

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.3391 of 2014
& M.P.No.1 of 2014

Kuppammal
Rep. By her Power Agent
K.Sivakumar

.. Petitioner

Vs.

Nagarajan

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 26.06.2014, made in I.A.No.165 of 2014 in O.S.No. 90 of 2005 on the file of the District Munsif Court, Sholinghur, Vellore District.

For Petitioner : Mr.A.Rajesh Kanna

For Respondent : Mr.A.Gowthaman

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 26.06.2014, made in I.A.No.165 of 2014 in O.S.No. 90 of 2005 on the file of the District Munsif Court, Sholinghur, Vellore District.

2.The petitioner is plaintiff and respondent is the defendant in O.S.No. 90 of 2005 on the file of the District Munsif Court, Sholinghur, Vellore District. The petitioner filed the said suit for declaration to declare his right and title over the suit property and for permanent injunction. The respondent filed written statement on 20.08.2008 and is contesting the suit. Trial commenced. When the suit was posted for cross examination of PW1, the respondent filed I.A.No.165 of 2014 under Order VIII Rule 9 of C.P.C for permission to receive the additional written statement along with the application filed by the respondent. According to the respondent, the petitioner encroached portion of the property of the respondent by annexing 18 ft east west and 15 ft north south shown as EFCD portion described in 'C' Schedule property in additional written statement and petitioner also is claiming 2 ft east west and 50 ft north south in the respondent's vacant site shown as IBFJ portion which is described as 'D' Schedule property in additional written statement. According to the respondent, he informed his previous counsel about his claim over the 'C' and 'D' Schedule properties in the additional written statement. But his previous counsel did not include the same in the written statement filed on 20.08.2008.

3.The petitioner filed counter affidavit and denied all the averments made in the affidavit.

4.The learned Judge, considering the averments made in the affidavit, counter affidavit and materials on record, allowed the application filed by the respondent.

5.Against the said order dated 26.06.2014, made in I.A.No.165 of 2014 in O.S.No. 90 of 2005, the petitioner has come out with the present Civil Revision Petition.

6.The learned counsel for the petitioner and respondent reiterated the averments made in the affidavit filed in support of their counter affidavit and contentions of the grounds of revision raised in the present revision. The learned counsel for the respondent, in support of his contentions, relied on the judgments reported in:

(i) 2012 5 LW 521 (Murugan (Died) & others Vs. Karuppiah & others):

""6.The Hon'ble Supreme Court in the decision reported in Ramesh Chand Ardawatiya V. Anil

Panjwani, 2003 (3) MLJ 26 (SC), held that there are three modes of pleading or setting up a counter-claim in a civil suit. Firstly, the written statement filed under Rule 1 may itself contain a counter-claim which in the light of Rule 1 read with Rule 6-A would be a counter-claim against the claim of the plaintiff preferred in exercise of legal right conferred by Rule 6-A. Secondly, a counter claim may be preferred by way of amendment incorporated subject to the leave of the Court in a written statement already filed. Thirdly, a counter-claim may be filed by way of a subsequent pleading under Rule 9. In the latter two cases, the counter-claim though referable to Rule 6-A cannot be brought on record as of right but shall be governed by the discretion vesting in the Court, either under Order 6, Rule 17 of the C.P.C., if sought to be introduced by way of amendment, or, subject to exercise of discretion conferred on the Court under Order 8, Rule 9 of the C.P.C., if sought to be placed on record by way of subsequent pleading."

The Hon'ble Supreme Court observed that the counter-claim has to be entertained for avoiding multiplicity of proceedings and also to save court's time. Under Order 8, Rule 9 of C.P.C, there is no provision to the effect that no additional pleadings, subsequent to the proceedings, shall be entertained. I have also observed that there is no time limit for making counter-

claim in the additional written statement.

7. In view of the above said views expressed by the Hon'ble Supreme Court, I am of the view that there is no legal embargo for this Court to entertain the additional written statement with counter-claim and no prejudice would be caused to the other side."

(ii) 2013 5 LW 639 (P.Saraswathi Vs. C.Subramaniam):

"12.... On a perusal of the materials available on record, I find that in the original written statement filed by the second defendant, he had merely denied the case of the plaintiff. But, in the subsequent additional written statement, he is projecting a specific defence with regard to the entitlement of the share of the first defendant to the extent of 5/6th share in the suit property and it is only an additional defence and it cannot be treated as inconsistent defence from that of the defence taken in the original written statement. Moreover, adding a new ground of defence or substituting or altering a defence is permissible....."

"....inconsistent defence can be raised in the written statement although the same is not permissible in the case of the plaint. Therefore, I do not find any force in the submission made by the learned counsel appearing for the plaintiff that since already trial has commenced, the Court below ought not to have

permitted the second defendant to file additional written statement. Under Order 8 Rule 9 C.P.C., wide discretion was given to the Court to give a chance to the parties to agitate their right even by raising subsequent pleas. Moreover, no restriction was imposed with regard to the receiving of the additional written statement under Order 8 Rule 9 C.P.C after commencement of the trial like in the case of amending the plaint under Order 6 Rule 17 C.P.C., where unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial.....”

