

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:27.04.2016

CORAM

THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR

Tr.C.M.P.No.260 OF 2016
and
C.M.P.No.7113 of 2016

M.K.Muthurajan

... Petitioner

Vs

A.Parasuraman

... Respondent

Transfer Civil Miscellaneous Revision Petition filed under Section 24 of the Civil Procedure Code to withdraw the O.S.No.18 of 2014 along with the counter claim from the file of the Sub Court, Kanchipuram and transfer the same to the District Court, Kancheepuram.

For Petitioner: Mr.T.Sundar Rajan

O R D E R

The defendant in O.S.No.18 of 2004, pending on the file of the Sub Court, Kancheepuram, is the petitioner in the present Transfer Civil Miscellaneous Petition.

2. The matter stands listed today for admission. The submissions made by Mr.T.Sundar Rajan, learned counsel for the petitioner are heard. The petition, supporting affidavit and the other materials produced in the form of typed-set of papers are perused.

3. The above said suit was filed by the respondent for a recovery of possession (ejectment) for recovery of rental arrears and consumption charges for permanent injunction and for costs.

4. The petitioner herein, who is the defendant in the above said suit, filed a written statement incorporating a counter claim which is valued at Rs.12,35,318/-. Thereafter, the petitioner herein has come forward with the present Transfer Civil Miscellaneous Petition stating that the suit should be transferred to the District Court, Kancheepuram, since the counter claim exceeds the pecuniary jurisdiction of the Sub Court, in which the suit is pending.

5. Learned counsel for the petitioner submits that since the cause of action for the plaintiff and the cause of action for the defendant are one and the same, he has no other alternative remedy than to file a counter claim in the suit filed by the respondent herein. This Court does not understand the logic in the above said submission made by the learned counsel for the petitioner. For making a counter claim, the cause of action need not be the same, as the one available to the plaintiff. The defendant shall have a separate cause of action to make a counter claim against the plaintiff. In such eventuality, the defendant can either file a separate suit or make a counter claim in the suit filed by the plaintiff.

6. Order VIII Rule 6A C.P.C reads as follows:-

The proviso to Sub Clause (1) makes it clear that the counter claim shall not exceed limits of the jurisdiction of the Court.

Sub Clauses (2) to (4) serve as an explanation of the proviso. According to Sub Clause (2) Counter claim shall have the same effect as a cross-suit.

Sub Clause(3) enables the plaintiff to file a written statement rebutting the counter claim.

Sub Clause (4) enables that the counter claim shall be treated as a plaint directing all the provisions applicable to the plaint.

When the defendant cannot file a separate suit in the Court in which suit filed by the plaintiff is pending as his claim would exceed the pecuniary jurisdiction of the said Court, then he cannot make a counter claim subject to a rider that he can do so by complying with the provisions found in Order II Rule 2 C.P.C.

7. Without adverting to the said provisions, perhaps due to wrong advice, the petitioner seems to have made a counter claim which exceeds the pecuniary jurisdiction of the Sub Court, Kancheepuram in which the suit is pending. Not stopping with the mistake, the petitioner has chosen to approach this Court for the transfer of the suit from Sub Court, Kancheepuram to the District Court, Kancheepuram, merely on the ground that he wants to make a counter claim which would exceed the pecuniary jurisdiction of the Sub Court, Kancheepuram. The said attempt can even be termed to be an abuse of process of Court. There is no merit in the petition and the same deserves to be dismissed at the threshold.

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

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

srn

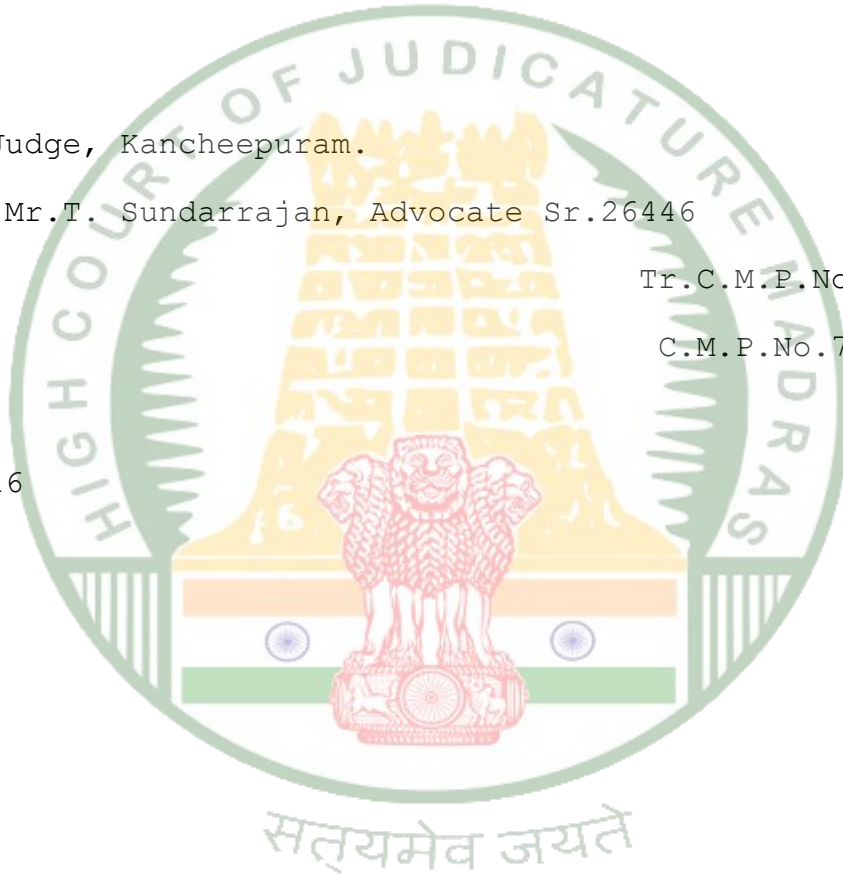
To

The Sub Judge, Kancheepuram.

+ 1 cc to Mr.T. Sundarrajan, Advocate Sr.26446

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