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CRP.No. 641 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : .05.2023

CORAM :

**THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN**

Civil Revision Petition No. 641 of 2020  
and  
CMP.No. 3323 of 2020

Revathy

.. Petitioner

Versus

1. G. Chellappan  
2. Thiruvankadam

.. Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, prays to set aside the fair and decretal order dated 22.10.2019 passed in I.A.No. 262 of 2017 in A.S.No. 68 of 2017 on the file of Principal District Judge, Cuddalore.

For petitioner : Mr. T.S.Baskaran  
For Respondents : Mr. D. Ravichander

**ORDER**

The plaintiff in O.S. No. 94 of 2009 is the revision petitioner. The defendants therein are the respondents.

2. The suit in O.S. No. 94 of 2009 was filed for the relief of specific performance of an unregistered Agreement of Sale dated 21.01.2008 executed



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among the plaintiff and the defendants. According to the plaintiff, on the date of agreement, she paid a sum of Rs.63,750/- as advance amount out of the total agreed sale consideration of Rs.1,63,750. It is further stated that she was ready and willing to pay the balance sale consideration and to get the sale deed in her name. However the defendants, for the reasons unknown to her, has been postponing the execution of the sale deed by assigning one reason or the other. Therefore, on 20.11.2009 she has issued a legal notice calling upon the defendants to come forward to execute the sale deed in her name after receiving the balance sale consideration. On receipt of the legal notice dated 20.11.2009, a reply dated 26.11.2009 was issued by the defendants with false and untenable averments. Therefore, she has filed the suit for specific performance.

3. In the suit, written statement was filed by the respondents/defendants herein contending that the agreement of sale itself is false and fabricated in as much as the signature of the first defendant has been forged thereon. After trial, the suit was dismissed on 23.03.2017. Aggrieved by the same, the plaintiff has filed the appeal in A.S. No. 68 of 2017. Pending the appeal, the revision petitioner has filed I.A. No. 262 of 2017 to amend the pleadings in the plaint. The reasons set out for filing the amendment



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application is that the Survey Number of the suit property has been wrongly mentioned in the plaint as 46/7 instead of 46/8. It was contended that in the agreement of sale, the corresponding old Survey Number has been correctly mentioned by the plaintiff, however, the new Survey Number alone has been mentioned incorrectly. Further, the word "the first defendant" in the plaint required to be substituted with the word "defendants" and accordingly, the revision petitioner sought for amending the plaint.

4. The application for amendment was opposed by the first respondent by contending that at the appellate stage, the amendment sought for is legally impermissible. Already, before the trial Court, the revision petitioner has filed I.A. No. 2 of 2010 for similar relief, however, it was withdrawn as not pressed. While so, the present application would be hit by principles of *res-judicata*. The relief sought for in the present application is also barred by order 23 Rule 1 read with Section 141 of CPC. In any event, the amendment sought for by the plaintiff to amend the pleadings made in the plaint before the trial Court during the pendency of appeal cannot be countenanced. Therefore, the respondent prayed for dismissal of the application.



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**5.** The Appellate Court accepting the opposition made by the respondent herein dismissed the application for amendment mainly on the ground that already I.A. No. 2 of 2010 was filed before the trial Court and it was dismissed as not pressed. Therefore, for the very same relief, the respondent cannot file the instant application.

**6.** Assailing the order passed by the Court below, the learned counsel appearing for the revision petitioner would contend that there is no bar for filing the application for amendment at the appellate stage. The amendment, if allowed, would not materially altered, vary or modify the material pleadings in the plaint. The alteration of the Survey Number is very much necessary so that, in the event of the appeal being allowed, it would enable the plaintiff to seek for execution of a decree. Thus, by virtue of the amendment being allowed, no prejudice will be caused to the respondents. The appellate Court without taking note of the above aspects has erroneously held that the amendment sought for is barred under Order 23 Rule 1 read with Section 141 of CPC. The learned counsel for the petitioner therefore prayed for allowing this revision petition.



7. On the above submissions of the learned counsel for the revision petitioner, this Court heard the learned counsel for the respondents and perused the materials placed on record.

8. At the outset, it must be stated that the revision petitioner, at the appellate stage, has sought for amendment of the plaint insofar as it relates to the erroneous Survey Number mentioned in the plaint. It is needless to mention that the revision petitioner suffered a decree before the trial Court. She is on appeal before the Appellate Court. Even before the trial Court an attempt was made to amend the Survey Number by filing I.A. No. 2 of 2010. However, the learned counsel for the revision petitioner before the trial court did not press for the relief in I.A. No. 2 of 2010 and therefore, it was dismissed as not pressed. While so, for the very same relief, now at the appellate stage the present application has been filed. There is no valid reasons assigned by the petitioner for filing the present application to amend the Survey Number at the appellate stage. If it is the plea of the revision petitioner that the Survey Number corresponding to the old survey number has been rightly mentioned in the agreement of sale, there is no necessity at all for filing the instant application.



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**9.** In any event, when already an application for the very same relief has been filed and it was withdrawn, the instant application is certainly barred under Order 23 Rule 1 read with Section 141 of CPC. The appellate Court is wholly justified in not granting the relief as sought for by the plaintiff. Hence, this Court does not find any reason to interfere with the order passed by the Appellate Court, dismissing the application filed by the revision petitioner, for amendment of the survey number in the plaint filed before the trial Court.

**10.** Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

**.05.2023**

Index : Yes/No  
Speaking Order : Yes/No  
Neutral Citation : Yes/No  
msm

To

1. The Principal District Judge, Cuddalore.
4. The Section Officer, High Court, Madras.



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**V.BHAVANI SUBBAROYAN, J.**

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Pre-Delivery Order  
in  
CRP.No. 641 of 2020

TO

**THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN**

Most Respectfully Submitted  
by MSM