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C.R.P. (PD) No.3413 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

**Civil Revision Petition (PD) No.3413 of 2024 &
C.M.P.No.18449 of 2024**

Yuvanesh

.. Petitioner/Petitioner/Plaintiff

Versus

**Annamalai [died]
Balasubramaniam [died]
1. Rukmani
2. Lakshmi Jain
3. Thilagavathi
4. Madhankumar
5. Nesanthkumar
6. Saraswathi
7. Ramalingam**

.. Respondents/Respondents/Defendants 3 to 9

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.10 of 2023 in O.S.No.541 of 2015 dated 13.06.2024 on the file of the Principal Sub Court, Erode.

For the Petitioner : Ms.Zeenath Begum



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ORDER

This Civil Revision Petition arises against the Order passed by the learned Principal Subordinate Judge, Erode in I.A.No.10 of 2023 in OS.No.541 of 2015.

2. O.S.No.541 of 2015 is a suit for partition and separate possession. Even at the time of filing of the suit, the registry of the Subordinate Court at Erode had raised an objection as to how the suit is maintainable without seeking cancellation of the two sale deeds dated 31.03.2000 and 10.05.2000. An endorsement was made by the counsel stating that, the plaintiff is not a party to the sale deeds, therefore, there is no necessity for cancellation. On this basis, the suit was taken on file and summons issued.

3. Subsequently, the ninth defendant entered appearance and filed his written statement. In paragraph 12 of the statement, it was specifically pleaded that the plaintiff is eo nomine party to the sale deeds dated 31.03.2000 and 10.05.2000. Despite the specific written statement filed on



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08.01.2021, no application for amendment was filed immediately.

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4. After a lapse of 8 years from the date of presentation of the plaint and nine years after attaining majority and 23 years from the date of execution of the sale deeds, an application seems to have been filed seeking for amendment. The amendment seeks to cancel the sale deeds dated 31.03.2000 and 10.05.2000. The learned Judge referring to Article 58 of the Limitation Act, went upon to dismiss the application. Hence, the revision.

5. Heard Ms.Zeenath for the Civil Revision Petitioner.

6. There is no dispute that the plaintiff is Eo nominee party to the sale deeds executed by the father of the plaintiff. The fact that the sale deeds had been executed was well within the knowledge of the plaintiff, even when the suit was presented on 08.07.2015. Even if I were to ignore that date, by virtue of the written statement filed on 08.01.2021, the plaintiff was aware that he is eo nominee party to the said sale deeds, yet no application had been filed in time.

7. It is necessary to point out here that before this lis, another the



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suit had been presented in O.S.N.360 of 2001 on the file of the first Additional District Munsif Court, Erode seeking for maintenance against the executant of the sale deed. Even that suit had been presented after the execution of the sale deed by the father for himself and on behalf of the minor plaintiff. The period of limitation, even if it is taken that the date of execution of sale was in the year 2000, expired with 2012. The suit itself has been filed after a lapse of 12 years. Though a wrong provision had been referred to, it does not improve the petitioner's case. The amendment being hopelessly barred by limitation, it cannot be granted.

8. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

27.08.2024

vrc

Index : Yes / No

Internet: Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

To

The Principal Sub Court, Erode.



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V.LAKSHMINARAYANAN, J.

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