



C.R.P.No.3480 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2024

CORAM

THE HONOURABLE THIRU JUSTICE **A.D.JAGADISH CHANDIRA**

C.R.P.No.3480 of 2023

Sakthivel

.... Petitioner

vs

1.Saravanan
2.Kuppusamy

..... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order dated 08.08.2022 made in I.A.No.230 of 2019 in O.S.No.30 of 2011 on the file of II Additional Sub Judge, Villupuram.

For Petitioner : Mr.T.Dhanyakumar

For Respondents : Mr.A.Mohamed Ismail

ORDER

The Civil Revision Petition has been filed against the the fair and decretal order dated 08.08.2022 made in I.A.No.230 of 2019 in O.S.No.30 of 2011 on the



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file of II Additional Sub Judge, Villupuram, rejecting the petition filed under Section 152 of Civil Procedure Code to amend the decree passed on 25.08.2015 to include the missing Survey Number Wet 51/3F of an extent of 0.17.00 ares in 1st item of suit schedule property and Survey Number Wet 64/2 of an extent of 0.15.50 ares, in 2nd item of suit schedule property.

2. Learned counsel for the petitioner made the following submissions:-

The petitioner is the plaintiff in O.S.No.30 of 2011, seeking for specific performance. In the plaint, the petitioner, due to inadvertence, had failed to include the survey numbers of the property, the respondent remained exparte and thereby an exparte judgment and decree came to be passed without including the survey numbers. Thereafter, the petitioner/plaintiff filed an Execution Petition and the Court has also directed to register the sale deed before Sub Registrar Office and when the petitioner/plaintiff had approached the Sub Registrar's Office to register the sale deed, the Sub Registrar refused to register the sale deed for want of Survey Numbers of the property in the decree and only then the petitioner/plaintiff came to know about the discrepancy and had filed an application in I.A.No.230 of 2019 under Section 152 of Civil Procedure Code,



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seeking to amend the plaint as well as the decree by including the survey numbers in the decree. The inclusion of the survey numbers would not amount to substitution of a different property, particularly, when the schedule of property, boundaries and the measurements are not different from that one which is in the plaint. The respondents/defendants have also remained exparte in the suit and they have not contested the suit and in such circumstances, the amendment by way of including the survey numbers will not affect the rights of the respondents/defendants. It is not the case where the petitioner had attempted to set up a new case or add a new cause of action whereas, the lower court, holding that the petitioner was attempting to set up a new case and also a new cause of action, had erroneously dismissed the petition. Learned counsel would further submit that Section 152 of Civil Procedure Code empowers the court to correct its own error in a judgment, decree or order from any accidental slip or omission. In this case, other than non-inclusion of survey numbers, no other amendment is sought for. If the Court has the requisite power to make an amendment of the decree, the same would not mean that it had gone beyond the decree or passing any decree. Therefore, the order dated 08.08.2022 made in I.A.No.230 of 2019 in O.S.No.30 of 2011 is liable to be set aside with a direction to the trial court to



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pass appropriate orders by including the survey numbers in the decree. In support of his contention, learned counsel would rely on the judgment of the Hon'ble Supreme Court in the case of *Niyamat Ali Molla vs Sonargon Housing Cooperative Society Ltd and Others* reported in *(2007) 13 SCC 42* wherein the Apex Court has held that the pleadings of the parties are to be read in their entirety and amendments are to be construed liberally and not in a pedantic manner whereby the reason of an amendment one property is not substituted for other.

3. Per contra, learned counsel for the respondents/defendants made the following submissions:

The petitioner/plaintiff had filed the suit for specific performance based on alleged agreement said to have been entered between the petitioner/plaintiff and the respondents/defendants' father on 03.03.2008 in respect of certain properties at Pilrampattu village in Villupuram District. The respondents/defendants' father passed away on 25.05.2008. After the death of the respondents/defendants' father, the suit came to be filed on 15.02.2011 against the legal heirs. Even in the plaint, the petitioner/plaintiff had admitted to have knowledge about the



