

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.12.2020

PRONOUNCED ON : .03.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CRP(PD)No.4070 of 2017
CMP.Nos.19085 of 2017 and 4957 of 2019

(Through Video Conferencing)

M/s.Mettupalayam Real Estates
by its Partner N.Ramasamy, Coimbatore

Petitioner

Vs

1. Brindha Kumari
2. Sridevi
3. C.P.Supraja
4. V.Vasanthi
5. A.Syed Ashik Hameed
6. K.Samraj
7. S.Chinnasamy
8. V.Indirani

Respondents

Prayer:- This Civil Revision Petition has been filed, under Section 227 of the Constitution of India, to set aside the order, dated 18.09.2017, passed in IA.No.215 of 2017, in OS.No.713 of 2009, by the III Additional District Sessions Court, Coimbatore.

For Petitioner : Mrs.Hema Sampath

For Respondent : Mr.R.Narayanan

ORDER

1. This Civil Revision Petition has been filed, to set aside the order dated 18.09.2017, passed in IA.No.215 of 2017 in OS.No.713 of 2009, by the III Additional District Sessions Court, Coimbatore.

2. The facts of the case are that the Plaintiff is the Petitioner and the Defendants are the Respondents. The suit was filed for specific performance and vacant possession of the suit property. The Plaintiff has filed the application to amend the plaint, by adding new reliefs for declaration. Since the application was dismissed by the impugned order, this Civil Revision Petition has been filed by the Plaintiff.
3. The learned counsel for the Petitioner has submitted that when the Respondents 6 and 7 had collusively obtained a consent arbitration award during the pendency of the suit and also purchased the suit properties and encumbered the suit properties, the amendment petition ought to have been allowed to avoid multiplicity of proceedings and consequently, this Civil Revision Petition is to be allowed, by setting aside the impugned order and allowing the amendment. The learned counsel has relied on **2002 7 SCC 559 (Sampath Kumar Vs. Ayyakannu)**, **2001 2 SCC 472 (Ragu Thilak D.John Vs. s.Rayappan and others)** and **2013 5 SCC 397 (Thomson Press (India) Limited Vs. Nanak Builders and Investors Private Limited)**.
4. The learned counsel for the Respondents has submitted that the amendment cannot be allowed after commencement of the trial and that after completion of the trial, the application has been filed suppressing the material facts to protract the proceedings and that the amendment sought to be carried out would change the character of the suit and that only after the decree in favour of the Petitioner, he can seek the relief of declaration that the arbitration proceedings, execution proceedings, sale and settlement

proceedings are null and void and till then, he has no right to claim that the above proceedings are null and void. The learned counsel has further submitted that at the fag end of the trial, with a sole intention to protract the case, the present application has been filed without any merits and hence, the application was rightly dismissed by the impugned order and consequently, this Civil Revision Petition is to be dismissed.

5. This court heard the learned counsel on either side and considered their submissions and also carefully perused the materials placed on record.

6. According to the Plaintiff, the Plaintiff Firm had entered into a sale agreement, dated 16.07.2006, with the Defendants 1 to 4, in respect of the suit property and an advance sale consideration was also paid. Since in spite of repeated demands, the Defendants did not come forward to comply with the terms of the sale agreement and are trying to alienate the suit property, originally, the suit in OS.No.713 of 2009 was filed for specific performance of the contract, directing the Defendants 1 to 4 to execute the sale deed in favour of the Plaintiff, as per the terms of the sale agreement dated 16.07.2006, in respect of the suit property and for vacant possession of the same.

7. The 5th Defendant is the tenant in the suit property. Pending the suit, the Defendants 1 to 5 have jointly entered into four sale deeds, in respect of the suit properties, dated 10.01.2014, in favour of the Defendants 6 and 7, taking advantage of the arbitration award, dated 27.09.2013, passed in the arbitration proceedings between the Defendants. The 6th Defendant had

also created a settlement document, dated 28.01.2016, in favour of the 8th Defendant. The Defendants 6 to 8 were impleaded as parties to the suit.

8. The amendment petition in IA.No.215 of 2017, was filed, seeking to amend the plaint, by including the reliefs of declaration that the arbitration award, dated 27.09.2013 made in Ar.OP.No.5 of 2013, all the orders made in REP.No.151 of 2014, the four sale deeds, dated 10.01.2014, created in favour of the Defendants 6 and 7 and the registered settlement document, dated 28.01.2016 executed in favour of the 8th Defendant are null and void and the amendment was denied, by the impugned order.

