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CRP.Nos.2789 and 2804 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.04.2024

CORAM:

THE HONOURABLE Mr.JUSTICE V.LAKSHMINARAYANAN

CRP.Nos.2789 and 2804 of 2022
and CMP.No.14986 of 2022

1.G.Mohan
2.S.Thangaraj

... Petitioners in both CRPs

Vs

R.Gowri

... Respondent in both CRPs

Prayer in CRP.No.2789 of 2022 : Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the fair and final order dated 14.07.2022 made in I.A.No.880 of 2022 in O.S.No.18 of 2022 on the file of the Principal District Judge, Tiruppur.

Prayer in CRP.No.2804 of 2022 : Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the fair order dated 14.07.2022 made in I.A.No.881 of 2022 in I.A.No.27 of 2022 in O.S.No.18 of 2022 on the file of the Principal District Judge, Tiruppur.



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For Petitioners : Mr.N.Umapathi
(in both CRPs)

For Respondent : Mr.C.Ramaraj
(in both CRPs) for Mr.M.Guruprasad

ORDER

The present civil revision petitions arise against the common order passed by the learned Principal District Judge, Tiruppur in I.A.No.880 of 2022 in O.S.No.18 of 2022 and I.A.No.881 of 2022 in O.S.No.18 of 2022, dated 14.07.2022. The plaintiffs are the revisionists.

2. The suit in O.S.No.18 of 2022 is laid for specific performance of an agreement of sale. The plaintiffs are two in number, one is Mohan and another is Thangaraj. The sole defendant is one Gowri. They wanted to purchase the property from two individuals, namely Gowri and Arumugam. In pursuance of the negotiations held, two separate agreements were entered into: one between both the plaintiffs and Gowri (the defendant herein) and the other between the first plaintiff and one Arumugam. Furtherance to the sale agreement that had been entered into with Arumugam by the first plaintiff, a sale deed was also executed on 09.03.2021 in Document



No.1341/2021 on the file of Kunnathur Sub Registrar Office. Therefore, the first plaintiff has become the owner of that property, of which, Arumugam has been the erstwhile owner.

3. While entering into an agreement with Gowri, the property of Arumugam has also been included in the schedule of the suit sale agreement. It is not in dispute that Gowri does not have any right over the property of Arumugam. The mistake committed in including the property of Arumugam in the schedule was also carried on in the suit notice as well as in the plaint. Coming to realise the error that had been committed, the plaintiffs wanted to delete the property, which the first plaintiff had purchased from Arumugam, from the schedule in the suit. In the meantime, the plaintiffs have also taken out an application for interim injunction in I.A.No.27 of 2022 in O.S.No.18/2022. Towards that end, the plaintiffs filed two separate applications for amendment of the schedule of suit property, namely one in I.A.No.180 of 2022 in O.S.No.18/2022 and the other in I.A.No.181 of 2022 in I.A.No.27 of 2022 in O.S.No.18/2022.

4. Both these applications were resisted by the defendant stating that if



the amendment is allowed, it will change the cause of action for the suit and will change the entire character of the suit as well. It is also pleaded that the agreement is forged and hence, if the amendment application is allowed, it will affect the defence of the defendants.

5. Considering the objections that has been raised by the defendant, the learned trial Judge came to the conclusion that by deletion of the property in the suit schedule, the case of the defendant will be seriously prejudiced, and hence, dismissed both the applications in I.A.No.880/2022 and I.A.No.881/2022 vide his order dated 14.07.2022. Aggrieved by the common dismissal order , the plaintiffs/civil revision petitioners are before this Court in the present revision petitions.

6. I heard Mr.N.Umapathi for the revision petitioners and Mr.C.Ramaraj for the respondent.

7. A perusal of the aforesaid facts would show that the plaintiffs want to delete the property for which the defendant is not the owner. A mere deletion of the property does not change the cause of action of the suit. The



cause of action continues to be in a suit for specific performance of an agreement of sale dated 15.09.2020. By no stretch of imagination can Gowri claim a right over Arumugam's property which has been inadvertently included in the schedule to the suit notice as well as to the plaint. The plaintiffs, now, want to correct the error committed by them. The Code of Civil Procedure is not a tool of punishment to crucify the plaintiff and ask him to stick to the plaint, even if he wants to rectify the error. I fail to understand how a cause of action will be affected by deleting the property from the schedule. The defence taken by the defendant is also governed by the Code. The schedule of the property does not determine the case of the plaintiff, and atleast not in this case. As already premised, it is a suit for specific performance, and even if a property is deleted from the suit schedule, it will not alter the cause of action in the suit.

8. I am not in agreement with the view taken by the learned Principal District Judge, Tiruppur, that in case the applications in I.A.Nos.880 & 881 of 2022 are allowed, it will take away the defence of the respondent. It is always open to the respondent to make all such defences available to her in the additional written statement to be filed, after the amendment is carried



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out. The test for amendment is whether it changes the cause of action or the character of the suit or in certain cases is barred by limitation. None of the above are applicable in the present case and therefore the amendment applications ought to be allowed.

9. The common order in I.A.No.880 of 2022 in O.S.No.18 of 2022 and I.A.No.881 of 2022 in I.A.No.27/2022 in O.S.No.18 of 2022 dated 14.07.2022 is to be set aside. The plaintiffs are entitled to file an amendment application and delete the property from the suit mentioned properties. Needless to say, it is always open to the defendant to file an additional written statement, if any.

10. With the above observations, both the civil revision petitions are allowed. No costs. Consequently, connection miscellaneous petition is closed.

02.04.2024

Index:Yes/No

Internet:Yes/No

Speaking order/Non-speaking order
ds



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- To
- 1.The Principal District Judge
Tiruppur.
 - 2.The Section Officer
VR Section
High Court, Madras.



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V.LAKSHMINARAYANAN,J.

ds

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