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C.R.P (PD) No.4050 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

C.R.P (PD) No.4050 of 2016
and C.M.P. No.20467 of 2016

1.Chinnammal
2.Jaganathan
3.Varadarajan
4.Jothimani
5.Venkatesan

... Petitioners

Vs.

1.B.Jayagopal
2.M.A.S.Sindhuja
3.Valliammal @ Pappu
4.Rathinam
5.Rukmani
6.Vijayalakshmi
7.Dhanam @ Sakunthala

... Respondents

PRAYER: The Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 20.10.2016 made in I.A. No.178 of 2016 in O.S. No.119 of 2011 on the file of the II Additional District Judge, Salem.

For Petitioners : Mr.B.R.Shankaralingam

For Respondents : Mr.C.Mahendran for R1 and R2
Mrs.R.Meenal, for R3 to R7



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ORDER

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This civil revision petition has been filed by the defendants 6 to 10/petitioners questioning the fair and final order passed in I.A. No.178 of 2016 in O.S. No.119 of 2011 by the learned II Additional District Judge, Salem dated 20.10.2016, allowing the application filed by the plaintiffs/respondents 1 and 2 under Order VI Rule 17 CPC.

2. The respondents 1 and 2/plaintiffs filed O.S. No.119 of 2011 seeking for the relief of specific performance. This suit was filed based on the agreement of sale entered into on 20.10.2008 with defendants 1 to 5. During the pendency of this suit, the plaintiffs filed I.A. No.178 of 2016 under Order VI Rule 17 CPC to amend the pleadings and to seek for an additional prayer for declaring the right and title of the defendants 1 to 5 and for a permanent injunction restraining the petitioners/defendants 6 to 10, not to interfere with the possession and enjoyment of defendants 1 to 5.

3. The petitioners contested this application on the ground that the amendment application virtually changes the entire cause of action and the nature of the suit and sought the dismissal of the application.



4. The court below, on considering the claim made by either side, allowed the application through order dated 20.10.2016 and aggrieved by the same, the present civil revision petition has been filed.

5. Heard both parties and perused the materials available on record.

6. The short point that arises for consideration in the present civil revision petition is as to *whether the order passed by the court below by allowing the amendment application filed under Order VI Rule 17 CPC suffers from perversity?*

7. The defendants 1 to 5 in the present suit filed a suit against defendants 6 to 10 seeking for the relief of permanent injunction in O.S. No.353 of 2001 before the Principal District Munsif Court, Salem. The suit was dismissed by judgment and decree dated 24.12.2003 and an appeal was filed by the defendants 1 to 5 in A.S. No.26 of 2005 before the learned Principal District Judge, Salem and it was allowed through judgment and decree dated 02.11.2005. The defendants 6 to 10 filed S.A. No.537 of 2006 before this court and the second appeal was allowed through judgment and decree dated 17.12.2014 by setting aside the judgment and decree passed by the first



appellate court. While allowing the second appeal, liberty was granted to defendants 6 to 10, who were the plaintiffs in that suit to seek for declaratory relief before the appropriate forum. The defendants 6 to 10 did not choose to file any suit thereafter and the judgment and decree passed in S.A. No.537 of 2006 has become final.

8. The respondents 1 and 2/plaintiffs entered into an agreement of sale with defendants 1 to 5 and based on the same, the suit for specific performance was filed before the court below in O.S. No.119 of 2011. In the pre-trial stage, an application came to be filed in I.A. No.178 of 2016 by the plaintiffs under Order VI Rule 17 CPC, to amend the pleadings. The plaintiffs, by virtue of this application wanted to amend the pleadings and support the case of defendants 1 to 5 and sought for the relief of declaration of title of defendants 1 to 5 and for a permanent injunction restraining defendants 6 to 10/petitioners from interfering with the possession and enjoyment of the property.

9. The amendment that was sought for by the plaintiffs virtually changes the very character of the suit. The plaintiffs are merely agreement holders and they cannot seek for the relief of declaration of the title on behalf of the defendants 1 to 5. The liberty that was granted by this court while allowing



S.A. No.537 of 2006 was not availed of by defendants 1 to 5. Hence the plaintiffs cannot step into the shoes of defendants 1 to 5 and seek for a relief for those defendants. The nature and character of the suit will get completely altered, if the amendment sought for by the plaintiffs is allowed and it goes beyond the scope of the pleadings and the relief sought for in O.S. No.119 of 2011.

10. The court below did not consider this issue in a proper perspective and has mechanically allowed the application by merely giving a finding that the proposed amendment is necessary in view of the judgment passed in S.A. No.537 of 2006. The judgment passed in the second appeal gave liberty to defendants 1 to 5, who did not choose to avail of the said liberty and the plaintiffs cannot be permitted to take advantage of the liberty and file an application seeking for amendment of the pleadings which virtually changes the very nature and character of the suit.

11. In the light of the above discussion, this court has absolutely no hesitation to interfere with the fair and final order passed by the court below in I.A. No.178 of 2016 in O.S. No.119 of 2011 on the file of the learned II Additional District Judge, Salem.



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12. In the result, this civil revision petition is allowed and there shall be a direction to the court below to dispose of O.S. No.119 of 2011 within a period of four months from the date of receipt of a copy of this order. The court below shall file a compliance report after disposing the suit within the time stipulated by this court. No costs. Consequently, the connected civil miscellaneous petition is closed.

08.12.2022

Asr

To
The II Additional District Judge, Salem



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N.ANAND VENKATESH, J.,

Asr

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