9. As per Order 6 Rule 17 of CPC, the Court is empowered to allow either party to alter or amend his pleadings, at any stage of the proceedings and such amendment shall be made for the purpose of determining the real controversies raised between the parties. A wide and discretionary power has been conferred on the court to allow amendment of the pleadings to a party in such manner and on such terms as it appears to the court just and proper.

10. In this case, despite having knowledge of the suit, the above said transactions came to be created by the Defendants in respect of the suit property. Hence, the above said transactions are sought to be declared as null and void, by way of amendment of the plaint on the ground that they came into existence during the pendency of the suit, namely, in lis-pendens.

11. It is the settled law that every transaction made during the pendency of the suit is hit by principle of lis pendens. In such a situation, the courts must be

liberal in allowing the application for amendment of the plaint. A complete and effectual adjudication of the disputes between the parties in respect of the subject matter of the suit, in the same suit itself, would be made.

12. When the amendments are sought for determination of the real questions in controversy between the parties, such amendments ought to be allowed. Further, in order to avoid multiplicity of proceedings and for proper and effective adjudication of the case and in order to bring out the truth, by way of a full fledged trial, it would be a sound exercise of discretion to permit the amendment sought for. The dominant purpose of allowing the amendment is to minimise the litigation. In such view of the matter, the amendment as sought for by the Plaintiff ought to have been allowed by the court below and hence, refusing to do so warrants interference by this Court.

13. In fine, this Civil Revision Petition is allowed, on condition that the Petitioner shall pay a cost of Rs.1,000/- (Rupees one thousand only) to the concerned Taluk Level Legal Aid Services Authority, within a period of two weeks from the date of receipt of a copy of this order, as there was a delay in filing the amendment petition. Since the suit is of the year 2009, the Trial Court is directed to dispose of the suit, on merits and in accordance with law, within a period of six months from the date of receipt of a copy of this order.

14. No costs. Consequently, the connected MPs are closed.

24.03.2021

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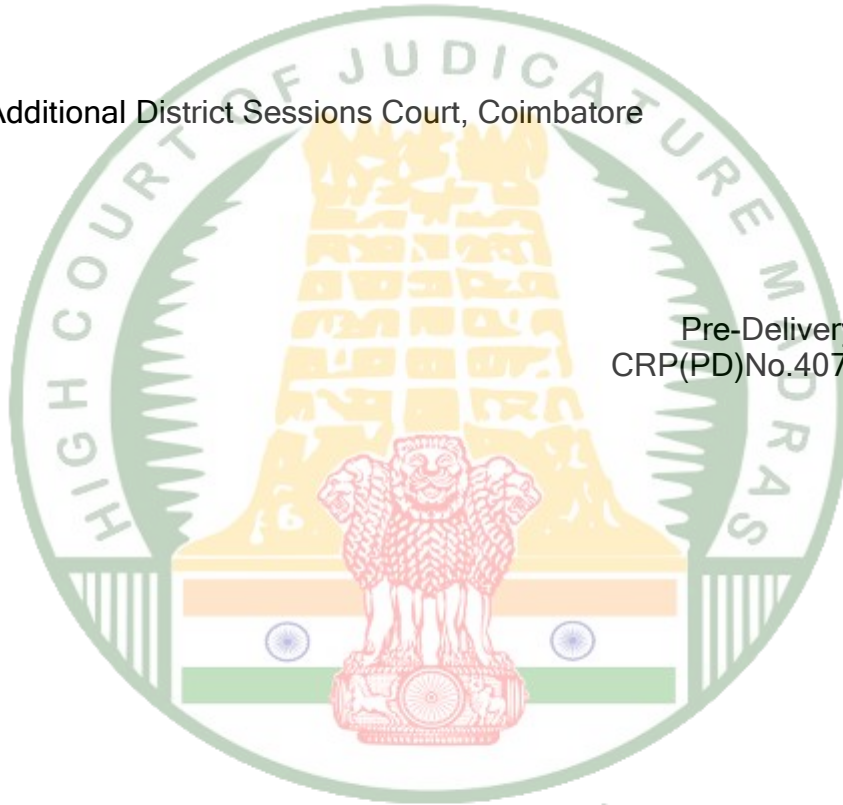
A.A.NAKKIRAN, J.

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Index:Yes/No
Web:Yes/No
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To

1. The III Additional District Sessions Court, Coimbatore



Pre-Delivery Order in
CRP(PD)No.4070 of 2017

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24.03.2021

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