



S.A.No.31 of 2024

C.M.P.No.14066 of 2021

in

S.A.No.538 of 2021

P.T.ASHA, J.,

The above application is filed for amending the prayer “a” of the
plaint.

*“(a) in O.S.No.56 of 2014 on the file of the
Principal Subordinate Judge, Krishnagiri, viz.,
directing the defendant to execute the sale deed in
favour of the plaintiff, failing which the plaintiff to
obtain sale deed through process of this Court in
O.S.No.56 of 2014 or in the alternate directing the
defendant to refund the sum of Rs.1,20,000/- to the
plaintiff together with interest @ 12% per annum
from the date of sale agreement, i.e, 03.01.2009 till
the date of realisation.”*

2. The plaintiff had filed the suit O.S.No.56 of 2014 on the file of the
Subordinate Court, Krishnagiri for the following reliefs:



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(a) directing the defendant to execute the sale deed in favour of the plaintiff, failing which the plaintiff is permitted to obtain sale deed through process of this court.

(b) directing the defendant to handover the possession of the suit property to the plaintiff, which the plaintiff is permitted to get possession through process of this Court.

(c) award costs of the suit and direct the defendant to pay the same.

3. The suit was dismissed by the Principal Subordinate Judge, Krishnagiri, by judgment and decree dated 31.07.2018 in respect of a relief of specific performance. However, the learned Judge had directed the defendant to refund the advance amount paid by the plaintiff to the defendant under the Sale Agreement dated 03.01.2009. Challenging this order directing refund of the advance amount, the defendant had filed A.S.No.46 of 2018 on the file of the Additional



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District Judge, Krishnagiri. The learned Additional District Judge, Krishnagi had relied upon Section 22(2) of the Specific Relief Act to allow the appeal and reject the alternate relief for refund of advance amount. It is challenging the said judgement that the plaintiff is before this Court.

4. The present petition is filed to amend the relief in the suit to include the prayer for refund of the advance amount. The petitioner / plaintiff has, in the affidavit filed in support of this petition, stated that he has now been advised to seek the alternate relief of advance as per Section 22(1)(b) of the Specific Relief Act. She would further submit that if the prayer is not amended, it would cause prejudice to her.

5. The respondent / defendant has filed a counter *inter-alia* contending that the plaintiff is not entitled to this amendment since he has denied the agreement of sale-Ex.A1 as a forged document. That apart, the amendment has not been taken in the first appellate Court despite the fact that the defendant has challenged the same and the



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amendment has petition has been filed 7 years after the filing of the suit without any basis.

6. Heard the learned counsel on either side and perused the materials available on record.

7. The proviso to Section 22(2) of the Specific Relief Act clearly provides that at any stage of the proceedings, a Court can allow the plaintiff in a suit for specific performance to amend the plaint to include the relief of refund of advance. The proviso to Section 22 (2) of the Specific Relief Act would read as follows:

“ 22(2).....Provided 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.”

The present petition is only in tune with the above provision and I see



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no reason to deny the relief. Accordingly, this petition is allowed.

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