



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.12.2021

CORAM :

THE HONOURABLE MS.JUSTICE **P.T.ASHA**

C.R.P. (MD) No.1384 of 2021

and

C.M.P. (MD) No.7847 of 2021

Mathiyalagan ... Petitioner/Petitioner/Plaintiff

vs.

Ganesan ... Respondent/Respondent/Defendant

PRAYER:- This Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 22.03.2021 rendered in I.A.No.21 of 2020 in O.S.No.69 of 2014 on the file of the learned Subordinate Judge, Vedasandur.

For Petitioner : Mr.K.S.Kathiravan
For Respondent : Mr.B.Azhagesh

ORDER

The plaintiff has filed the above Civil Revision Petition challenging the order passed in I.A.No.21 of 2020 in O.S.No.69 of 2014 dated 22.03.2021 on the file of the learned Subordinate Judge, Vedasandur.

2.By the impugned order, the learned Judge has dismissed the application filed by the plaintiff to amend the plaint. The brief facts are as follows:-

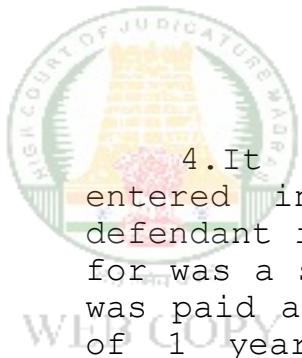
3.The plaintiff had originally filed a suit O.S.No.69 of 2014 for the following reliefs:-

"a) for specific performance of the agreement of sale deed dated 04.05.2011 directing the defendant to execute a sale deed in favour of the plaintiff in respect of the suit land within a period to be specified by the Court failing which executing the sale deed through process of Court;

b) for a consequential relief of possession of the suit property;

c) alternatively, for recovery of the advance amount with interest at 24% p.a. upto date, namely, Rs.3,56,920-50p with subsequent interest;

d) for a permanent injunction restraining the defendant, his men and servants from alienating the suit



4.It is the case of the plaintiff that he had originally entered into an agreement of sale dated 04.05.2011 with the defendant in respect of the suit schedule property. The price agreed for was a sum of Rs.7,87,500/- and a sum of Rs.2,00,000/- was paid as advance. The time for completing the sale was a period of 1 year. However, the defendant kept seeking an extension. Therefore, another sale agreement dated 15.05.2012 was entered into on the same terms. Once again, another sale agreement was entered into on 15.05.2013. When the plaintiff had approached the defendant in the month of February, 2014 to receive the balance sale consideration and execute the sale deed, the defendant refused to do so. Therefore, the plaintiff issued a legal notice dated 27.03.2014, calling upon the defendant to execute the sale deed. A reply containing false allegations was issued on 26.04.2014 by the defendant, to which an adequate rejoinder was submitted by the plaintiff on 16.07.2014. Thereafter, the plaintiff had come forward with the above suit for specific performance.

5.The defendant had filed a written statement denying the execution of the sale agreement. It was his case that on 17.06.2010, he had borrowed a sum of Rs.1,50,000/- from the plaintiff, for which, the plaintiff had got signatures in several blank papers and this has been misused to create these agreements. The defendant denied the plea of readiness and willingness as stated by the plaintiff and sought for dismissal of the suit.

6.Pending the above suit, the plaintiff had come forward with the impugned application to amend the plaint with regard to the prayer portion and in paragraph No.11 of the plaint. The plaintiff would submit that although in the plaint the plaintiff has set out all the agreements of sale, he had however by typographical error not included it in the relief portion and also in paragraph No.11. Therefore, he sought to amend the plaint.

7.The defendant had filed a written statement denying the contentions of the plaintiff and stating that the very agreement of sale is denied by the plaintiff and therefore, an amendment cannot be ordered.

8.The learned Subordinate Judge, Vendasandur by judgment dated 22.03.2021 had dismissed the said application on the ground that the suit had been listed for trial on 28.11.2019 and since the plaintiff had not appeared, the suit had been dismissed for default. Thereafter, it was restored to file. At that point of time, the plaintiff has come forward with the present application. Further, the learned Judge had observed that there is no reference to the agreement of sale dated 15.05.2012 and 15.05.2013 in the plaint and therefore, it deserves to be dismissed. Aggrieved by the said order, the plaintiff is before this Court.



9.Heard the learned counsels on either side.

10.The plaintiff has in very cogent terms set out how he had entered into an agreement of sale on 04.05.2011, which was thereafter extended on two occasions and ultimately since the defendant had not come forward to execute the sale deed, the plaintiff had been constrained to move the Court for specific performance. Therefore, the observation of the learned Judge that the plaint does not contain any reference to the other two agreement of sale is *per se* wrong and the order insofar as the above observation is concerned clearly shows the non application of mind on the part of the learned Judge. That apart since the reference has already been made to the two agreement of sale, no new contention is sought to be introduced by the plaintiff and no prejudice is going to be caused to the defendant, as it is for the plaintiff to prove the execution of these deeds by the defendant. In these circumstances, the order dismissing the above amendment is totally incorrect and is liable to set aside.

11.In the result, the Civil Revision Petition stands allowed and the order passed in I.A.No.21 of 2020 in O.S.No.69 of 2014 dated 22.03.2021 on the file of the learned Subordinate Judge, Veda sandur is hereby set aside. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(T & P)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To
The Subordinate Judge,
Veda sandur.

+1 CC to M/s.K.S.KATHIRAVAN, Advocate (SR-39760[F] dated 21/12/2021)

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20.12.2021

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