



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.04.2017

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WEB COPY

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.R.P.(MD)No. 968 of 2017(PD)

and

C.M.P.(MD)No.4292 of 2017

A.Johnraj

.. Petitioner

Vs.

1.Minor Praveen Kumar

2.Minor Pradisha

3.Jeya

(Minors 1 & 2 are represented
by their mother and guardian,
the 3rd respondent herein)

.. Respondents

Prayer :Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 15.02.2017 passed in I.A.No.517 of 2016 in G.W.O.P.No.212 of 2011 on the file of the Principal District Judge, Thoothukudi.

For Petitioner

:: Mr.M.P.Senthil

ORDER

This revision petition is filed under Article 227 of the Constitution of India, questioning the legality of the order passed by the Trial Court in an application filed under Order 6 Rule 17 of C.P.C.

2.The case of the revision petitioner is that, in the Guardian Wards Original Petition filed by him, he has not mentioned the cause of action and therefore, he may be permitted to insert a paragraph regarding the cause of action. According to the revision petitioner, non disclosure of cause of action in the petition explicitly, will render his application non maintainable.

3.The Trial Court, which has considered the petition as well as the counter filed there in, has held that the petitioner has raised a plea against the content of the written documents which are prohibited under Section 91 of the Indian Evidence Act and in the petition seeking leave to amend the prayer, certain new facts contra to the documents have been attempted to be introduced. Having observed so, the Court below has dismissed the application saying that the amendment sought need not be permitted.



4.The subject matter is regarding the guardianship of minor children and petition is filed under Section 12 read with Section 25 of the Guardian and Wards Act. The dispute leading to file the said petition has been vividly explained and put forth by the petitioner in the said petition. The same has been contested and controverted by the respondent by filing a counter. The case is also ripe for trial. After 6 years, now for reason best known, under the garb of introducing a clause regarding cause of action, the petitioner herein has filed this application. Wherein as pointed out by the Trial Court, new facts which are totally contrary to the documents are being introduced.

5.When there is no legal impediment to sustain the petition without explicitly mentioning the cause of action or without an exclusive paragraph regarding cause of action, the apprehension of the petitioner that this petition is not maintainable itself is an illusion.

6.When there is no specific requirement to recite exclusively regarding cause of action and when there is no objection taken by the adverse party that the petition does not disclose cause of action, the apprehension of this revision petitioner is unwarranted. The petition to amend is filed with some ulterior intention and not for reason as stated in the petition. Hence this Court finds no merit in this revision petition.

7.Hence, the Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is also closed. No Costs.

Sd/-
Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar.

To
The Principal District Judge,
Thoothukudi.

+1CC to M/S.M.P.Senthil, Advocate, SR.No.55027

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