



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.02.2017

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)No.235 of 2017 (PD)

1. Arunmugachamy
2. Mahendran
3. Murugan

... Revisions Petitioners/Petitioners /
Defendants Nos. 1 to 3

Vs

- 1.Velusamy
- 2.Pavun raj
- 3.Kadarkarai samy
- 4.Ganesan
- 5.Valliammal
- 6.Nantheeswaran
- 7.Mariyammal

...1st Respondent/1st Respondent/
Plaintiff

... Respondents 2 & 3/Respondents 2 &3
Defendants Nos.4 & 5

... Respondents 4 to 7 / Respondents 4 to 7
proposed Defendants Nos. 6 to 9

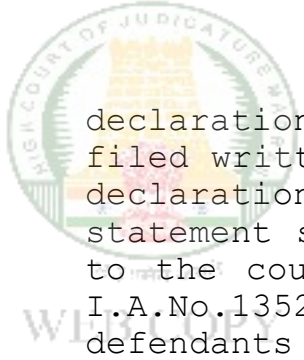
PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to call for the records relating to the order, dated 09.11.2016 passed by the learned Principal District Munsif, Sankarankovil, Tirunelveli in I.A.No.1352/15 in O.S.72/2010 and set aside the same.

For Petitioner : Mr.V.Kathirvelu
Senior Counsel for
Mr.K.Prabhu

ORDER

The petitioners have filed this Civil Revision Petition to set aside the order, dated 09.11.2016 passed by the learned Principal District Munsif, Sankarankovil, Tirunelveli in I.A.No.1352/15 in O.S.No.72/2010.

2.The petitioners are the defendants 1 to 3 and the first respondent is the plaintiff and respondents 2 & 3 are the defendants 4 & 5 in the suit. The first respondent/plaintiff filed suit in O.S.No.72 of 2010 before the learned Principal District Munsif, Sankarankovil against the petitioners and respondents 2 & 3 for



declaration and injunction. The petitioners and respondents 2 & 3 filed written statement. The petitioners filed counter claim seeking declaration and injunction. The respondents 2 & 3 filed their reply statement stating that the respondents 4 to 7 are necessary parties to the counter claim. In the circumstances, the petitioners filed I.A.No.1352 of 2015 for impleading the respondents 2 and 3 as defendants 4 & 5 in the counter claim and impleaded the respondents 4 to 7 as proposed respondents 6 to 9 in the counter claim.

3. In the said I.A., the first respondent and respondents 2 & 3 filed separate counter affidavit and opposed the said application stating that as per Order 8 Rule 6(A) of Code of Civil Procedure, the counter claim can be made only against plaintiff and cannot be made against co-defendants. Third parties cannot be impleaded as defendants in the counter claim. Therefore, respondents 2 to 7 are not necessary and proper parties to the counter claim.

4. The learned Judge considering the averments made the affidavit and counter affidavit and considering the provisions of Order 8 Rule 6(A) of C.P.C., and judgment reported in **(2015) 1 MLJ 818 (Ukravel vs. Senthilmurugan and others)** dismissed the application.

5. Against the said order of dismissal, the petitioners have come out with the present Civil Revision Petition.

6. The learned Senior Counsel appearing for the petitioners submitted that the learned Judge has not considered the reasons given by the petitioners for impleading the respondents 2 to 7 as defendants in the counter claim. The respondents 2 to 7 are necessary and proper parties. The learned Judge failed to consider the reply statement of respondents 2 & 3 wherein they have stated that necessary parties are not impleaded.

7. I have heard the learned Senior counsel appearing for the petitioners and also perused the entire materials on record.

8. From the materials, it is seen that the petitioners have filed counter claim in the suit filed by the first respondent claiming declaration and injunction. As per the provisions of Order 8 Rule 6(A) of Code of Civil Procedure counter claim can be made only against the plaintiff in the suit. A defendant cannot make any counter claim other than the plaintiff. The petitioners cannot make co-defendant or third party as party to the counter claim. The remedy available to the defendants in this case is only to file a separate suit.

Order 8 Rule 6(A) of Code of Civil Procedure reads as follows:-

Order 8 Rule 6(A) Counter-claim by defendants (1) A defendant in a suit may, in addition to his right of pleading a set-off under Rule 6, 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 rules applicable to plaints.

9. The learned Judge has considered the provisions of Order 8 Rule 6(A) of Code of Civil Procedure and the ratio in the judgment reported in **(2015) 1 MLJ 818 (Ukravel vs. Senthilmurugan and others)** in proper perspective dismissed the application and there is no illegality or irregularity in the order warranting interference by this Court.

10. In the result, the Civil Revision Petition is dismissed. No costs.

Sd/-

Assistant Registrar (P&A)

/True Copy/

Sub Assistant Registrar

To

The Principal District Munsif,
Sankarankoil.

Copy To:-

The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.K.PRABHU, ADVOCATE IN SR No. 6496

AM

<https://hcservices.ecourts.gov.in/hcservices> 21/02/2017 : 3P/4C

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