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CRP.No.2755 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.No.2755 of 2019 and
CMP.No.18104 of 2019

Palaniyappan

... petitioner

Vs.

1.Mariammal

2.Palaniammal

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 09.01.2019 passed by the learned Sub Judge at Mettur in IA.No.549 of 2015 in OS.No.188 of 2011 pending on the file of the learned Sub Judge at Mettur.

For Petitioner : M/s.S.T.P.Kuilmozhi

For Respondents

For R1 : Ms.S.Nandhini Devi
for Mr.R.Subramanian

For R2 : No appearance

ORDER

This civil revision petition has been filed to set aside the order dated 09.01.2019 passed by the learned Sub Judge at Mettur in IA.No.549 of 2015 in



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OS.No.188 of 2011 pending on the file of the learned Sub Judge at Mettur, thereby

allowed the petition seeking amendment of plaint.

2. The petitioner is the second defendant in the suit filed by the first respondent herein for specific performance. The case of the first respondent is that the second respondent herein had executed agreement for sale dated 30.05.2011 and agreed to sell the suit property comprised in survey No.153/5 to an extent of 34 cents. However, due to inadvertence by the first and second respondents, they wrongly mentioned the survey number as 153/5 instead of survey No.153/1A since the boundaries mentioned in the agreement for sale is matched with the boundaries of the land comprised in survey No.153/1A. In fact, patta was also issued in favour of the second respondent in respect of the land comprised in survey No.153/1A. Therefore, the first respondent filed petition seeking amendment in the agreement for sale and also in the plaint in IA.Nos.548 and 549 of 2015. The court below allowed the application in IA.No.549 of 2015. Aggrieved by the same, the petitioner herein has filed the present civil revision petition.

3. The learned counsel for the petitioner would submit that the petitioner is arrayed as the second defendant in the suit filed by the first respondent for specific performance on the strength of the agreement for sale executed by the



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second respondent herein dated 30.05.2011. As per the agreement, the land which was intended to be sold in favour of the first respondent is comprised in survey No.153/5 admeasuring 34 cents. Now the first respondent has come forward with the petition seeking amendment of the survey number itself as 153/1A. It causes prejudice to the petitioner and it changes the entire cause of action as well as the nature of the suit itself. Therefore, it should not be allowed to amend the plaint. In fact, the application filed in IA.No.548 of 2015 seeking amendment in the agreement for sale was already dismissed by the trial court and the first respondent did not challenge the same.

4. The learned counsel for the first respondent would submit that the second respondent executed registered agreement for sale and on the strength of the same, the first respondent filed suit for specific performance. In fact, the petitioner is arrayed as the second defendant in the said suit who is none other than the son of the second respondent herein. After execution of the Will in favour of her grandsons i.e. the petitioner's sons, she was not maintained by them and she was neglected by them. Therefore, she could not maintain herself and she intended to sell the suit property. On receipt of the advance amount, she had executed registered agreement for sale in favour of the first respondent herein. Though the second respondent is ready and willing to execute the sale deed in favour of the



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first respondent, the petitioner threatened her not to execute any sale deed and as such, the first respondent was constrained to file a suit for specific performance. In fact, the first respondent and the second respondent very well know the property which was intended to be sold in favour of the first respondent and they had full knowledge about the boundaries of the property. Therefore, the court below rightly allowed the petition seeking amendment of the plaint. She further submitted that IA.No.548 of 2015 was filed seeking amendment in the agreement for sale. In fact, the court below, though dismissed the same, stated that no need to amend the agreement for sale if the amendment sought for in the plaint is allowed. In support of her contention, she cited the judgment of the Hon'ble Supreme Court of India in the case of *Puran Ram Vs. Bhaguram and another* reported in (2008) 4 SCC 102.

5. Heard, the learned counsel for the petitioner and the learned counsel for the first respondent.

6. The second respondent had executed agreement for sale in favour of the first respondent. On the strength of the same, the first respondent filed suit for specific performance in respect of the suit property. The subject property was already bequeathed by the second respondent in favour of her grandsons on condition that she should be maintained by the beneficiaries. However, she was not



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maintained by them and as such, she could not maintain herself and she could not able to make out her medical expenses. Therefore, she intended to sell the property and entered into an agreement for sale with the first respondent herein on receipt of the advance amount. Hence, the grandsons already filed suit as against the respondents herein challenging the agreement for sale itself and it is pending. In the said suit, the second respondent filed written statement and categorically stated that though she is ready and willing to execute the sale deed, the petitioner herein who is being the son of the second respondent, is objecting the same and not permitting the second respondent to execute any sale deed since the suit property was already bequeathed in favour of his sons. In fact, only after the demise of the second respondent, the Will comes into force. Therefore, before her demise, she can very well cancel the Will and she can deal with the property. Accordingly, she executed agreement for sale in favour of the first respondent. Due to inadvertence, they wrongly mentioned the survey number in the agreement for sale and as such, the first respondent herein rightly filed petition seeking amendment in the agreement for sale as well as the plaint in OS.No.188 of 2011.

7. The learned counsel for the first respondent relied upon the judgment in the case of ***Puran Ram Vs. Bhaguram and another*** reported in (2008) 4 SCC



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102, wherein the Hon'ble Supreme Court of India held that in a suit for specific performance of contract for sale, it is permissible to amend a part of the description of the suit property not only in the plaint but also in the agreement. **Section 26** clearly says as to when a contract or other instrument can be rectified and provides that when through fraud or a mutual mistake of the parties, the agreement in writing does not express their real intention, it is open to the parties to apply for amendment of the instrument. A reading of the two conditions under Section 26 of the Act says that either party or his representative in interest may institute a suit to have the instrument rectified, or a party who has already filed suit in which any right arising under the instrument is in issue, may claim in his pleadings that the instrument be rectified.

8. In the case on hand, on verification of the written statement filed by her in the suit filed by the petitioner's sons in OS.No.257 of 2011, she categorically mentioned that the suit property is a self acquired property and she can very well cancel the Will and she has right to sell the property. Further, on threatening and compulsion, she could not able to execute the sale deed in favour of the first respondent. Therefore, the first respondent filed suit in OS.No.188 of 2011 for specific performance. That apart, the petitioner is none other than the son of the second respondent. He is being her son, he has also been impleaded as the second



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defendant in the suit. Therefore, he has nothing to do with the agreement executed by the second respondent herein and he has nothing to do with the order impugned in the present civil revision petition. As such, the court below rightly allowed the petition and this Court finds no infirmity or illegality in the order passed by the court below.

9. Accordingly, this civil revision petition is dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

10.01.2023

Speaking/non-speaking
Index : Yes/No
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G.K.ILANTHIRAIYAN, J.

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To

The learned Sub Judge at Mettur

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