

**IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE (FTC),
VELLORE, VELLORE DISTRICT.**

PRESENT: Thiru.P.V.Sandilyan, M.L.

Additional District Judge (FTC), Vellore.

Thursday, the 4th day of December, 2025

I.A. No.1/2025 in A.S. No.18/2023 in O.S.No.168/2014

C.Aridass . . . Petitioner/Appellant

Versus

A.Kumar . . . Respondent/Respondent

This petition came up before me for final hearing on 27.11.2025, in the presence of Tr.V.Jothiram, Counsel for the Petitioner; Tr.V.B.Bhaskaran, Counsel for the Respondent and upon hearing the arguments of both sides, upon perusal of case records and having stood over for consideration till this date, this court delivers the following:-

ORDER

This petition has been filed under Order VI Rule 17 and Section 151 C.P.C. and Order XLI Rule 33 of C.P.C. r/w Section 22(2) of Specific Relief Act, 1963 to amend the plaint.

2. The averments in the affidavit are as follows:-

2.1 The petitioner is the appellant in the appeal and plaintiff in the original suit. On 17.04.2012, he and the respondent entered into a registered sale

agreement for the property mentioned in the petition, under which the respondent agreed to sell the property for a total consideration of Rs.4,50,000/- He further stated that the respondent had already received Rs.3,00,000/- from him as advance and part of the sale price and had agreed to receive the remaining the Rs.1,50,000/- within three years and thereafter execute a registered sale deed in his favour. The agreement was registered at the Sub-Registrar Office, Vellore as Document No.5106/2012.

2.2 The petitioner claimed that although he consistently expressed readiness and willingness to pay the balance amount, the respondent failed to accept it and avoided executing the sale deed. Consequently, he instituted legal proceedings. He stated that during the trial, the respondent admitted receipt of Rs.3,00,000/- but falsely pleaded that the sale agreement was executed only as security. Despite the evidence and his continuous readiness and willingness, the trial court dismissed the suit on 18.04.2023, causing him to file the present appeal. He further submitted that the plaint averments, exhibits, evidence on both sides and his grounds for appeal should be treated as part of the affidavit.

2.3 The trial court ought to have at least ordered refund of the advance amount, and the failure to grant even alternative relief has caused him comparative hardship. He added that the pleadings and oral and documentary evidence on record are sufficient to grant specific performance, however, since he has already paid a substantial advance of Rs.3,00,000/- he is also entitled to alternative relief

of refund on equitable grounds. Therefore, he has filed the present application seeking amendment of the plaint to include a claim for refund of the advance amount as alternative relief. He clarified that the amendment does not alter the nature of the suit or introduce a new cause of action and requested the court to permit the amendment to avoid hardship.

2.4 The petitioner submitted that the buyer of the property, he has a statutory charge over it under Section 55(6)(b) of the Transfer of Property Act, 1882, and is entitled to interest on the advance paid. The respondent has benefited from the advance amount, he is liable to refund it along with interest at 12% per annum from the date of the agreement until realization. He also pointed out that under Article 62 of the Limitation Act, refund of advance money with interest under an agreement of sale of immovable property can be claimed within twelve years from the date when the money becomes due. Therefore, the claim for alternative relief is within limitation, and he is entitled to seek it in addition to the major relief of specific performance. Therefore, he prayed to amend the plaint in order to avoid comparative hardship.

3. The averments in the Counter filed by the Respondent are as follows:-

3.1 The petition is not maintainable at all and it is liable to be dismissed. The petitioner had filed an appeal against the judgment dated 18.04.2023 of the Principal Sub Court, Vellore in O.S.No.168/2014, and that the trial court had

rightly dismissed the suit with costs after considering the evidence on both sides and after correctly deciding not to grant alternative relief because the petitioner had failed to seek such relief before the trial court. The respondent added that instead of filing a fresh suit for recovery of the advance amount, the petitioner had filed the present application without sufficient grounds.

3.2 According to the petitioner the sale agreement was not intended for sale but was executed only as security for the amount paid by the petitioner as a debt to the respondent on an interest basis. Hence, the petitioner's claim that he was ready and willing to purchase the property did not arise and had rightly been rejected by the trial court. He added that the trial court had relied on recent Supreme Court judgments in refusing alternative relief.

3.3 The petitioner was not entitled to amend the plaint under Section 22 of the Specific Relief Act to introduce belated alternative relief. He further contended that the claim was barred by limitation. The respondent argued that the petitioner could not demand interest from the date of agreement because no demand for interest had been made before the suit was filed. According to the Interest Act, interest on earnest money is payable only at the rate regulated by the Reserve Bank of India and only from the date of demand. Therefore, the claim of interest on Rs.3,00,000/- from 17.04.2012 was unlawful. He added that any amendment permitting interest could only allow interest up to the date of filing of the plaint, not until disposal of the suit.

