



C.R.P(MD)No.659 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 10.09.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P(MD)No.659 of 2024

and

C.M.P(MD)No.3332 of 2024

Vimala

... Petitioner /
Petitioner /
Plaintiff

Vs.

1.B.Deepa

2.R.Vijayalakshmi

3.P.Mahendran

4.R.Periyakarupparaja

5.L.MohamedRizwan

... Respondents /
Respondents /
Defendants

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the Fair and Decreetal order made in I.A.No.2 of 2023 in O.S.No.477 of 2019 dated 27.06.2023 on the file of the Sub Court, Melur and allow the above Civil Revision Petition.



C.R.P(MD)No.659 of 2024

For Petitioner : Mr.B.Arun

For Respondents : Mr.M.Mithun for R.1 to R.4

Mr.K.Baalasundaram
Senior Counsel
for M/s.KBS Law Associates for R.5

ORDER

Heard the learned counsel appearing for the revision petitioner, the learned counsel appearing for the respondents 1 to 4 and the learned Senior Counsel appearing for the fifth respondent.

2.The revision petitioner filed O.S.No.477 of 2019 on the file of Sub Court, Melur seeking the relief of declaration that the sale deed executed by the first defendant in favour of the second defendant on 11.03.2019 and the sale deed executed by the second defendant in favour of the fifth defendant on 26.04.2019 are null and void and for permanent injunction. The plaintiff filed I.A.No.2 of 2022 for amending the plaint. It is not in dispute that the suit property belonged to the plaintiff. The first defendant executed the sale deed in favour of the second defendant



C.R.P(MD)No.659 of 2024

on 11.03.2019 only in her capacity as power agent of the plaintiff. Power of attorney was executed on 06.03.2019 and registered as Document No. 1276 of 2019. The plaintiff now wants that this document also to be declared as null and void.

3. Admittedly, the plaintiff knew that she had executed power of attorney in favour of the first defendant on 06.03.2019. Therefore, when she filed the suit, at the very first instance this prayer should have been included. IA was filed on 01.06.2023. Thus more than four years have elapsed. Limitation for seeking the relief of declaration is three years (Article 58 of the Limitation Act). The Court below was therefore justified in rejecting this Interlocutory Application. There is yet another reason. Admittedly, the amendment in question is a post trial amendment. Therefore, the petitioner should satisfy what is known as due diligence test. The petitioner fails on this score also. Both the reasons given by the Court below are well founded. Interference is not warranted with the impugned order.



C.R.P(MD)No.659 of 2024

4.This Civil Revision Petition stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

10.09.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
MGA

To

The Sub Court,
Melur.



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C.R.P(MD)No.659 of 2024

G.R.SWAMINATHAN, J.

MGA

C.R.P(MD)No.659 of 2024

10.09.2024