



C.R.P.(MD).Nos.1819 & 1820 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 20.02.2023

DELIVERED ON: 10.03.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD).Nos.1819 & 1820 of 2022
and CMP(MD).No.8203 of 2022

Dr.S.Murugesan (died)

1.Dr.M.Patchirajan

2.M.Savithiri Devi

....Petitioners in both petitions

Vs

1.C.Radhakrishnan

2.R.Sagunthala

....Respondents in both petitions

COMMON PRAYER: Civil Revision Cases are filed under Article 227 of Constitution of India, to call for the records and set aside the fair and decreetal order dated 14.06.2022 in I.A.Nos.6 & 7 of 2022 in O.S.No.117 of 2016 on the file of the IV Additional District Judge, Tirunelveli and allow these civil revision petitions.



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(In both revisions)

For Petitioners : Mr.G.Prabhu Rajadurai

For Respondents : Mr.M.Arjunvarman

COMMON ORDER

The plaintiffs in a suit for recovery of money are the revision petitioners.

2.Pending suit, the plaintiffs had filed I.A.No.6 of 2022 for the relief of reopening the case which was posted for continuation of arguments. The plaintiffs had filed another application in I.A.No.7 of 2022 under Order 6 Rule 17 of C.P.C to amend the plaint. Both the applications were dismissed by the trial Court. Challenging the same, the present civil revision petitions have been filed.

3.According to the plaint averments, the first plaintiff had purchased the suit schedule properties from the defendants by way of a registered sale deed dated 14.12.2009 by paying a total sale consideration of Rs.1,16,00,000/-. Pursuant to the sale deed, the possession was also handed over to the first plaintiff. On 12.04.2012, the defendants have lodged a complaint before the Crime Branch, Palayamkottai stating that



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the total sale consideration is Rs.1,52,52,250/- and not Rs.1,16,00,000/-.

The balance amount of Rs.36,52,250/- was retained by the first plaintiff for the purpose of handing over of order copy to be obtained from the Government for deleting 5 ½ cents area from the notification of service road and Green Belt area. After obtaining legal opinion from the Government Pleader, the said complaint was closed. However, a second complaint was lodged before the Inspector of Police, Perumalpuram and the plaintiffs were forcibly brought to the Police Station on 15.03.2013. In the Police Station, the plaintiffs were threatened to pay a sum of Rs.36,00,000/- immediately to the first defendant and under the said coercion, the plaintiffs had handed over Rs.36,00,000/- to the first defendant. According to the learned counsel for the petitioners/plaintiffs, they had never retained any amount out of the sale price and therefore, handing over of the said Rs.36,00,000/- to the first defendant was not warranted and therefore, they had filed a suit for recovery of the said amount with 12% interest.

4.The defendants had filed a written statement contending that the plaintiffs had retained the sale consideration for an extent of 5.50 cents on the ground that the said extent of land falls within the Green Belt



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Scheme and hence, they cannot utilize the said property. As and when the defendants get clearance about the said Green Belt area, they would disburse the said retained sale consideration. The defendants had further contended that there was no proposal to acquire any part of the schedule property under the green belt scheme and the same was also informed to the plaintiffs on 25.11.2010. Even thereafter the plaintiffs had refused to part with the sale consideration for the above said extent. Therefore, the payment of Rs.36,00,000/- by the first defendant to the first plaintiff is only towards the sale consideration of the area that was proposed to be covered in the green belt scheme (that was retained by the plaintiffs). Hence, the prayer for recovery of money is not maintainable.

5.In the light of the above said averments, the plaintiffs had filed I.A.No.7 of 2022 for amendment of plaint. As per the proposed amendment, the plaintiffs had intended to insert Paragraph No.13(A) to contend that the false and fabricated documents were produced by the first defendant to impress the plaintiff to part with Rs.36,00,000/- on the ground that the land has been released from the green belt scheme. In order to reconfirm the said document, the plaintiffs had addressed another letter on 09.04.2014 to the Director of Town and Country Planning Authority,



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Chennai. This representation was treated as an appeal and the first plaintiff was informed that it continues to fall within the green belt scheme and the appeal was rejected on 06.06.2014. The plaintiff also sought to mark the letter dated 06.06.2014.

6.The defendants had filed a counter contending that it does not fall within the green belt area and the amendment application filed during the arguments stage is clearly in violation of proviso to Order 6 Rule 17 of C.P.C.

7.The revision petitioners had also filed I.A.No.6 of 2022 to reopen the case to mark a letter dated 06.06.2014 sent by the Local Town and Country Planning Authority, Tirunelveli. In the said application, a counter was filed by the defendants contending that an attempt is being made to fill up the lacuna. The defendants had further contended that when the copy of the letter is said to have been obtained on 06.06.2014, which is very much prior to the filing of the suit, the question of reopening the suit to mark the said document is not permissible.

8.The Trial Judge dismissed both the applications by way of a common order pointing out that in the plaint there are no averments relating to the alleged petition dated 09.04.2014 or the order dated



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06.06.2014. Further there is no reference about the retention of any amount towards the green belt scheme. Further when the suit is posted for cross examination, the request for amendment of plaint at that point of time would be in violation of provision to Order 6 Rule 17 C.P.C unless the plaintiffs plead and establish their due diligence. According to the trial Court, the plaintiffs had not explained the delay in placing the documents before the Court or the reason for amendment of the plaint at the belated stage. Based on the said findings, the trial Court dismissed both the applications. Challenging the said order, the present civil revision petitions have been filed.

