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C.M.P.No. 10095 of 2023

in

A.S. No. 292 of 2021

T.V. THAMILSELVI, J.

This Civil Miscellaneous Petition has been filed seeking to amend the plaint in O.S.No.15 of 2018 on the file of II on the file of II Addl. District Judge, Vellore at Ranipet by adding the alternative prayer for refund of advance amount as described in the details of amendment.

2. Mr.P.Jagadeesan, learned counsel for petitioner/respondent submitted that due to inadvertent mistake, the petitioner omitted to pray for the alternative relief of refund of advance amount with interest. He would further submit that the petitioner was advised to seek for alternative relief by way of abundant caution by seeking necessary amendment in the plaint and the same would not any way change the nature and character of the suit. Furthermore, there is no need to pay any additional court fee also. Accordingly, he has filed the above petition praying to amend the plaint in O.S.No.15 of 2018.

3. Mr.R.Ganesh Kumar, learned counsel appearing for respondent/appellant appeared and raised strong objections in allowing this petition and to that effect, he submitted counter affidavit of respondent.



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4. Considering the facts and circumstances, and as per his objections, he has disputed the advance amount also, but it is a settled proposition, suitable opportunity must be given to the plaintiff, when the plaintiff failed to seek for alternative remedy while filing the suit,. If the opportunity is not given to him, his valid defence will be defeated. Therefore, without prejudice to the objections raised by the respondent, this court is inclined to allow this petition.

5. Registry is directed to carry out necessary amendment in the plaint and post the matter for arguments on 19.10.2023 finally.

27.09.2023

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