



C.R.P.No. 1718 of 2

THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.No. 1718 of 2024

and

C.M.P.No.9052 of 2024

R.Venugopalakrishnan

...Petitioner

Vs.

S.Ranganathan

...Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 21.06.2023 made in I.A.No. 4 of 2023 in A.S.No. 44 of 2021 on the file of the III-Additional District Judge, Coimbatore.

For Petitioner : Mr.N.Ponraj

For Respondent : Mr.C.R.Prasannan

ORDER

This Civil Revision Petition has been filed against the order passed by the learned Additional District Judge, Coimbatore in I.A.No. 4 of 2023 in A.S.No. 44 of 2021 dated 21.06.2023, dismissing the petition filed under



Order 6, Rule 17 of C.P.C., seeking permission to amend the appeal memorandum.

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2. The petitioner in the amendment petition is the defendant in O.S.No. 5 of 2016 and the appellant in A.S.No.44 of 2021. The suit in O.S.No. 5 of 2016 had been filed by the respondent herein / plaintiff for eviction and recovery of rent arrears. It is the case of the respondent / plaintiff that the petitioner / defendant has sold the property to him through his power agent and later, the petitioner continue to reside in the suit property as tenant and though he had agreed to vacate the suit property, he did not do so. The revision petitioner / defendant had contended before the Trial Court that the power of attorney has been executed by him in favour of one Selvaraj for a loan transaction of Rs.2,00,000/- and he had signed in blank documents for obtaining loan. Upon the same, the said Selvaraj and the respondent / plaintiff had fraudulently created a sale deed in the name of the respondent and there was no real sale transaction.

3. Based on the pleadings, issues were framed. By holding that the power of attorney in favour of Selvaraj was not for a loan transaction but for



the reasons stated in the sale deed and also by holding that the sale deed in the name of the respondent executed by the Selvaraj as a power agent is a valid document, the Trial Court allowed the claim of the respondent.

Against the said decree and judgment, the revision petitioner had filed appeal in A.S.No. 44 of 2021. While the appeal was pending, the petitioner filed an application to amend the appeal memorandum and he had intended to insert a prayer of declaration that the sale deed in the name of the respondent executed by his power agent is null and void.

4. The learned Judge holding that the petitioner is a defendant before the Trial Court and that he had not filed any counter claim there and having not sought any relief before the Trial Court during trial, the petitioner cannot insert a relief in the appeal memorandum and, by holding that the relief of declaration in the appeal by way of amending the appeal memorandum cannot be granted and rejected the petition, against which, the present revision has been filed.

5. Mr.M.Ponraj, learned counsel for the revision petitioner would submit that apart from seeking an amendment of prayer in respect of



declaratory relief, other reliefs also sought for, which are as follows:-

"1.To add following as Para 23:

23. The Trial Court had failed to consider the documentary and oral evidence of appellant / defendant that the respondent / plaintiff colluding with Selavaraj and committed fraud in executing the fraudulent sale deed Ex.A2 in his favour by fraudulently using power of attorney Ex.A1 in order to cheat and commit fraud against appellant / defendant and to rob and usurp the appellant / defendant suit property which is against law. The appellant / defendant had cancelled the power of attorney Ex.A1 by registered ocument No.7578/2014 dated 30.06.2014 at Sub-Register Office at Periyanaickenpalayam, Coimbatore when came to know about the fraudulent acts of Selvaraj and respondent / plaintiff. Thus now appellant / defendant hereby seeks and prays the honourable court that the fraudulent sale deed Ex.A2 to be declared as null and void by honourable Court as the said document has no legal entity due to fact that it is executed by fraudulent act of respondent / plaintiff and Selvaraj.

2. To amend Para number 23 as 24 and Para number 24 as 25.

3. In Para 23, To strike out Rs.1,93,000/- and amend as Rs.1,98,000/-.

4.In Para 23, To Strike out Rs.5,805/- and amend as Rs.5,955/-.



5. In Para 23, To add in detail of valuation following as:

3. For the relief of declaration, Suit is valued for -
Rs.5000/-

Court Fees paid under Section 25(d) of Tamil Nadu
Court

Fees and Suit Valuation Act - Rs.150/-

6. In para 24, To add following prayer:

2. Declaring the sale deed Document No: 1305/2014
dated 05.02.2014 at Sub-Registrar Office,
Periyanaickenpalayam, Coimbatore as null and void.

7. To add in list of documents following:

3. 30.06.2024"

The learned Appellate Judge, taking into consideration that a declaratory relief cannot be sought in the appeal without a counter claim being filed, dismissed the petition thereby, seeking to set aside the order.

6. Contending contra, learned counsel for the respondent would submit that the petitioner is a defendant before the Trial Court. Apart from filing a written statement, he had not filed any counter claim and he had not sought for any other relief. The learned Appellate Judge rightly finding that the petitioner as a defendant before the Trial Court had not filed any counter claim and without seeking the relief before the Trial Court cannot seek the



to amend the prayer in the appeal, had dismissed the petition.

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7. Heard Mr.M.Ponraj, learned counsel for the petitioner and Mr.C.R.Prasannan, learned counsel for the respondent and perused the material available on record.

8. The petitioner is a defendant in the suit. The petitioner has not made any counter claim or claiming the relief of declaration to declare the sale deed as null and void. In such circumstance, the petitioner cannot, at this stage, file a petition to amend the prayer. The appellate Court rightly concluding that the amendment relief cannot be granted, had dismissed the petition. This Court, do not find any error in the findings rendered by the Trial court. Hence, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

07.08.2024

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Internet: Yes / No

Index: Yes / No

Speaking / Non-speaking order

Nuetral Citation : Yes / No

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To:-

The III-Additional District Court,
Coimbatore.

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A.D.JAGADISH CHANDIRA, J.

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