

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.06.2018

Coram:

THE HONOURABLE **MR.JUSTICE P.VELMURUGAN**

C.R.P.(PD)Nos.1472 to 1474 of 2018 and
C.M.P.No.7856 of 2018

1. T.N.Venkataraman
2. V.Bhuvaneshwari
3. V.Chandrashekar

... Petitioners in all the CRPs

Vs.

1. L.Vimala
2. L.Umashankar

... Respondents in all the CRPs

Prayer in all the CRPs: Civil Revision Petitions have been filed under Article 227 of the Constitution of India against the orders dated 19.02.2018 made in I.A.Nos.2083 of 2017, 1109 of 2017 and 1110 of 2017 respectively in O.S.No.6676 of 2014 on the file of the XV Assistant Judge, City Civil Court, Chennai.

For Petitioners : Mr.R.Thiagarajan
For Respondents : Mr.K.Rajasekaran

COMMON ORDER

These civil revision petitions have been filed against the orders dated 19.02.2018 made in I.A.Nos.2083 of 2017, 1109 of 2017 and 1110 of 2017 respectively in O.S.No.6676 of 2014 by the learned XV Assistant Judge, City Civil Court, Chennai.

2 The petitioners herein are the defendants in the suit in O.S.No.6676 of 2014, which was filed by the respondents herein. Pending suit, the revision petitioners/defendants filed three interlocutory applications to reopen the plaintiff side evidence, to recall the evidence of P.W.1 and also to receive the additional written statement with counter claim. The learned trial Judge after hearing both the parties dismissed all the three applications by a common order dated 19.02.2018.

3 Aggrieved against the same, the defendants are before this Court with these present civil revision petitions.

4 The learned counsel appearing for the petitioner would submit that northern boundary of the property is only 30 ft. public road, but the respondents/plaintiffs avered in the plaint that the northern boundary measuring an extent of 1260 sq.ft. was sold to 1st plaintiff on 22.06.1984. The revenue records are manipulated by the respondents/plaintiffs to that effect. The petitioners/defendants came to know the above fact only after completion of evidence. Hence they filed three applications with the above said prayers.

5 Further the learned counsel appearing for the revision petitioners/defendants placed his reliance in support of his contentions on various judgments of the Hon'ble Supreme Court as well as this Court reported in the following cases:

1. (2000) 1 Supreme Court Cases 712 (B.K.Narayana Pillai vs. Parameswaran Pillai and another)
2. (2008) 5 Supreme Court Cases 117 (Chander Kanta Bansal vs. Rajinder Singh Anand)
3. (2015) 13 Supreme Court Cases 132 (Mahila Ramkali Devei and others vs. Nandran (dead) through legal representatives and others)
4. (2017) 8 Supreme Court Cases 567 (State of Bihar and others vs. Modern Tent House and another)
5. AIR 2018 Supreme Court 100 (Raj Kumar Bhatia vs. Subhash Chander Bhatia)
6. (2009) 6 MLJ 933 (E.O.Mohammed Ali vs. Dessi Ammal alias Jessima Beevi and others)

6 The learned counsel appearing for the respondents/ plaintiffs would submit that the petitioners filed all the three applications at a later point of time i.e. after completion of evidence. It is settled law, once trial has commenced, it is not permissible to allow the defendants to file counter claim by way of additional written statement. If at all the petitioners/defendants aggrieved against the order dated 19.02.2018, they can very well workout their remedy by

filing a fresh suit.

7 Heard the learned counsel appearing for the revision petitioners and the respondents and perused the materials available on record.

8 On a perusal of the materials, it reveal that the petitioners filed three applications with the above said prayer after completion of evidence. This Court is of the view that applications in I.A.No.1109 of 2017 and 1110 of 2017 shall be allowed, since it is only for reopen and recall P.W.1 and it will not cause any serious prejudice the respondents/plaintiffs.

9 Accordingly C.R.P.Nos.1473 & 1474 of 2018 are hereby allowed. Since P.W.1 is party to the proceedings, P.W.1 is directed to appear before the trial Court on 25.06.2018. The trial Court is directed to permit the revision petitioners/defendants to cross examine P.W.1 on 25.06.2018 and the petitioners are directed to complete the cross examination of P.W.1 on the same day itself.

