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C.R.P.No.4086 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.09.2023

CORAM

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.4086 of 2015

and

M.P.No.1 of 2015

Ponni

...Petitioner/Petitioner/Appellant.

Vs.

- 1.Jaya
- 2.Nirmala
- 3.Malarkodi
- 4.Chitra
- 5.Kaliammal
- 6.Ramesh (Died)
- 7.Suresh
- 8.Indhira
- 9.Lakshmi
- 10.Mahalakshmi
- 11.Minor Sivasankari
- 12.Minor Yuvanesh
- 13.Minor Durkesh

...Respondents/Respondents/Respondents.

[RR11 to 13, Minor Rep.by R-10, Panruti Cuddalore District, Respondent 6 died. Respondents 10 to 13 brought on record as Lrs of the deceased R6 viz., Ramesh vide court order dated 13.09.2023 made in C.M.P.No.15008 and 150121 of 2023 in C.R.P.No.4086 of 2015].

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decree dated 22.06.2015 made in I.A.No.10 of 2015 on A.S.No.73 of 2013, on the file of the Principal District Judge, Cuddalore.



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For Petitioner : Mr.V.Jayaprakash
For Respondents :
(RR7 to 13) : Mr.Sathyaraj
(R1) : Died
(RR2 and 5) : Not Ready in Notice
(R3) : Refused

ORDER

This Civil Revision Petition arises against the dismissal of an application filed for amendment of plaint. O.S.No.77 of 2005 on the file of Sub-Court, Panruti is a suit for specific performance. The said suit was dismissed in and by way of a judgment dated 22.11.2013.

2.Aggrieved over the same, the petitioner preferred A.S.No.73 of 2010. At the time of moving the appeal it was noticed that alternative relief of refund of advance amount has not been sought for. Therefore, an application was moved to amend the plaint at the appellate stage seeking to add the said relief.

3.The Learned Appellate Judge dismissed the application stating that such an amendment would change the character of the suit. Challenging the same, the present civil revision petitioner is filed.

4.Heard Mr.V.Jayaprakash, learned Counsel for the petitioner and Mr.Sathyaraj, learned Counsel for respondent Nos.7 to 13.

5.In a suit for specific performance, the Court shall not grant refund of advance amount until and unless it is specifically sought for. This is as per Section 22 of the Specific Relief Act. There are two provisos appended to Section 22. The second proviso appended to Section 22 makes it very



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clear that the plaintiff has a right to amend the plaint to claim refund of advance amount at any stage of the proceedings. This power to be exercised notwithstanding anything contained in CPC. I am unable to agree with the reason given by the learned first Appellate Judge that by seeking for refund of advance amount, the character of the suit will change. The suit continues to be one for specific performance and the relief sought for through the amendment is only an alternative relief. The statute being clear, the Learned Lower Appellate Judge fell in error in dismissing the application. Therefore, applying Section 22, I.A.No.10 of 2014 will stand allowed.

6.The plaintiff/appellant is permitted to amend the plaint. On such amendment, the respondent will be entitled to file his additional written statement confining his objection, with respect to the amended relief, which is newly sought for.

7.This civil revision petition stands allowed. No costs. Connected Miscellaneous Petition is closed.

19.09.2023

nst

Index : Yes/No

Speaking Order : Yes/No

Neutral Citations : Yes/No

To:

The

Principal District Judge,
Cuddalore.



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V. LAKSHMINARAYANAN.J,

nst

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