9. According to the learned counsel appearing for the petitioners, the petition made by the plaintiffs on 09.04.2014 and the order received on 06.06.2014 were not known to other plaintiffs. The first plaintiff had passed away. Only when the other plaintiffs were cleaning the cupboard of their father, they laid their hands on these two documents. Therefore, even after exercising of due diligence, the plaintiffs were not able to place these documents before the Court at the appropriate time.

10. The learned counsel for the petitioners had further contended that the defendants have produced a fake document to the effect that the



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area has been excluded from the green belt scheme and including the said area, the total sale consideration of Rs.1,16,00,000/- was paid by the first plaintiff. Only on a later point of time, it came to their knowledge that the area has not been excluded from the green belt scheme. The total sale consideration of Rs.1,16,00,000/- includes the disputed area of 5.50 cents. Therefore, there is no change in cause of action or introduction of new cause of action by way of amendment. The learned counsel had relied upon a judgement of the Hon'ble Supreme Court *in the case of Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and another in Civil Appeal No.5909 of 2022 dated 01.09.2022* with a specific reference to Paragraph No.17 to impress upon the Court that unless the amendment changes the nature of the suit or cause of action, the amendment can be allowed.

11.Per contra the learned counsel appearing for the respondents had relied upon the same judgement and contended that it completely changes the cause of action and therefore, amendment cannot be allowed. The learned counsel had also relied upon the judgement of the Hon'ble Supreme Court reported *in (2022) 8 Supreme Court Cases 145 (Asian Hotels (North) Limited Vs. Alok Kumar Lodha and others)* with specific



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reference to Paragraph No.36 to contend that allowing of the prayer for amendment would result in changing of the nature of suit and the Court would not be justified in allowing such amendment.

12.The learned counsel for the respondents had further contended that the cause of action that is pleaded in the original plaint is that the first plaintiff was coerced to part with a sum of Rs.36,00,000/- under threat from the Police Authorities. There is no reference about the exclusion or inclusion of the disputed area from the green belt scheme in the original plaint. Therefore, introduction of a new paragraph in the plaint that the defendants have produced a fake document and the first plaintiff got it clarified later through another document would completely change the cause of action. Hence, he prayed for dismissal of the revision petition.

13.I have considered the submissions made on either side and perused the materials available on record.

14.A perusal of the plaint averments indicate that the suit has been filed to recover a sum of Rs.36,00,000/- from the defendants on the ground that the plaintiffs were coerced by the police authorities to part with the said amount to the defendants. It is the specific case of the plaintiffs that the total sale consideration is Rs.1,16,00,000/- and the entire



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sale consideration was paid at the time of execution of the sale deed. There is no reference about any disputed area relating to the coverage under the green belt scheme either in the original plaint averments or in the sale deed.

15.The defendants' side evidence in the suit was closed on 20.10.2021 and it was posted for arguments on 18.11.2021. At this stage, the present application for amendment of plaint has been filed. By way of amended plaint, the plaintiffs seek to introduce a new paragraph which disclose that the plaintiffs were cheated by the defendants by production of certain documents relating to the exclusion of the disputed land from the green belt scheme. The plaintiffs had further contended in the amended plaint that on 09.04.2014, they have addressed a letter to the Director of Town and Country Planning relating to the exclusion of certain portion from the green belt scheme which was rejected by an order dated 06.06.2014. The suit has been filed by the first plaintiff on 28.11.2016. Therefore, it is clear that these two documents were available with the first plaintiff even two years prior to the filing of the suit. The first plaintiff was alive at the time of filing of the suit and he has not chosen to refer to these documents in the plaint. The first plaintiff had averred in the original plaint



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that Rs.36,00,000/- was sought to be recovered only on the ground of payment under threat and coercion. There is no reference about any inclusion or exclusion of certain portion of the property from green belt scheme in the averments in the plaint.

16.In view of the above said facts, it is clear that the legal heirs of the first plaintiff are now attempting to say that they have discovered these two documents at the fag end of the trial. That apart, the introduction of Paragraph 13(A) would result in completely changing the suit. The plaintiffs having specifically pleaded that they have not retained any amount, out of the total sale consideration and now attempting to say that based upon certain fake documents, the defendants have extracted an amount which was later found to be fake. Therefore, it is clear that the amendment of the plaint would completely change the cause of action and would result in introduction of a new cause of action. That apart, the first plaintiff was in possession of these two documents even two years prior to the filing of the suit and there is no reference about two documents in the original plaint. Therefore, it is clear that the plaintiffs have not established their due diligence for not making the pleadings with regard to these documents in the original plaint filed in the year 2016. Therefore, the



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proposed amendment is clearly not permissible in view of proviso to Order
6 Rule 17 C.P.C.

17. With the above deliberations, this Court does not find any
merit in both the civil revision petitions and the same are dismissed. No
costs. Consequently, connected miscellaneous petition is closed.

10.03.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To

1. The IV Additional District Judge, Tirunelveli

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



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R.VIJAYAKUMAR, J

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Pre-delivery common order made in
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