



C.R.P(MD)No.858 of 2021

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.06.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.858 of 2021

and

C.M.P(MD)No.4674 of 2021

Sathyavathiselvarani

... Petitioner

Vs.

J.Ponsingh

...Respondent

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.247 of 2019 in O.S.No.200 of 2017 dated 17.02.2021 on the file of the learned Subordinate Judge's Court, Tiruchendur, Tuticorin District.

For Petitioner : Mr.Ka.Raamakrishnan

For Respondent : Mr.M.P.Senthil



C.R.P(MD)No.858 of 2021

WEB COPY

ORDER

The petitioner is the sole defendant in O.S.No.200 of 2017 filed by the respondent / plaintiff before the Sub Court, Tiruchendur, Tuticorin District. Earlier, the suit was filed by the respondent before the Sub Court, Tuticorin, which was numbered as O.S.No.149 of 2013. The suit was filed by the respondent for specific performance of the obligation undertaken by the petitioner allegedly under a sale agreement dated 17.11.2011. After the case was argued at length and the case was listed for pronouncing judgment on 03.04.2019, the respondent / plaintiff filed an application for amendment of the plaint under Order VI, Rule 17 of the Civil Procedure Code in I.A.No.247 of 2019.

2. The trial Court has allowed the application in I.A.No.247 of 2019 filed by the respondent under Order VI, Rule 17 of the Civil Procedure Code with a condition to pay a cost of Rs.500/- which according to the petitioner, respondent has not paid. It is submitted that the amendment that has been allowed causes serious prejudice and therefore, the Court erred in allowing the application for amendment of the plaint and after the case was listed for pronouncing judgment. It is submitted that though the petitioner had received a



C.R.P(MD)No.858 of 2021

sum of Rs.5,00,000/- under the sale agreement dated 17.11.2011, the petitioner had also issued a legal notice dated 23.01.2013 and terminated the contract in the agreement dated 17.11.2011 and therefore the amendment for refund of the amount paid after adjusting the amount repaid by the petitioner in the year 2019 was clearly barred under law. The learned Counsel for the petitioner has placed reliance on the decision of the Hon'ble Supreme Court in ***Pandit Malhari Mahale Vs. Monika Pandit Mahale and Others reported in 2020 (11) SCC 549*** wherein this Court has observed as under:

“8. In the present case, the Civil Judge has not returned any finding that the Court is satisfied that in spite of due diligence, the party could not have raised the matter before the commencement of trial. In (Vidyabai and Ors. v. Padmalatha and Anr.) (2009) 2 SCC 409, this Court observed in para 19 as under:

“19. It is primal duty of the Court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. However, proviso appended to Order 6, Rule 17 of the Code of Civil Procedure restricts the power of the Court. It puts an embargo on exercise of its jurisdiction. The court's jurisdiction in a case of this nature is limited. Thus unless the jurisdictional fact, as envisaged therein, is found to be existing, the Court will have no jurisdiction at all to allow the amendment of the plaint.”



WEB COPY

9. *There being no finding by the Court that the Court is satisfied in spite of due diligence, the party could not introduce amendment before commencement of the trial, the order of the trial Judge is unsustainable. The High Court has not adverted to the above aspect of the matter. In view of aforesaid, we allow the appeal and set aside the order of the High Court as well as of the Civil Judge, the amendment application stands dismissed.*”

3. The learned Counsel for the petitioner has also placed reliance on the decision of this Court in ***KTA Raja Chettiar and Another Vs. Tmt.Rajamani and Others reported in CDJ 2007 MHC 862***. Relevant portion of the order is reads as under:

“16. Moreover, the plaintiffs have to blame for themselves since they have not established that such mistake or omission has taken place in spite of due diligence. The payment of advance amount is well known to them even at the time of filing of the suit. Yet, they failed to make any claim in that regard. In that circumstance, the plaintiffs cannot be permitted to file the amendment application as has been held in the decision of this court reported in 2005 (2) MLJ 382. Though the amendment sought for does not alter the nature and character of the suit which can be generally allowed since the same will not cause prejudice to the other side, in the present case the defendants will be greatly prejudiced since by virtue of limitation a valuable right or defence has accrued to them which cannot be taken away even by imposing



heavy costs. The plea of subsequent events after filing of the suit for allowing the amendment cannot also be raised by the plaintiffs since the alleged payment of advance amount relates backs to 14 years.”

4. That apart, the learned Counsel for the petitioner would submit that Section 22 of the Specific Relief Act is categorical. It is submitted that main portion of Section 22(1) uses the expression 'may' which means the plaintiff filing a suit for specific performance of an obligation under an agreement has to ask for possession or partition and separate possession of the property in addition to such performance or any other relief to which the plaintiff is entitled to including the refund of any earnest money or deposit paid or [made by] him, in case his claim for specific performance is refused. It is submitted that by allowing the amendment in I.A.No.247 of 2019, this Court has ignored the benefit of limitation which accrues in favour of the petitioner.