3.4 The petitioner had not provided proper or accurate particulars to amend the plaint and therefore the application was not maintainable and the relief claimed was baseless and exaggerated. The respondent submitted that the application lacked bona fide and deserved to be dismissed with costs.

4. There is no oral and documentary evidence on both sides.

5. The point for consideration in this petition is, **whether this petition is to be allowed or not?**

6. Point:-

6.1 The appellant filed petition under Order 6 Rule 17 and Order 41 Rule 33 of CPC r/w Sec.22 (2) of Specific Relief Act to permit him to amend the plaint as per the particulars of amendment detailed in this petition exclusively for alternative relief of refund of advance amount.

6.2 The petitioner/appellant filed the suit against the respondent for the relief of specific performance and injunction against creating any encumbrance over the suit schedule property. But, the suit was dismissed by the trial court observing that the petitioner did not sought refund of advance amount though observed the defendant received sale consideration of Rs.3,00,000/- from the petitioner. Against which the petitioner preferred an appeal. The learned counsel for the petitioner contended that the respondent even in written statement para-4 admitted the receipt of part sale consideration amount of Rs.3,00,000/- but falsely

alleged that the sale agreement was executed for security. But the trial court after observing the receipt of part sale consideration amount by the respondent ought to have ordered for refund of advance amount but dismissed the suit in its entirety as alternative relief was not sought for by the petitioner. The learned counsel further contended that on equity basis the petitioner entitled for the alternative relief and filed the petition seeking to amend the plaint regarding claim of alternative relief by relying Hon'ble Supreme Court citation reported in 2023(2) MWN (Civil) 835 for alternative relief can be claimed at any stage of the proceedings and Hon'ble Madras High Court citation reported in 2013 (6) CTC 28 for the aspect suit for refund of advance amount shall be governed under Article 62 of the Limitation Act, the petitioner filed the amendment petition within the limitation of 12 years as prescribed under Article 62 and prayed to allow the petition.

Section 22 in The Specific Relief Act

22. Power to grant relief for possession, partition, refund of earnest money, etc. -

(1) XXXXX

(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed:

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 Hon'ble Supreme Court in **2023 (2) MWN (Civil) 835** in the case of **Manickam @ Dhandapani and Anr. Vs. Vasantha** held that

SPECIFIC RELIEF ACT, 1963 (47 of 1963), Sections 22(1) & 22(2), Proviso - Provision, whether mandatory or directory - Phrase "At any stage of proceedings" - Implication of - Section 22(2) worded in negative terms that no relief shall be granted unless it is specifically claimed - However, Proviso to sub-section (2) dilutes mandatory nature from provision - As per Proviso, Plaintiff is allowed to amend Plaint on such terms at any stage of proceedings - At any stage of proceeding, held, would mean Suit, Appeal or execution - Section 22(2), held, thus only directory in nature and Decree-holder cannot be non-suited for reason that relief sought subsequently was not granted in Decree for Specific Relief. (Paras 26 & 29)

6.3 The learned counsel for the respondent in his counter refuted the claim of amendment for refund of advance amount as a belated one without any locus standi, further contended that the petitioner have a liberty to file a suit for return of advance amount paid under the alleged sale agreement, the alternative relief claimed in a belated stage cannot be entertained for it is clearly barred by limitation and prayed to dismiss the petition.

6.4 On perusal of the Hon'ble Supreme Court citation as per Section 22 (1) & (2) Proviso at any stage of the proceedings the plaintiff is allowed to amend the plaint. Further, the Hon'ble Supreme Court in the case of **K.R.Suresh Vs. R.Poonima reported in 2025 SCC Online SC 1014** in a recent judgment held that the amendment sought at the appellate stage is permissible and if the amendment is not allowed in case the appellant succeeds in passing of consideration, then the only relief will be enforce the specific performance it may be prejudiced to the respondent. In this case, the respondent admitted that the

passing of part consideration hence in the interest of justice, the prayer for amendment for the relief of alternative relief to be allowed and the appellant must be provided an opportunity for claiming alternative relief. For the above reason the application seeking to amend the plaint regarding claim of alternative relief is allowed subject to the proof regarding passing of consideration.

In the result, this petition is allowed. No costs.

Dictated by me to the Stenographer, directly and computerized by her, corrected and pronounced by me in open court this the 4th day of December, 2025.

**Additional District Judge (FTC),
Vellore.**

Both side Witnesses and Exhibits:- - NIL -

**Additional District Judge (FTC),
Vellore.**