



C.R.P(MD)No.2359 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **07.07.2023**

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THE HON'BLE MR.JUSTICE C.KUMARAPPAN

C.R.P(MD)No.2359 of 2018
and
C.M.P(MD)No.10539 of 2018

Thiruparkadal

...Petitioner/Respondent/
Defendant

Vs.

Balakrishnan

...Respondent/Appellant/
Plaintiff

PRAYER: Civil Revision Petition is filed under Section 115 of C.P.C., to call for the records and set aside the fair and decreetal order passed in I.A.No.304 of 2017 in A.S.No.58 of 2017 dated 29.01.2018 on the file of the learned Additional District Judge, Tirunelveli.

For Petitioner : M/s.Janaki Devi
For Mr.S.Prithiviraj

For Respondent : Mr.T.Selvan

ORDER

This civil revision petition has been filed against the order passed by the learned Additional District Judge, Tirunelveli in I.A.No.304 of 2017 in A.S.No.58 of 2017 dated 29.01.2018.



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2. The petitioner is the defendant in the suit in O.S.No.122 of 2011 before the Additional Sub Court, Tirunelveli. The respondent/plaintiff has filed the said suit for specific performance based upon the agreement, dated 15.07.2008. It appears that the suit was dismissed on 10.02.2016.

3. Against which, the respondent/plaintiff has filed an appeal in A.S.No.58 of 2017, which was decreed on 30.01.2018. While so, the respondent/plaintiff has filed an amendment application in I.A.No.304 of 2017 in A.S.No.58 of 2017 for an alternate relief for refund of advance amount. The learned Appellate Judge has allowed the I.A.No.304 of 2017 along with the main appeal. In pursuance of the above order, the learned Appellate Judge has also decreed for alternative relief.

4. Now this revision petitioner has filed this application only against the order of the amendment application in I.A.No.304 of 2017, on the sole ground that the learned Appellate Judge has allowed the I.A.No.304 of 2017 along with the main appeal, instead of disposing independently. It is also the contention of the petitioner that, when the learned Trial Judge has ordered an amendment under Order 6 Rule 17 of C.P.C., the plaint should also have to be amended. Therefore the learned



counsel for the petitioner submits that when such procedure has not been followed, the very order passed in I.A.No.304 of 2017 permitting the amendment is liable to be set aside.

5. The learned counsel for the respondent invited the attention of this Court in respect of Section 22 of the Specific Relief Act. According to the above section, the parties can seek for an alternative prayer at any stage of the proceedings. While pursuing the order of the learned Appellate Judge, the learned Appellate judge has also referred to the decision of this Court in the case of *Meharunnisha Beevi Vs Mohamed Jackria* reported in *(2010) 4 MLJ 130*.

6. At this juncture, the learned counsel for the respondent would also urge before this Court that the petitioner has filed only the very civil revision petition, without filing any appeal against the decree of granting alternative relief. Therefore, she would contend that in the absence of any appeal suit, this civil revision petition is not maintainable. This Court finds some force in the submission of the learned counsel for the respondent.



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7. Thus, having considered the statutory provision of Section 22 of the Specific Relief Act, this Court finds no infirmity in the order passed by the learned Appellate Judge. Therefore, this Court would like to confirm the order passed in I.A.No.304 of 2017.

8. In the result, this civil revision petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

07.07.2023

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

1.The learned Additional District Judge,
Tirunelveli

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



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C.KUMARAPPAN,J.

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