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*C.R.P.(PD)No.2288 of 2019*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2023

CORAM:

**THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN**

C.R.P.(PD)No.2288 of 2019  
and CMP.No.14923 of 2019

Arunachalam (died)

1.Govindammal

2.Rajarajeswari

3.Umamaheswari

... Petitioners

Vs.

Annadurai (died)

2.A.Jayakodi

3.A.Sakthi

4.A.Chandravadiu

... Respondents

(Respondents 2 to 4 brought on record as LRS of the deceased viz., R1-Annadurai, vide court order dated: 01.12.2021 made in CMP.No.19396/2021 in CRP.No. 2288 of 2019)



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PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the Fair and Decreetal order dated 23.04.2019 made in I.A.No.999 of 2018 in O.S.No.16 of 2017 on the file of the Sub Court, Jayankondam.

For Petitioners : Mr.Ramaraj  
for Mr.M.Guruprasad

For Respondents : Mr.P.Valliappan, Senior Counsel  
for Mr.Sri Ram Narayanan

### **ORDER**

O.S.No.84 of 2006 was presented before the learned Subordinate Judge, Ariyalur. In paragraph No.5 of the plaint, the purpose for which the suit has been presented has been stated as one for specific performance of a contract of sale dated 17.08.2005. However, the prayer that was sought for in the suit was for recovery of possession. The prayer in the suit does not fit within the frame of the suit. In the meanwhile, the suit was proceeded with.

2.Sometime after filing of the reply statement, the plaintiff realized that instead of seeking the relief of specific performance, he had sought



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for recovery of possession. A prayer for recovery of possession is consequent to the suit for specific performance and it is not vice versa. Therefore, he took out an application in I.A.No.999 of 2018 for amendment of the prayer. The said application was dismissed as it was stiffly opposed by the respondent herein. Against the said order, the present revision has been presented.

3.Heard Mr.Ramaraj, learned counsel for Mr.M.Guruprasad, learned counsel appearing for the petitioners and Mr.P.Valliappan, learned Senior Counsel for Mr.Sri Ram Narayanan, learned counsel for the respondents. I have carefully gone through the records.

4.Mr.Ramaraj, learned counsel for the petitioner would draw my attention to paragraph No.5 of the plaint and would state that what was sought was only a suit for specific performance. But, inadvertently, the prayer that had been sought for is one of recovery of possession. Therefore, they came forward with an application to amend the plaint to rectify this error.

5.Mr.P.Valliappan, learned Senior Counsel would submit that even



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in the notice which has been issued prior to the suit, the relief that had been sought for was only for recovery of possession and the plaint is only a reflection of the pre-suit notice which had been exchanged between the parties.

6.He would state that the plaintiff came forward with the specific case for recovery of possession and therefore, he is not entitled seeking for amendment at the stage when recording of evidence is going on.

7.A careful perusal of the records shows that while evidence was being recorded, permission to file additional pleas was granted. Pleading itself was completed only on 30.10.2018 and on that very day, the application for amendment came to be presented. This shows that the Court had extended the time for evidence till 30.10.2018 by receiving the plaintiff's reply statement. After the evidence had been partly recorded, the Court had been gracious enough to permit the plaintiff to file an application to bring on record their reply statement.

8.The purpose of Order 6 Rule 17 of CPC is to decide the actual cause which the parties want the Court to decide. As pointed out by



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Mr.Ramaraj, a perusal of paragraph No.5 shows that it is a suit for specific performance that had been sought for but the prayer had been wrongly drafted. I can take notice of the fact that the prayers are not been drafted by the parties, but only by the counsels. The same go for exchange of pre-suit notices also.

9.The suit has been framed on the basis of an agreement and the suit will have to be brought in line with the agreement itself. The factum that the agreement was entered into is not denied but the plea is that it is one of loan transactions.

10.The issue of “due diligence” under Order 6 Rule 17 has to be looked into from a pragmatic angle. A party approaches a lawyer and gives him instructions to file a plaint. In this case, he had given him the copy of the agreement and had wanted the relief to be properly drafted by the lawyer for the purpose of getting a decree from the Court. At best, the wrong drafting cannot be blamed on the party. 'Due diligence' is not the diligence of the lawyer, but the diligence of the parties. This should be the consideration under Order 6 Rule 17 of CPC.



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11.It is too much on my part to expect that a party, in the mofussil area, would know the difference between a suit for specific performance and a suit for recovery of possession. This is entirely within the realm of the lawyers. For the mistake committed by the lawyer, I do not want to punish the litigant.

12.The Code of Civil Procedure is not a tool to punish the litigant for having asked the wrong prayer. This is more so, in this case, when in paragraph No.5 it has been specifically stated that the relief that he seeks for is one for specific performance. Considering the over all circumstances, I am of the view that being an amendment, to rectify the error committed by the counsel who drafted the plaint, the same can be allowed.

13.Having noticed this fact, I cannot be blind to the situation that the defendant has been put to loss on account of the fact, the suit has been pending for the past 10 years. Therefore, while allowing I.A.No.999 of 2018, I am inclined to impose costs of Rs.20,000/- on the plaintiff. The said costs will be paid on or before 30.09.2023 to the defendants. On the



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payment of Rs.20,000/- as costs, the Civil Revision Petition stands allowed. In case, the cost is not paid, the CRP will stand dismissed without any further reference of this Court.

14.The Civil Revision Petition is allowed and the order passed in I.A.No.999 of 2018 is set aside. On payment of costs, the plaintiff is granted liberty to amend the plaint. Once the plaint is amended, the defendants will be entitled to file an additional written statement to the same. No costs. Consequently, connected miscellaneous petition is closed.

**17.08.2023**

Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

rjr/vs

To

The Sub Court,  
Jayankondam.



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**V.LAKSHMINARAYANAN,J.**

rjr/vs

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