7. Heard the learned counsel for the petitioner as well as the respondent and perused the materials available on record.

8. From the materials available on record, it is seen that the respondent has filed application for filing additional written statement with counter claim. According to the respondent, the petitioner, after purchase of the property, agreed to remove the encroached portion and construction put up by the petitioner when the respondent puts up construction on his property. When the respondent demanded removal of the encroached portion and construction put up by him, the petitioner refused to do so and filed

vexatious suit. These averments in the written statement clearly reveals that the cause of action for the counter claim made by the respondent in the additional written statement has arisen even before filing of the suit. In such circumstances, the respondent, ought to have made counter claim in the written statement filed by him on 20.08.2008. The respondent has filed written statement on 20.08.2008 and filed present application for permission to file additional written statement with counter claim in the year 2014, when the suit was posted for cross examination of PW1.

9.The **Order VIII Rule 6(A)** reads as follows:

"6-A. Counter-claim by defendant- (1) A defendant in a suit may, in addition to his right of pleading a set-off under rule 6, set up, by way of counter-claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not:

Provided that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the Court.

(2)Such counter-claim shall have the same effect

as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and on the counter-claim.

(3) The plaintiff shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the Court.

(4) The counter-claim shall be treated as a plaint and governed by the rule applicable to plaints."

As per Order VIII Rule 6(a), a defendant must make the counter claim before he delivers his defence or before the time limit for delivering his defence has expired.

10. The learned Judge has not properly appreciated this rule and failed to note that counter claim must be made when the defendant filed written statement. The learned Judge erred in holding that respondent has not delivered his defence whereas, the respondent has already delivered his defence by filing written statement on 20.08.2008. Further, the learned Judge erred in holding that cause of action for the counter claim arose only on 02.03.2014 whereas, the cause of action has arisen even before filing of the suit as per the averments in the written statement filed

by the respondent on 20.08.2008. The learned Judge has not exercised his power properly and committed an irregularity by wrongly interpreting Order VIII Rule 6 A of C.P.C. For the above reasons, the impugned order of the learned District Munsif dated 26.06.2014, made in I.A.No.165 of 2014 in O.S.No.90 of 2005 is liable to be set aside and is hereby set aside.

11.In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Internet: Yes/No
Index: Yes/No
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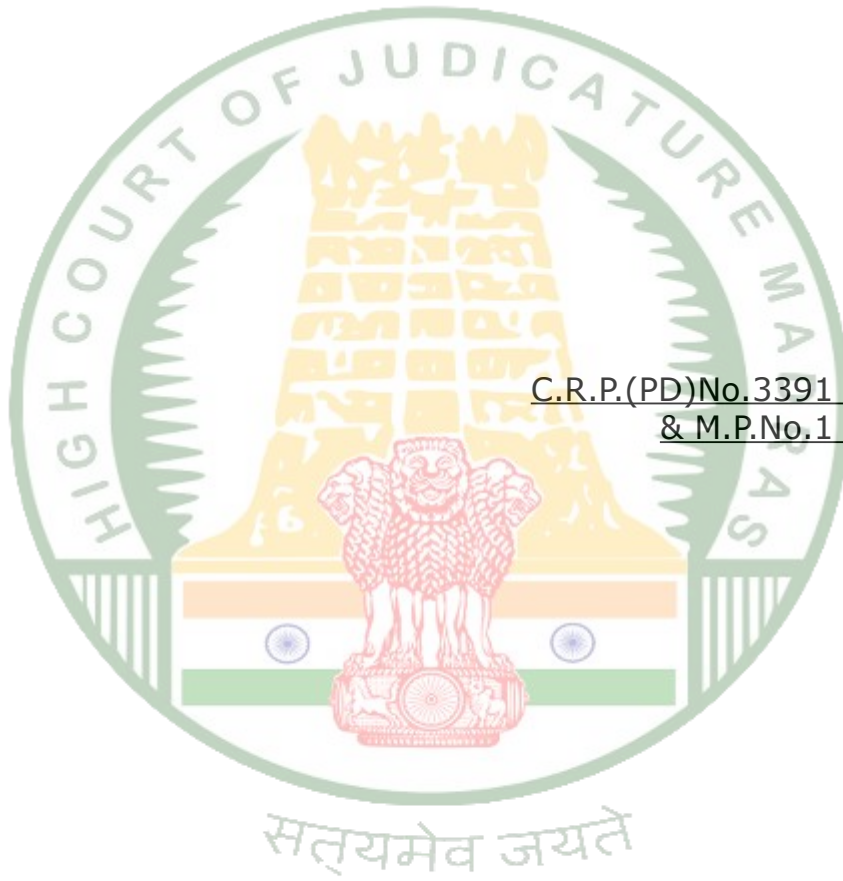
To

The District Munsif,
Sholinghur,
Vellore District.

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V.M.VELUMANI, J.

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