



WEB COPY

CRP(PD)No.356



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

**C.R.P.(PD)No.356 of 2017
and C.M.P.No.1589 of 2017**

P.Jayaseelan

... Petitioner

Vs.

1.K.Selvam
2. K.Sundaram
3. M.Rajeswari
4. M.Saravanan
5. M.Kannan
6. P.Shanmugam

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 22.10.2016 in I.A.No.137 of 2016 in O.S.No.179 of 2012 on the file of the II Additional District Court, Salem.

For Petitioner : Ms.R.Meenal

For R1 to R5 : Mr.S.Sivasankar



ORDER

Heard the learned counsel for the civil revision petitioner and learned counsel for the respondents. I have carefully gone through the records.

2. The revision arises against an order passed by the learned II Additional District Judge, Salem, dated 22.10.2016 in I.A.No.137 of 2016 in O.S.No.179 of 2012.

3. The plaintiff is the civil revision petitioner. The defendants are the respondents. O.S.No.179 of 2012 was filed by the plaintiff for the purpose of specific performance of an agreement of sale. Pending the proceedings, the judgment of the Supreme Court intervened, which had stated that a mere suit for specific performance without seeking for declaration that the cancellation of the contract is null and void, is not maintainable. Pursuant to the said judgment, the plaintiff filed an application in I.A.No.137 of 2016 to amend the prayer seeking for declaration. The said application was stiffly resisted by the defendants before the trial Court, as well as before me, stating that such an amendment at the stage of argument is not maintainable.

4. By allowing the amendment, the nature of the suit and the cause of action is not going to change. Apart from that, the defendants would also not be taken by surprise. The defendants' cancellation of the contract is the subject matter of the



declaration. Therefore that relief sought for by the plaintiff on the basis of the verdict of the Supreme Court cannot be said to be bad.

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5. Therefore, the order passed by the learned II Additional District Judge, Salem, dated 22.10.2016, in I.A.No.137 of 2016 in O.S.No.179 of 2012 is set aside. I make it clear that the plaintiff and the defendants will not be entitled to let in any fresh evidence in the suit. Parties shall proceed on the basis of the evidence already recorded and the amendment is only with respect to the prayer. The defendants will be entitled to file a written statement and can take all the defence including the defence of limitation.

6. With the above observations, the Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

19.07.2023

Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

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To

II Additional District Judge, Salem.

<https://www.mhc.tn.gov.in/judis>



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V.LAKSHMINARAYANAN,J.

Kj

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