

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.08.2021

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THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

CRP. (PD) Nos.3276 & 3277 of 2019

and C.M.P. No.21273 of 2019

Nagalakshmi

... Petitioner in both the petitions

Vs.

M.Sarasu

... Respondent in both the petitions

Civil Revision Petitions are filed under Article 227 of the Constitution of India, to set aside the fair and decreetal orders dated 31.07.2019, passed in I.A. No.01 & 02 of 2019 in O.S. No.44 of 2015, on the file of the Additional District Court, Dharmapuri by allowing these Civil Revision Petitions.

For Petitioner : Mr. R.Prabakar
(in both petitions)

For Respondent : No appearance
(in both petitions)

COMMON ORDER

C.R.P. Nos.3276 & 3277 of 2019 have been directed against the orders passed in I.A. No.1 & 2 of 2019 respectively, in O.S. No.44 of 2015, pending on the file of Additional District Court, Dharmapuri.

2. I.A. No.1 of 2019 was filed for reopening the case of the petitioner / plaintiff and I.A. No.2 of 2019 was filed for amending the plaint. The petitioner filed O.S. No.44 of 2015, seeking relief of specific performance of contract for enforcing the sale agreement dated 24.07.2012. When oral evidence has been completed on both sides and the matter was pending for argument, the petitioner filed I.A. No.1 of 2019, for reopening the case of the plaintiff and also filed I.A. No.2 of 2019, for amending the plaint for including a prayer for refund of advance amount. The learned Additional District Judge, Dharmapuri, on considering the submissions made by the parties, dismissed the petitions. Against the said orders of dismissal, these Civil Revision Petitions are preferred.

3. Despite notice being served on the respondent and her name is printed in the cause list, there is no representation on behalf of the respondent. Hence, this Court is inclined to dispose this petition on merits. The issue involved in this petition has a very limited scope as to whether the proposed amendment can be entertained or not. Admittedly, the suit is for relief of specific performance. At the time of filing the suit, the alternative prayer for return of advance amount was not asked. Reading of the written statement of the respondent shows that the respondent denies the execution of sale agreement. The case of the respondent is that there was a loan transaction between the

petitioner and the respondent and the respondent was lured to execute a document. Believing that the respondent was executing a mortgage deed, the petitioner got sale agreement. There are other defences which are not necessary for the disposal of this petition. The fact remains that the execution of sale agreement is admitted though the respondent claim that she executed the sale agreement believing that she was executing a mortgage deed. Section 22 of Specific Relief Act, 1963, deals with regard to the prayer of alternative refund of advance money. Section 22 of the Specific Relief Act, 1963, is extracted hereunder for convenience:

“22. Power to grant relief for possession, partition, refund of earnest money, etc.-

(1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 (5 of 1908), any 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 I[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.

It is clear from Section 22(1) that the person seeking specific performance can also ask for possession or partition and separate possession of the property in addition to specific performance or any other relief to which he may be entitled, including the refund of any earnest money or deposit paid, in case his claim for specific performance is refused. Section 22 (2) reads that the aforesaid reliefs cannot be granted unless it has been specifically claimed. However, the provision provides that any stage of the proceeding, the Court shall allow the amendment of the plaint on such terms, for including a claim for such relief. This Section makes it clear that if an alternative prayer for refund of advance amount is not prayed at the time of filing of the suit, it can be permitted at any stage of proceedings. Whether the parties intended to execute a sale agreement, is a matter for trial. The parties have to prove their respective case by producing oral and documentary evidence.

4. In the above facts and circumstances of the case, this Court is of the considered view that the proposed amendment sought by the petitioner for including the alternative prayer for return of amount should have been

entertained by the learned Additional District Judge, Dharmapuri. However, without considering the important purpose of Section 22 of Specific Relief Act, the learned Judge, dismissed the petitions.

5. For the reasons aforesaid, the orders of the learned Additional District Judge, Dharmapuri, in I.A. Nos.1 & 2 of 2019, dated 31.07.2019, are hereby set aside and these Civil Revision Petitions are allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes / No
Speaking order / Non speaking order
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Copy to:

The Additional District Judge, Dharmapuri.

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G.CHANDRASEKHARAN. J.,

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