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respondents/defendants selling the property to third parties, however, the subsequent purchasers were not added as necessary parties in the suit for specific performance. Further, there was no averment/pleading with regard to readiness and willingness on the part of the petitioner/plaintiff to perform his part of the contract. The fact remains that the properties were sold on 10.01.2011, much prior to filing of the suit on 15.02.2011. The schedule of property was also not clear. The trial Court had set the respondents/defendants exparte and without there being any averment/pleading on the part of the petitioner/plaintiff with regard to readiness and willingness to perform his part of the contract and without there being any issues framed by the trial court with regard to readiness and willingness nor any finding, had, by a cryptic judgment, decreed the suit in favour of the petitioner/plaintiff on 25.08.2015. Thereafter, much belatedly, after four years, the petitioner/plaintiff filed an application in I.A.No.230 of 2019 with composite prayer, seeking to amend the plaint as well as the decree contending that the Sub Registrar had refused to register the sale deed.

4. The learned counsel for the respondents would further submit that the judgment and decree passed by the trial Court in a suit for specific performance



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without there being any pleading/averment in the plaint with regard to readiness and willingness and without issues being framed with regard to readiness and willingness, is a nullity and the Sub Registrar has rightly refused to register the documents since the description of the property was not clear. The learned counsel would further submit that the trial Court, rightly finding that the proposed amendment would amount to setting up a new case and it would also amount to new cause of action and also finding that the petitioner/plaintiff has not shown sufficient cause to allow the petition, has rightly rejected the petition. He would further submit that when the judgment and decree itself is a nullity, no purpose would be served by allowing the amendment to be carried on including the survey numbers and he would thereby seek for dismissal of the revision. In support of his contention, the learned counsel would rely on the judgment of the Hon'ble Supreme Court in the case of ***Mehboob-Ur-Rehman (dead)through legal representatives vs Ahs Anul Ghani*** reported in ***(2019) 19 SCC 415*** and ***U.N.Krishnamurthy vs A.M.Krishnamurthy*** reported in ***(2023) 11 SCC 775***.

5. Heard both sides and perused the materials available on record including the judgment in O.S.No.30 of 2011.

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6. The petitioner/plaintiff has filed a suit in O.S.No.30 of 2011 seeking for specific performance. From a reading of the plaint, it is seen that the petitioner/plaintiff has averred that he has knowledge about the properties being sold to third parties at Pilrampattu village in Villupuram District. Though the suit has been filed on 15.02.2011, the subsequent purchasers have not been impleaded in the suit. Further, the plaint does not contain any averment with regard to readiness and willingness on the part of the petitioner/plaintiff that he was ready to perform his part of the contract. Perusal of the judgment shows that the respondents/defendants were set exparte. However, no issues have been framed by the trial court and no findings have been rendered in the judgment with regard to readiness and willingness. The averment and proof of the readiness and willingness to perform his part of contract has been a threshold requirement for a plaintiff, who seeks the relief of specific performance and the same is absolutely missing in this case. Further, the trial Court has not rendered a finding as to what was the advance amount paid by the petitioner/plaintiff and what was the remaining amount to be paid to the respondents/defendants for registering the document.



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7. As stated above, without there being any specific pleading and without there being any issues framed and also without there being any finding with regard to the amount paid as advance and the remaining amount to be paid and the readiness and willingness on the part of the plaintiff to perform his part of the contract, the suit had been decreed by the trial Court. In the case of ***Mehboob-Ur-Rehman (dead)through legal representatives vs Ahs Anul Ghani*** reported in ***(2019) 19 SCC 415***, the Hon'ble Supreme Court has held as follows:-

“ 19. So far as the proposition for amendment of the plaint is concerned, we are unable to find any illegality on the part of the First Appellate Court and the High Court in rejecting the prayer belatedly made by the plaintiff. As noticed, the averment and proof on readiness and willingness to perform his part of the contract has been the threshold requirement for a plaintiff who seeks the relief of specific performance. The principle that the requirement of such averment had not been a matter of form, applied equally to the proposition for amendment at the late stage whereby, the



