

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2020

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

C.R.P.PD 3068 of 2019

G.Karthikeyan

... Petitioner

Versus

1. B.Renushree
2. M.Tamiliniyan
3. S.Suriyamorthi
4. Vairavel
5. V.Sivagami

... Respondents

PRAYER : Civil Revision Petition is filed under Art. 227 of Constitution of India, praying to direct the learned Principal District Judge, Erode to number the suit filed by the petitioner herein in unnumbered O.S. No.....of 2019 in C.R.F. 1425 of 2019 on the file of Principal District Judge, Erode.

For Petitioner : Mr.M.Guruprasad

ORDER

This Civil Revision Petition has been filed against the order returning the petitioner's plaint as barred by limitation.

2. As the suit yet to be registered, and returned even before numbering, notice to the respondent is dispensed with.

3. The petitioner has filed a suit for declaration to declare the decree passed in the counter claim in O.S. 262 of 2009, on the file of II Addl. District Court, Erode in favour of plaintiff. The above suit has been filed on the ground that, originally, the suit in O.S. 262 of 2009 has been filed by 4th and 5th defendants in the present suit against the 1st defendant. Pending suit, the petitioner has purchased the suit schedule property. Thereafter, the vendors viz., 4th and 5th defendants in the present suit filed an application to implead the petitioner as party defendant in the suit. In the above suit, the 1st defendant herein filed a counter claim to set aside the sale deed said to have been executed in favour of defendants 4 and 5 herein. The 1st defendant has also filed an application to implead the petitioner as party defendant. Even though the application was allowed, no steps has been

taken to amend the cause title, and bring the petitioner as a defendant.

4. Subsequently, the suit was dismissed for default. However, the counter claim has been allowed, and decreed exparte. Thereafter, the 1st defendant herein levied execution, and in the above E.P., the petitioner has filed an application under Order 21 Rule 58 of C.P.C. In an incidental application, Civil Revision Petitions have been filed before this Court in C.R.P. NPDs 707 ad 708 of 2016, in which this Court has held that, the petitioner being a third party cannot maintain an application under Order 21 Rule 58 of C.P.C. In view of the above findings, according to the petitioner, his application is likely to be rejected. In the said circumstances, he has filed the present suit seeking to set aside the decree passed in favour of 1st defendant. The Court below has refused to register the suit mainly on the ground that, even though the suit is of the year 2009, the petitioner is contesting the E.P. from the year 2014, and he has knowledge about the decree. Hence, the suit is barred by limitation.

5. I have considered the submissions made by learned counsel appearing for petitioner and perused the records carefully.

6. It is a settled law, question of limitation is a mixed question of law and facts. According to the petitioner, he has no knowledge about the suit filed earlier, the 1st defendant in the present suit sought to implead the petitioner, which was also allowed, but no notice served on him, and for the default of the petitioner, he was not impleaded as party defendant in the suit. Subsequently, the suit filed by his vendors has been dismissed for default, and the counter claim has been allowed. Thereafter, 1st defendant has filed E.P. by virtue of the order passed by this Court, the application filed by the petitioner under Order 21 Rule 58, is also likely to be rejected. In the said circumstances, the present suit has been filed. In the above circumstances, whether the suit is barred by limitation cannot be decided at this stage, and the issue of limitation can be decided as one of the issues in the Suit. On that ground, the court below cannot refuse to register the suit. Hence, the docket order passed by the court

below in C.F.R. 1425 of 2019, dated 14.02.2019 is set aside, and the court below is directed to register the suit, and the question of limitation can be decided as one of the issues in the Suit. Accordingly, this Civil Revision Petition stands allowed. No costs.

