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C.M.P.No.17313 of 2023

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in
A.S.No.282 of 2015

R.SUBRAMANIAN, J.
and
N.SENTHILKUMAR, J.

This application has been filed seeking permission to amend the
plaint to include the following prayers:-

*A. In plaint Para VI, the prayer (i) to be amended
as:*

*“i) To direct the 1st defendant to execute a Sale
Deed in favour of the plaintiff as per the Sale Agreement
dated 12.01.2007 with respect to the undivided half
share belonging to the 1st defendant.”*

B. In plaint Para VI include the prayer as:

*ii) To grant a decree for partition and separate
possession of the half share belonging to the 1st
defendant in the suit property in favour of the plaintiff
by metes and bounds.”*

C. In plaint Para VI include the prayer as:

*“iii) To refund the advance amount a sum of
Rs.10,00,000/- (Rupees Ten Lakhs only) together with
interest at 12% per annum.*

D. Amend the prayer No.ii as No.iv and

E. Amend the prayer No.iii as No.v.



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2. The suit was filed for specific performance of an agreement of sale dated 12.01.2007 entered into by the 1st respondent for sale of the property for himself and as a guardian of the 2nd respondent on the basis of an order passed by the Principal District Judge, Puducherry in MIPOP.No.32 of 2002 dated 17.03.2003. The 2nd respondent is stated to be a mentally ill person.

3. On a suit for specific performance being filed, the 1st respondent who had executed the agreement on behalf of the 2nd respondent also placing reliance on the judgment of the Principal District Judge, Puducherry sought to contend that no permission was obtained for sale of property of insane person and therefore the specific performance cannot be granted. The learned trial Judge held that the order passed by the Principal District Judge, Puducherry in MIPOP.No.32 of 2002 would be sufficient and therefore granted a decree for specific performance. Aggrieved, the appellant is before this Court by way of this appeal.

4. Pending appeal, it was sought to be argued that the order passed



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in MIPOP.No.32 of 2002 is only an order appointing guardian of the person of the 2nd appellant and it cannot amount to a permission having been granted for sale of the property of the insane person. Realizing the difficulty, the learned counsel for the respondent/ plaintiff has filed this application seeking to amend the plaint as aforesaid.

5. The prayer for amendment is strictly opposed contending that the prayer for partition cannot be included at the appellate stage and no special reason has been assigned for not seeking amendment before the trial Court. In the affidavit filed along with the application for amendment it is specifically pleaded that the order made in MIPOP.No.32 of 2002 was projected as if the permission granted for sale of property and the trial Court has also accepted the same. Only now in the course of hearing of the appeal it was realized that the order of the Principal District Court is only an order appointing the 1st appellant as guardian of the person of the 2nd appellant and no specific permission for sale of the property was obtained. It was also pleaded that the respondent was under the *bona fide* impression that the said order would enable the 1st appellant to sell the property.



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6. Mr.R.Veeramani learned counsel appearing for the respondents in this application/ appellants in the appeal would attempt to rely upon the judgment of the Hon'ble Supreme Court in *A.Abdul Rashid Khan (Dead) and others Vs. P.A.K.A.Shahul Hamid and others* reported in *(2000) 10 SCC 636* to contend that the decree for partition cannot be granted in the absence of the other co-owner. In the case on hand, we find that the other co-owner is also the 2nd appellant. Therefore, he is very much present before the Court and hence the ground on which the Hon'ble Supreme Court set aside the decree for partition granted by the trial Court is not available in the case on hand. We must however point out that the Hon'ble Supreme Court has in fact held that while the decree for specific performance can be granted and plaintiff should be referred to a separate suit for partition by impleading the other co-owners, such necessity does not arise here.

7. The learned counsel would also rely upon the judgment of the Hon'ble Supreme Court in *P.C. Varghese Vs. Devaki Amma Balambika Devi and others* reported in *(2205) 8 SCC 486*. The said judgment is



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against the respondents in this application. The Hon'ble Supreme Court in paragraph No. 32 has recognized the right of the plaintiff in a suit for specific performance to seek partition. All that they have said in paragraph No.35 is that final decree proceedings can be initiated only after the sale deed is executed. Therefore, both the judgments of the Hon'ble Supreme Court are not helpful to the learned counsel for the respondent in this application.

8. From the averments made in support of this application, we find that the plaintiff has made out a case for allowing the amendment. The fact that the order in MIPOP.No.32 of 2002 was relied upon before the trial Court as an order granting permission for sale would be sufficient to conclude that the respondent was under a *bona fide* impression that the said order would be sufficient authority for the 1st appellant to execute the sale deed. Only during the course of the hearing of the appeal, it was brought out that the said order does not enable sale of the property. Hence, we find that the petitioner has satisfied the requirement of the proviso to Order VI Rule 17 of the Code of Civil Procedure. Therefore, we **allow** this application for amendment.



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WEB COPY 9. The Registry is directed to permit the learned counsel for the petitioner in this Court/ plaintiff to carryout the amendment in the original plaint and post the appeal for hearing in the **2nd week of January 2024.**

(R.S.M., J.) (N.S., J.)
18.12.2023

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