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C.M.P.No.17001 of 2025

in
A.S.No.375 of 2018

R.KALAIMATHI, J.,

The petition has been filed to amend the plaint to add the following relief:-

“(aa) In the event that this Hon’ble Court is not inclined to grant the relief of specific performance, to direct the Respondent/Appellant to refund the advance sale consideration of Rs.4,15,000/- (Rupees Four Lakhs Fifteen Thousand only) with interest at 18% per annum from 09.06.2006 till the date of realisation”.

2. The petitioners herein are the plaintiffs in O.S.No.10315 of 2010 on the file of the VII Additional City Civil Court, Chennai seeking to direct the defendant to execute and register the sale deed in their favour.

3.Originally the suit was filed before this Court in C.S.No.444 of 2007 was filed before this Court which was subsequently transferred to the VII Additional City Civil Court, Chennai and the same was taken on file as O.S.No.10315 of 2010.



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4. The petitioners herein / plaintiffs have entered into a sale agreement with the respondent/defendant on 09.06.2006 in respect of the purchase of the suit property measuring an extent of 10.00 acres for a sale consideration of Rs.16,50,000/-. The petitioners have paid a sum of Rs.4,15,000/- as advance sale consideration on various dates. The said amounts were received and duly acknowledged by the respondent/appellant.

5.The respondent has admitted that the suit property has been mortgaged with the Indian Bank and bank took possession of the same and acutioned about 4.00 acres out of 10.00 acres.

6. The trial Court vide judgment dated 08.02.2017 dismissed the suit with regard to the relief of specific performance, however, directed the defendant to pay the plaintiffs a sum of Rs.4,15,000/- with interest at 18% per annum from the date of agreement for sale till the date of realization within three months with costs. Aggrieved by the judgment of the trial Court, the defendant has filed the present Appeal Suit in A.S.No.375 of 2018.

7. Pending the first appeal, the plaintiffs/petitioners have taken out the above Miscellaneous Petition seeking leave of the court to include the above relief alleging that inadvertently they omitted to add the said prayer



for refund of the said amount. Hence, they seek to amend the plaint with the additional prayer.

8. The respondent/defendant has filed the counter affidavit. To the effect that they have filed petition to amend the plaint belatedly only with an intention to fill up the lacuna in the above appeal at the appellate stage and to improve their pleadings in the plaint which is inadmissible and liable to be rejected. Hence, he sought for rejection of the above petition.

9. Heard the counsels on both sides and perused the materials available on record.

10. A thorough perusal of the plaint indicates the fact that suit is laid for the relief of Specific Performance and for other relieves. The proposed amendment details show that now the petitioner wants to add prayer for refund of advance amount.

11. In order to determine the real questions in controversy between the parties and also to advance the cause of justice, this petition is ordered to be allowed.



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12. Accordingly, this Civil Miscellaneous Petition is allowed.

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Note: The parties are directed to amend the prayer.



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