

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06-04-2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1265 of 2017
and C.M.P.No.5937 of 2017

S.Kosalan

.. Petitioner

Vs.

P.Lakshmi

.. Respondent

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India against the decreetal and fair order made in I.A.No.188 of 2015 in O.S.No.498 of 2009 duly passed by the Sub-Judge, Tambaram dated 28.11.2016 directing the dismissal of the application duly taken out under Order 6 Rule 17 of CPC.

For Petitioner : Mr.D.Ashok Kumar

ORDER

This Civil Revision Petition is filed against the decreetal and fair order made in I.A.No.188 of 2015 in O.S.No.498 of 2009 duly passed by the Sub-Judge, Tambaram dated 28.11.2016 directing the dismissal of the application duly taken out under Order 6 Rule 17 of CPC.

2. The petitioner is the plaintiff in the suit filed in O.S.No.498 of 2009 for specific performance of agreement of sale dated 16.02.2005 against the respondent/defendant on the file of Subordinate Judge, Tambaram. The respondent/defendant filed written statement on 23.06.2008 contesting the suit.

3. The petitioner filed I.A.No.188 of 2015 under Order 6 Rule 16 & 17 of CPC to amend the plaint to include the relief of declaration, declaring that the cancellation of agreement of sale dated 16.02.2005 by the respondent as null and void and for necessary amendment in the plaint.

4. According to the petitioner, the amendment to the plaint is prayed for as per the judgment of the Hon'ble Apex Court reported in **2014 (1) L.W. 47 [I.S.Sikandar (d) by Lrs vs. K.Subramani & ors.]** wherein it has been held that when an agreement of sale is cancelled, there should be a relief of declaration declaring such cancellation as null and void, to seek the relief of specific performance.

5. The respondent opposed the said amendment application by filing detailed counter wherein it has been stated that the respondent issued notice dated 02.06.2006 to the plaintiff rescinding the contract and thereafter only filed O.S.No.810 of 2006 on the file of the Additional District Munsif, Alandur, Chennai for declaration to declare the sale agreement as null and void. The petitioner is well aware of the cancellation of agreement of sale and also filing of the suit in O.S.No.810 of 2006 by the respondent. In the said circumstances, amendment sought for by the petitioner after a period of eight years is a belated one and as such is barred by limitation.

6. The Trial Court, after considering the averments contained in the affidavit, counter affidavit and the notice dated 02.06.2006 issued by the respondent to the petitioner rescinding the agreement of sale, dismissed the amendment application holding that the application is a belated one and the relief sought for by the petitioner is barred by limitation. Aggrieved by the order, the present revision petition is filed.

7. The learned counsel for the petitioner reiterated the averments made in the application and grounds raised in the present revision and submitted that the application is not a belated one and relied upon the judgment of the Hon'ble Apex Court reported in **2014 (1) L.W. 47 [I.S.Sikandar (d) by Lrs vs. K.Subramani & ors.]** stating that amendment can be done at any stage and it is well settled law that amendment is possible even at the time of second appeal.

8. Heard the learned counsel appearing for the petitioner and perused the records.

9. From the records, it is seen that the respondent has rescinded the agreement of sale dated 02.06.2006 and also filed O.S.No.810 of 2006 for declaration, declaring the agreement of sale as null and void. According to the respondent, the petitioner was well aware of the suit filed by him and inspite of the same, he has not sought for declaration, at the time of filing of the suit. The petitioner has not denied about the cancellation of agreement of sale and filing of the suit by the respondent.

10. The contention of the learned counsel for the petitioner that the amendment application insisting upon the judgment of the Hon'ble Apex Court and that the application is not a belated one is untenable. The petitioner has not given any reason for not seeking relief of cancellation of agreement of sale by the respondent in the year 2006 itself when he filed the suit in the year 2009.

11. In the above said facts and circumstances of the case, I do not find any illegality or irregularity in the order passed in the impugned order warranting interference by this Court.

12. In the result, the civil revision petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

06.04.2017

Speaking/Non-speaking order
Index : Yes
rgr

To

The Subordinate Judge,
Tambaram.

V.M.VELUMANI, J.

rgr

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