10 As far as, application in I.A.No.2083 of 2017 is concerned, this Court is of the view that once trial has commenced and the evidence of both the parties were already completed, it is not possible to permit the revision petitioners/defendants to file counter claim by way of additional written statement. The decisions referred to by the learned counsel for the revision petitioners/defendants are not applicable to the facts of the present case on hand, the decisions referred to are only for amendment of written statement. There is no quarrel with the legal position laid down by the Hon'ble Apex Court in the decisions referred to. It is to be noted that none of the above decisions referred to about the counter claim, which can be filed even after completion of the trial.

11 In the present case on hand, the revision petitioners/defendants have not even sought for amendment of written statement, they have sought permission to file counter claim by way of additional written statement, which is not permissible in law.

12 In this regard, it is pertinent to refer the provision of Order VIII Rule 6A (1) of CPC, which is extracted hereunder:

"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."

In this case, admittedly counter claim was not filed before the revision petitioners/defendants has filed written statement or before the time limit extended for filing written statement. The revision petitioners/defendant filed application to receive counter claim only after completion of trial and not before filing written statement.

13 In view of the above reasons, there is no illegality or infirmity with respect to the order dated 19.02.2018 made in I.A.No.2083 of 2017. Accordingly, C.R.P.No.1472 of 2018 arising out of I.A.No.2083 of 2017 is dismissed.

14 Since evidence of both the parties were already completed, as per the direction of this Court after completion of cross examination of P.W.1 on 25.06.2018, the trial Court is directed to dispose of the main suit in O.S.No.6676 of of 2014 on or before 13.07.2018. Consequently connected miscellaneous petition is closed. No costs.

18.06.2018

Internet: Yes/No

Index: Yes/No

Note: Issue order copy on 20.06.2018

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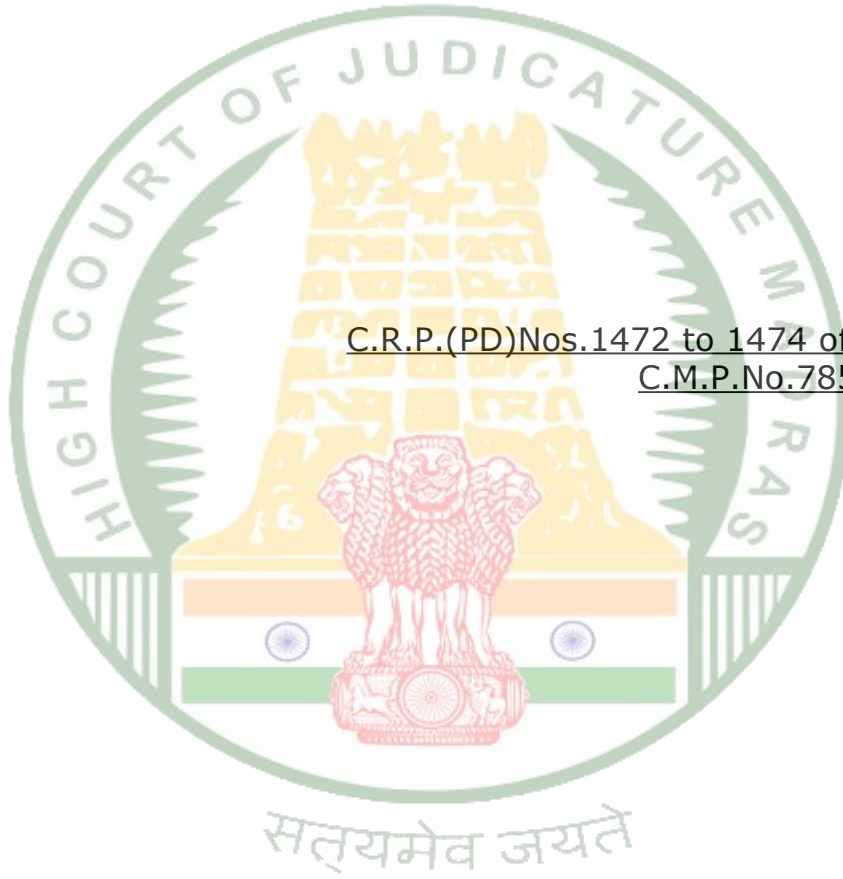
To
The XV Assistant Judge,
City Civil Court, Chennai.



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P.VELMURUGAN, J.,

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