plaintiff only attempted to somehow improve upon the form of the plaint and insert only the phraseology of his readiness and willingness. In such a suit for specific performance, the Court would be, and had always been, looking at the substance of the matter if the plaintiff, by his conduct, has established that he is unquestionably standing with the contract and is not wanting in preparedness as also willingness to perform everything required of him before he could be granted a relief whereby, the performance of other part of the contract could be enjoined upon the defendant. In the present case, the plaintiff-appellant had failed to aver and prove his readiness and willingness to perform his part of the contract. The Trial Court made a rather assumptive observation that he had proved such readiness and willingness. Thereafter, the plaintiff sought leave to amend the plaint only when the ground to that effect was taken in the first appeal by the defendant. In the facts and circumstances of the present case, in our view, it was too late in the day for the plaintiff to fill up such a lacuna in his case only at the appellate stage. In other words, the late attempt to improve upon the pleadings of the plaint



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*at the appellate stage was only an exercise in
futility in the present case. “*

8. In the case of ***U.N.Krishnamurthy vs A.M.Krishnamurthy*** reported in
(2023) 11 SCC 775, the Hon'ble Supreme Court has held as follows:

*23. Section 16 of the Specific Relief Act, 1963, as it
stood at the material time (prior to amendment with
effect from 1.10.2018), inter alia, provides:-*

*“16. Personal bars to relief.—Specific performance
of a contract cannot be enforced in favour of a
person—*

*(a) who would not be entitled to recover
compensation for its breach; or*

*(b) who has become incapable of performing, or
violates any essential term of, the contract that on
his part remains to be performed, or acts in fraud of
the contract, or wilfully acts at variance with, or in
subversion of, the relation intended to be
established by the contract; or*

*(c) who fails to aver and prove that he has
performed or has always been ready and willing to
perform the essential terms of the contract which
are to be performed by him, other than terms the*



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performance of which has been prevented or waived by the defendant.

Explanation. —For the purposes of clause (c), —

(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;

(ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction.”

24. Section 16 © of the Specific Relief Act, 1963 bars the relief of specific performance of a contract in favour of a person, who fails to aver and prove his readiness and willingness to perform his part of contract. In view of Explanation (i) to clause (c) of Section 16, it may not be essential for the plaintiff to actually tender money to the defendant or to deposit money in Court, except when so directed by the Court, to prove readiness and willingness to perform the essential terms of a contract, which involves payment of money. However, explanation (ii) says the plaintiff must aver performance or readiness and willingness to perform the contract according to its true construction.



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25. To aver and prove readiness and willingness to perform an obligation to pay money, in terms of a contract, the plaintiff would have to make specific statements in the plaint and adduce evidence to show availability of funds to make payment in terms of the contract in time. In other words, the plaintiff would have to plead that the plaintiff had sufficient funds or was in a position to raise funds in time to discharge his obligation under the contract. If the plaintiff does not have sufficient funds with him to discharge his obligations in terms of a contract, which requires payment of money, the plaintiff would have to specifically plead how the funds would be available to him. To cite an example, the plaintiff may aver and prove, by adducing evidence, an arrangement with a financier for disbursement of adequate funds for timely compliance with the terms and conditions of a contract involving payment of money.

9. It is the settled position that the threshold requirement in a suit for specific performance is the averment in the plaint with regard to readiness and willingness on the part of the plaintiff to perform his part of the contract, which is



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absent in the present case. The petitioner/plaintiff had failed to make such an averment which makes the judgment and decree itself a nullity and in such circumstances, this Court is of the opinion that by allowing to amend a decree which is a nullity, no useful purpose would be served to the petitioner/plaintiff. Further the trial Court, holding that by the proposed amendment, the petitioner/plaintiff had about to set up a new case and it was an attempt to add a new cause of action and that the petitioner had not shown sufficient cause, had dismissed the petition. I do not find any infirmity or irregularity in the order passed by the II Additional Subordinate Judge, Villupuram dated 08.08.2022 in I.A.No.230 of 2019 in O.S.No.30 of 2011. Hence the Civil Revision Petition is liable to be dismissed.

10. Accordingly, the Civil Revision Petition is dismissed. No costs.

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Website:yes/no

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The II Additional Sub Judge, Villupuram

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A.D.JAGADISH CHANDIRA,J.,

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