even in the written statement it was specifically stated that,

the first respondent has no connection with the suit property. Taking note of the long delay in filing the amendment petition and after the commencement of the trial, this petition was dismissed. Against the said order, the present Revision is filed.

7. The learned counsel for the petitioner submitted that the first respondent had admitted the execution of the Sale Agreement in support of the suit property. The Sale Agreement was written by a person, who is not well versed in writing the Sale Agreement. Therefore, there is a mistake in mentioning the Survey Number of the suit property in the Sale Agreement. Unless, this amendment petition is allowed, he would be seriously prejudiced. Therefore, he seeks to set aside the order passed by the learned Principal District Munsif, Gingee.

8. As narrated above, the suit was filed for the relief of specific performance on the basis of the Sale Agreement dated 11.08.2008. The suit was filed in the year 2008 in O.S.No.299 of 2008 and the first respondent filed written statement. In paragraph no.2 of the written

statement, he had specifically denied that, the property in Survey No.15/1J belong to him. It is also alleged that the property in Survey No.15/1J belongs to the petitioner and one Loganathan. The four boundaries of the suit properties are disputed. He had also given a description of his property. It was also alleged that the suit filed with wrong description of property, is not maintainable.

9. It is true that the first respondent admitted that there was a Sale Agreement between the petitioner and the first respondent. However, in paragraph no.5 of the written statement, it is clearly said that the Sale Agreement related to the property in Survey No.16/4P. It is further said that when the petitioner wanted to change the property in Survey No.15/1I in the place of Survey No.16/4P, it was refused by the first respondent. The first respondent specifically denies the execution of the Sale Agreement on the basis of which, the present suit is filed.

WEB COPY

10. Reading of the Sale Agreement also shows that this Agreement had been written as if, it is a Sale Deed. Through this document,

it is claimed that the property was sold to the petitioner and the possession was handed over to him. It does not appear to be a Sale Agreement. Rather it appears to be a Sale Deed. There is also a reference that it is an Agreement. There are contradictory versions in this document as to whether it is Sale Deed or Sale Agreement. Importantly, the petitioner has not signed in this document. Be that as it may, the first respondent had denied the description, boundaries of the suit property at the time of filing the written statement even on 17.11.2008. It has been reiterated through his additional written statement also. However, this present amendment petition is filed only in the year 2019 after the trial has commenced. Amendment of pleadings cannot be entertained after the commencement of trial.

11. For the reasons aforesaid, this Court is of the considered view that this amendment petition cannot be entertained on merits and on the ground of long delay. This Court finds no reason to interfere with the order of the learned learned Principal District Munsif, Gingee, in dismissing the amendment petition for the reasons stated in the order. Therefore, this

Court confirms the order passed by the learned Principal District Munsif, Gingee in I.A.No.573 of 2019 in O.S.No.299 of 2008 dated 19.03.2021.

12. Accordingly, this Civil Revision Petition is dismissed.

Consequently, connected Miscellaneous Petition is closed. However, there is no order as to costs.

09.08.2021

Speaking order / Non-speaking order

Index : Yes / No

sri

To

1.The Principal District Munsif,
Gingee.

2.The Sub Registrar,
Office of the Sub Registrar,
Avalurpettai, Gingee Taluk,
Villupuram District.

G.CHANDRASEKHARAN, J.

sri



C.R.P. (PD) No.1555 of 2021
and C.M.P.No.12176 of 2021

WEB COPY

09.08.2021