

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2017

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(PD) No.591 of 2017

N.Jayamurugan

... Petitioner

v.

1.R.Dhanalakshmi

2.Minor Swathi

3.Minor Tharani

Minor Respondents 2 and 3 are
Eep. by their father & Natural Guardian
M.Ramachandran

... Respondents

Civil Revision Petition filed under section 115 of the Civil Procedure Code
against the fair and decreetal order dated 30.11.2016 passed in I.A.No.868 of
2015 in O.S.No.400 of 2010 on the file of

For Petitioner : Mr.K.M.Balaji

ORDER

Challenging the fair and final order passed in I.A.No.868 of 2015 in O.S.No.400 of 2010 on the file of Sub Court at Tambaram, Kancheepuram District, the plaintiff has filed the above Civil Revision Petition.

2. The plaintiff filed the suit in O.S.No.400 of 2010 in the year 2006 for specific performance. The defendants filed their written statement and are contesting the suit. When the suit was posted for trial in the year 2015, the plaintiff took out an application in I.A.No.868 of 2015 seeking for amendment of the plaint stating that by virtue of the judgment of the Apex Court reported in **2014 (1) LW 47 [I.S.Sikandar (D) by LRs v. K.Subamani and others]** he should have sought for declaration to declare the cancellation deed executed by the defendant as null and void and therefore, the plaintiff has sought for incorporating the prayer for declaration.

3. The application filed by the plaintiff was opposed by the defendant stating that the prayer sought for in the amendment application is barred by limitation. Further, the defendant had contended that in Ex.A12, notice sent to her, it is stated that the petitioner did not accept the unilateral cancellation of the agreement. The plaintiff having had prior knowledge about the cancellation of the suit agreement, he should have filed the suit for declaration

at the first instance itself. The plaintiff had waited for 9 years for filing of the present application seeking for amendment of the plaint. That apart, in the cause of action paragraph, the plaintiff has not stated anything about the cancellation of the agreement. Without reference to any cause of action mentioned in the suit, the prayer to declare the cancellation deed as null and void cannot be granted.

4. The Trial Court, taking into consideration all these aspects rightly dismissed the application.

5. In these circumstances, I do not find any error or irregularity in the order passed by the Trial Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs.

07.03.2017

Index : No

Rj

To

The Subordinate Judge,
Tambaram, Kancheepuram District.

M. DURAISWAMY,J.,

Rj

C.R.P.(NPD) No.591 of 2017

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