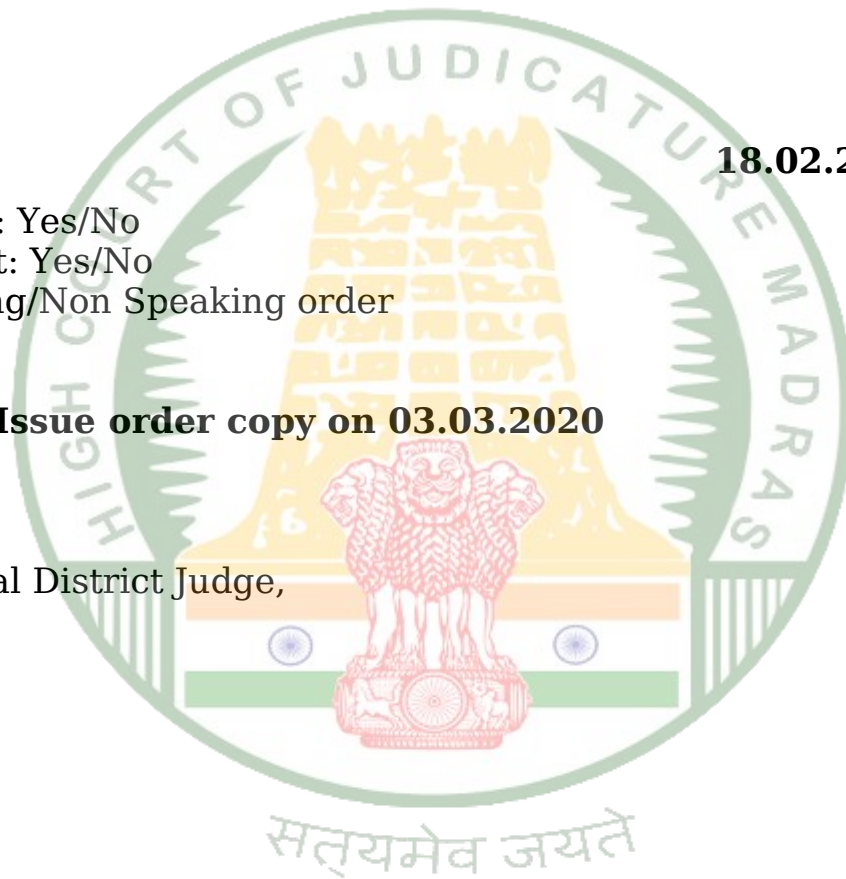
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Index : Yes/No
Internet: Yes/No
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Note : Issue order copy on 03.03.2020

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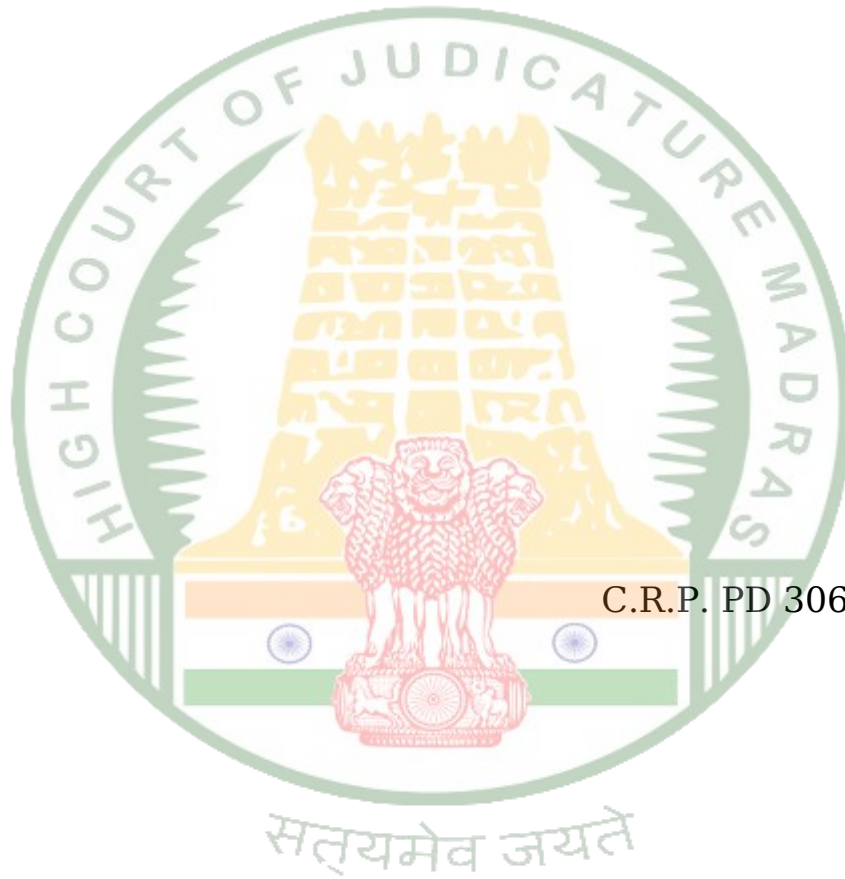
Principal District Judge,
Erode.



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V.BHARATHIDASAN,J.

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