

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2015

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.3489 of 2011

And

M.P.No. 1 of 2011

P.Kalimuthu

...Petitioner/Petitioner/
Plaintiff

Vs.

P.Karthikeyan

...Respondent/Respondent/
Defendant

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order dated 10.08.2011 in I.A.No. 741 of 2011 in O.S.No. 727 of 2010 on the file of District Munsif Court, Pollachi.

For Petitioner : Mr.A.Shivaji

For Respondent : Mr.T.Murugamanickam

ORDER

Heard Mr.A.Shivaji, learned counsel for the revision petitioner and Mr.T.Murugamanickam, learned counsel for the respondent. The materials produced in the form of typed set of papers are also perused.

2. The plaintiff in the original suit is the petitioner in

the revision. The sole defendant in the original suit is the respondent in the revision. The revision petitioner/plaintiff filed the suit O.S.No.727/2010 on the file of the Court of District Munsif, Pollachi for injunction restraining the respondent herein/defendant from interfering with the use of underground pipeline described in plaint 'B' schedule for taking water from the well in S.No.619/2B of Setthumadai Village to irrigate his land comprised in S.No.613/1A having an extent of 3.63 acres in Vettaikaranpudur village morefully described in plaint 'A' schedule.

3. The respondent herein/defendant filed a written statement resisting the prayer made by the revision petitioner/plaintiff for injunction and also making a counter-claim to the effect that the revision petitioner/plaintiff should be restrained from interfering with the right of the respondent/defendant to irrigate his land comprised in S.Nos.613/1A3, 613/4 and 614/1B2 of Vettaikaranpudur Vilalge using the underground pipeline passing through the Government poramboke land comprised in S.No.613/1A2 and the land comprised in S.No.613/1B.

4. It is obvious that none of the above said survey numbers

through which the underground pipeline of the respondent/defendant allegedly passes belongs to the revision petitioner/plaintiff. The pipeline in respect of which the respondent/defendant has made the counter-claim does not have any link or connection with the pipeline described in plaint 'B' schedule, no part of the pipeline of the respondent/defendant is stated to be passing through any of the survey fields owned by the revision petitioner/plaintiff. Under the said circumstances, the revision petitioner/plaintiff filed an application under Order VIII Rule 6(c) and Section 151 of the Code of Civil Procedure as I.A.No.741/2011 praying for the exclusion of the counter-claim made by the respondent herein/defendant.

5. The learned trial Judge, after hearing both sides, dismissed the petition holding that allowing the respondent herein to pursue the counter-claim shall avoid multiplicity of proceedings. The legality and sustainability of the said order are questioned in the present revision filed under Article 227 of the Constitution of India.

6. It is the contention of the learned counsel for the petitioner that the counter-claim has become infructuous because the licence granted by the Public Works Department,

which was referred to as the basis of the claim of the respondent in the counter claim, came to be cancelled by the Public Works Department and the respondent has chosen to challenge the same before the High Court by filing a Writ Petition. The correctness of the above said fact brought to the notice of this court by the learned counsel for the petitioner is not disputed. It is the further contention of the learned counsel for the petitioner that only in order to cause confusion and make the proceedings unwieldy with the ultimate aim of preventing the petitioner from getting an early verdict in the suit, the respondent has chosen to make the counter claim in respect of an entirely different set of facts and also in respect of properties, which have no connection with the properties concerned in the suit filed by the revision petitioner.

7. On perusal of the schedules provided in the plaint and the schedules provided in the counter-claim, this Court is able to find that the respondent/defendant has not made any claim of easement or licence in respect of any of the properties of the revision petitioner/plaintiff. Still, by projecting a cause of action as if the revision petitioner/plaintiff was trying to prevent the use of the pipe line meant for irrigating his properties in S.No.613/1A3, 613/4 and 614/1B2 of Vettaikaranpudur Village

from the Well in S.No.619/2A1 of Vettaikaranpudur village, the respondent/defendant has chosen to make the counter-claim. As rightly contended by the learned counsel for the petitioner, the said claim can be more conveniently dealt with in a separate suit and clubbing the same with the suit filed by the revision petitioner will make the proceedings unwieldy besides causing unnecessary confusion regarding the identity of the properties both in the suit and the counter claim.

8. Though Rule 6(c) of Order VIII of the Code of Civil Procedure provides for exclusion of the counter-claim, it does not elaborate the circumstances under which such exclusion can be made. It has been left to the discretion, no doubt a guided judicial discretion of the court, to decide whether the counter-claim has to be tried in the very same suit in the very same proceedings or as a separate suit. If we take into consideration the facts and circumstances of the case, there cannot be any better case than the one on hand to exercise the power of the Court under Order VIII Rule 6(c) of the Code of Civil Procedure to exclude the counter-claim from the proceedings in the suit. The learned trial Judge has not properly exercised the discretion and this Court is of the view that the same can be corrected by exercising its power of Superintendence under Article 227 of the

Constitution of India. By the exclusion of the counter-claim, the respondent herein/defendant is not driven out without any remedy. The result shall be that the counter-claim shall be numbered as a separate suit and it shall be proceeded with separately without clubbing the same with the suit filed by the revision petitioner/plaintiff.

9. In the result, the revision succeeds and the same is allowed. The order of the trial Court dated 10.08.2011 made in I.A.No. 741 of 2011 is set aside. I.A.No. 741 of 2011 in O.S.No. 727 of 2010 on the file of the learned District Munsif Court, Pollachi, shall stand allowed with the result, the counter-claim of the respondent shall stand excluded, with a direction to the trial Court to number the counter claim as a separate suit and try the same separately. Consequently, connected Miscellaneous Petition is closed. No costs.

30.01.2015

Index : Yes
Internet : Yes
vsg/asr

To

District Munsif Court, Pollachi.

P.R.SHIVAKUMAR. J.,

vsg/asr

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