5. Per contra, the learned Counsel for the respondent submitted that impugned order is well reasoned and requires no interference. He further submitted that the present Civil Revision Petition is liable to be dismissed. That apart, the learned Counsel for the respondent has placed reliance on the proviso to sub Section 2 of Section 22 of the Specific Relief Act, 1963, which reads as under:



WEB COPY

“22.(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed:

Provident that where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.”

6. The learned Counsel for the respondent has also placed reliance on the following decisions of this Court as below:

1. This Court in the case of ***Gajendran Vs. Sivanandi (Died) reported in 2021 AIR (MAD) 42*** dated 11.01.2021.

2. This Court in the case of ***Dr.Suryakala, Represented by Power of Attorney Agent, Dr.C.Sreekumar Vs. Prema Naidu reported in CDJ 1999 MHC 393*** dated 16.12.1999.

3. This Court in the case of ***N.Balasubramanian Vs. N.Kavitha and Others reported in 2021 (1) LW 782*** dated 01.02.2021.

4. This Court in the case of ***S.Jayendran Vs. M.Gajanandam reported in 2021 (2) LW 463*** dated 02.03.2021.

5. This Court in the case of ***Aruldoss Vs. Thobidoss*** dated 10.04.2018.

6. This Court in the case of ***P.Muthusamy Vs. K.Arumugma and Others***



reported in 2016 (6) CTC 740 dated 29.11.2016.

WEB COPY

7. I have considered the arguments advanced by the learned Counsel for the petitioner and respondent and I have also perused the impugned order and the decision cited across the bar on behalf of the learned Counsel for the petitioner and respondent. The Hon'ble Supreme Court of India in **Ragu Thilak D.John Vs. S.Rayappan and Others reported in 2001 (2) SCC 472** has held as follows:

“14. Though the above said decision does not directly dealt with the limitation aspect, in the later decision in Ragu Thilak D.John Vs. S.Rayappan and Others reported in 2001 (2) SCC 472 the Supreme Court held thus:-

“The amendment sought could not be declined. The dominant purpose of allowing the amendment is to minimize the litigation. The plea that the relief sought by way of amendment was barred by time is arguable in the circumstances of the case. The plea of limitation being disputed could be made a subject matter of the issue after allowing the amendment prayed.” ”

8. Thus, it is always open for the petitioner to argue on the question of limitation even after the amendment is allowed. That apart, proviso to Section 22(2) also makes it clear that even if the plaintiff has failed to seek any relief or refund in the plaint, the Court shall at any stage of the proceeding allow to



C.R.P(MD)No.858 of 2021

plaintiff to amend the plaint on such terms as may be just for including a claim for such relief. In this case, precisely this has been done by this Court while allowing an application for amendment of the plaint to include a prayer for refund of the amount paid to the petitioner. Therefore, there is no scope for interfering with the impugned order passed in the above suit. Although the application was filed by the respondent in I.A.No.247 of 2019 on 31.07.2019 after the case was reserved for pronouncing order earlier, the fact of the matter is that the Court has reserved the case for pronouncing the judgment and listed the case on 03.04.2019. However, the judgment was not made ready and therefore the case was adjourned to 04.04.2019. Thereafter, the case was adjourned on 08.04.2019 to 23.04.2019 for seeking clarification. It is thereafter the case was once again adjourned to 18.06.2019 for further clarification and it is during this period on 31.07.2019, I.A.No.247 of 2019 was filed. There is absolutely no scope for interfering with the order passed by the learned Sub Court, Tiruchendur while allowing the application for amendment of the plaint. The amount that has been directed to pay for Rs.500/- is too meagre considering that the suit is of the year 2013. To that extent, the petitioner can said to have been put to prejudice. Considering the same, I inclined to direct the respondent / plaintiff to pay another sum of Rs.4,500/- towards cost.



C.R.P(MD)No.858 of 2021

9. Considering the facts and circumstances the suit is of the year 2013, the Trial Court shall proceed to pronounce judgment and decree in the suit as expeditiously as possible preferably within a period of three (2) weeks from the date of receipt of copy of this order.

10. With the above said observation, this Civil Revision Petition stands disposed of. Consequently, connected Miscellaneous Petition stands closed.

06.06.2023

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
BTR

To

1.The Subordinate Court,
Tiruchendur,
Tuticorin District.

2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.R.P(MD)No.858 of 2021

C.SARAVANAN, J.

BTR

C.R.P(MD)No.858 of 2021

06.06.2023