



C.R.P(MD)No.1750 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **03.04.2024**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.1750 of 2019

and

C.M.P(MD)No.8967 of 2019

N.Natrayan

... Petitioner/3rd Respondent
3rd Defendant

Vs.

1.V.S.Mani

... 1st Respondent/Petitioner
Plaintiff

2.K.Seenivasan

3.K.Seenivasan

4.S.R.Lakshminathan

5.P.Muthukili

6.C.T.Arulraj

7.S.Sekar

8.Malliga

9.N.Karnan

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10.N.Boominathan

11.Muthulakshmi

12.P.Paramasivam

13.P.Santhana Karuppaiah

14.P.Muthukumar

... Respondents 2, 3 & 4 to 14/
Respondents 1, 2 & 4 to 14/
Defendants 1, 2 & 4 to 14

(Service of notice to respondents 3, 6 to 11, 13 and 14 is dispensed with vide Court order, dated 01.04.2024 made in C.R.P(MD)No.1750 of 2019)

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 08.03.2019 passed in I.A.No.5 of 2019 in O.S.No.53 of 2015 on the file of the Fast Track Mahila Court, Dindigul.

For Petitioner : Mr.M.P.Senthil

For R-1 : Mr.N.Dilip Kumar

For R-2, R-4,
R-5 & R-12 : No appearance

R-3, R-6 to R-11,
R-13 & R-14 : Dispensed with



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ORDER

The instant revision petition has been filed by the third defendant in O.S.No.53 of 2015 on the file of the Fast Track Mahila Court, Dindigul, challenging an order, wherein, the Trial Court has permitted the plaintiff to amend the plaint, so as to incorporate two new prayers. The first respondent herein as plaintiff had filed a suit for the relief of recovery of a sum of Rs.11,90,192/- with subsequent interest on the ground that he had paid the said amount as advance on the basis of a sale agreement, dated 24.07.2012. Instead of seeking a prayer for specific performance of the said agreement, the suit was filed only for the re-fund of the advance amount along with interest.

2. Pending suit, the plaintiff had filed I.A.No.5 of 2019 for cancellation of alienations that were made by the defendants in the suit and for creating a charge over the suit property, if the defendants 1 and 2 failed to pay the suit claim to the plaintiff. The defendants had not filed counter and they were not represented at the time of hearing. The Trial



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Court had set them *ex parte* and had allowed the application for amendment. Challenging the same, the present Civil Revision Petition has been filed.

3. According to the learned Counsel appearing for the revision petitioner, just because the defendants had not appeared, the Trial Court ought not to have allowed the said application for amendment without considering the proviso to Order VI, Rule 17 of CPC. He further contended that when the plaintiff had given up the prayer for specific performance and had filed the suit for recovery of advance amount alone, the question of challenging the alienations made by the defendants is noway relevant to the suit. He had further contended that, in a specific performance suit, a charge decree cannot be created over the suit schedule property. Hence, he prayed for allowing the Civil Revision Petition.

4. Per contra, the learned Counsel appearing for the first respondent had contended that, incase if the plaintiff succeeds in the suit,



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they would not be in a position to recover the decretal amount, unless the alienations are set aside and a charge decree is created over the suit schedule property. Hence, he prayed for sustaining the order passed by the Trial Court. He further pointed out that the defendants having remained *ex parte* before the Trial Court, cannot file the present Civil Revision Petition.

5. I have carefully considered the submissions made on either side and perused the materials available on record.

6. A perusal of the plaint averments clearly indicate that the plaintiff is no longer interested in seeking a prayer for specific performance of the sale agreement, dated 24.07.2012 and he had filed the present suit only for refund of the advance amount. Therefore, the question of seeking to set aside the alienations made by the defendants would not arise. That apart, the plaintiff had sought to incorporate a prayer for creating a charge on the suit schedule property, so that he will be in a position to enjoy the fruits of the decree. Section 55 (6) (b) of the



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Transfer of Property Act, 1882 clearly creates a statutory charge over the property, for which an advance amount has been paid. Therefore, even without a prayer for a charge decree, in case of a success in the suit, a statutory charge would get created over the property in the suit even if alienations are made by the defendants either before the suit or pending suit. During the existence of the sale agreement, the property would be subjected to the charge to the extent of repayment of the advance amount along with interest. Therefore, the prayer to create a charge decree is superfluous.

7. In view of the above said deliberations, both the amendments sought for by the plaintiff are superfluous in nature and it will only delay the trial. The Trial Court ought to have considered the relevancy of the amendments proposed by the plaintiff before allowing them *ex parte*.

8. It is brought to the notice of the Court that the suit has been transferred from Fast Track Mahila Court, Dindigul to learned Sessions Judge Special Court for Trial Case registered under SC / ST (POA) Act,



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Dindigul. The said Court is directed to dispose of the suit on or before

WEB CC **31.08.2024.**

9. In view of the above said deliberations, the order impugned in the revision petition is set aside. This Civil Revision petition stands allowed with the said observations. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

03.04.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

- 1.The Fast Track Mahila Court,
Dindigul.
- 2.The Sessions Judge Special Court for Trial Case registered
under SC / ST (POA) Act,
Dindigul.
- 3.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.

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R.VIJAYAKUMAR, J.

BTR

Order made in
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