

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1122 of 2015 and
M.P.No.1 of 2015

1.Valli

2.Vellaiyammal

.. Petitioners

Vs.

Kandasamy

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 03.12.2014 made in I.A.No.716 of 2014 in O.S.No.198 of 2005 on the file of the District Munsif Court, Sankari.

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For Petitioners : Mr.S.M.S.Shriram Narayanan

for Mr.P.Valliappan

For Respondent : Mr.N.Manokaran

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 03.12.2014 made in I.A.No.716 of 2014 in O.S.No.198 of 2005 on the file of the District Munsif Court, Sankari.

2. The petitioners are defendants 5 and 6 and respondent is plaintiff in O.S.No.198 of 2005 on the file of the District Munsif Court, Sankari. The respondent filed the said suit for injunction restraining the petitioners and other defendants from interfering with the respondent's peaceful possession and enjoyment of the suit property, particularly not to obstruct the pathway, cart track and not to damage the Mettur Left bank channel by means of permanent injunction. The petitioners filed written statement on 01.11.2005 and are contesting the suit. The trial commenced and when the suit was posted for cross-examination of P.W.1, the petitioners filed I.A.No.716 of 2014 under Order VIII Rule 9 read with Section 151 C.P.C., for permission to receive additional written statement filed along with the application. Though the petitioners filed additional written statement along with counter claim, they have filed the application only for permission to file additional written statement.

3. According to the petitioners, it is only the respondent is trying to interfere with their right to use the common cart track. On 14.06.2014, the respondent damaged the underground P.V.C. pipe line laid by the petitioners in the suit property. In view of the same, it is necessary to file additional written statement with counter claim.

4. The respondent filed counter affidavit and denied the averments made in the said application. He submitted that the petitioners are introducing a new case. No such incident had taken place on 14.06.2014. The alleged incident on 14.06.2014 is only an after thought for the purpose of filing additional written statement with counter claim and prayed for dismissal of the application.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and judgment relied on by the counsel for the respondent, dismissed the application holding that the petitioners have not mentioned the above fact in the written statement already filed and the petitioners have not stated what are all the particulars not mentioned in the written statement already filed.

6. Against the said order of dismissal dated 03.12.2014 made in I.A.No.716 of 2014 in O.S.No.198 of 2005, the present Civil Revision Petition is filed by the petitioners.

7. The learned counsel for the petitioners reiterated the averments made in the affidavit filed in support of I.A.No.716 of 2014 and contentions raised in the grounds of Civil Revision Petition and in support of his contentions, relied on the following judgments:

(i) **2012 (4) CTC 807 (A.Nandagopala Krishnan v. Antony);**

"12. Thus, taking a cue from the above dictum of the Honourable Supreme Court, I am of the view that the Court must lean in favour of full and complete justice. As rightly pointed out by the learned counsel for the Respondent, there is clear factual foundation even in the original Written Statement filed by the Defendant and he has put forward his contention regarding the counter-claim against the Plaintiff except seeking for cancellation of impugned sale deed. Therefore, no question of prejudice being caused to the Petitioner/Plaintiff by allowing amendment of the Written Statement to incorporate a counter-claim."

(ii) **2016(2) CTC 167 (P.Ramasami and others v. Nagai Sivasakthi Benefit Fund Limited, represented by its Managing Director, R.K.Ravi, No.8, Santhana pillai lane, Nagapattinam.)**

"14. It is to be remembered that the principle under Order 8 Rule 9 of CPC is that no pleading subsequent to the filing of Written Statement shall be presented by a party before the Court of Law except with permission of the said Court.

15. In regard to the filing of Additional Written Statement is concerned, the ingredients of Order 8 Rule 9 of CPC provide an ample power to the Court of Law to grant leave to file Additional Written Statement in regard to the defence/defences to be taken by a party. Also, it cannot be forgotten that even subsequent development/event by means of rejoinder can be pressed into service by a party concerned in the form of Additional Pleadings, but the only rider is subsequent Pleadings setup by the party ought not to be inconsistent with the defence/defences taken earlier.

16. By allowing the I.A.No.6 of 2013 in O.S.No.9 of 2004 on the file of trial court certainly, no prejudice or hardship or misery would be caused to the Respondent/Plaintiff in the considered opinion of this Court. Even in the subsequent Pleadings, viz., in I.A.No.6 of 2013 in O.S.No.9 of 2004 on the file of trial court, the Revision Petitioners / Defendants had raised a plea of counter claim even that can also be looked into by the trial court at the time of determination of the main suit and in this regard necessary issues can be framed by the concerned Court. Further, safe in exceptional cases a counter claim may not be permitted to be incorporated by means of an amendment under Order 6 Rule 17 of Code of Civil Procedure Code as per decision of **Hon'ble Supreme Court (Ramesh Chand Ardawatiya V. Anil Panjwani) reported in (2003) 7 Supreme Court Cases 350 at Special Page 367.** Further, Order 8 Rule 6A of Code of Civil Procedure permits filing of counter claim in respect of any suit without any fetters, as opined by this Court. After all, for the counter claim, purportedly set up by the Revision Petitioners/Defendants, they have to pay the requisite Court fee if any in this regard."

(iii) **2017 (1) CTC 315 (N.Vijayalakshmi v. Janakiyammal and others);**

"7. As stated earlier, the fourth defendant has made a counter-claim based on the partition deed dated 23.05.1990. Therefore, the cause of action for the fourth defendant was available before he had filed his written statement. A right to file a counter-claim is an additional right under Order VIII Rule 6-A of CPC, which preferably accrues from the date of cause of action, however, the cause of action must accrue before or after the filing of the suit and if such cause of action continued even after filing of the written statement, a counter-claim can be filed, even after the filing of the written statement.

8. In this regard, the learned counsel appearing for the R6/fourth defendant relied on the judgment of this Court reported in 2012(4)CTC 807 [A.Nandagopala Krishnan vs. Antony]. The relevant paragraphs are as under:

"11. I derive support to my view from the following paragraph in Mahendra Kumar

vs. State of Madhya Pradesh, AIR 1987 SC 1395, wherein it is held as below:

"Paragraph 15 of the above case also speaks about the fact "what is laid down under Rule 6-A(1) is that a counter-claim can be filed, provided the cause of action had accrued to the defendant before the defendant had delivered his defence. The word "Defendant has delivered his defence" has to be construed in the light of Order 6, Rule 17, which provides for amendment of the pleadings. A combined reading of Order 6, Rule 17, with Rule 6-A of Order 8 quoted above goes to show that before the evidence is finally closed by either side the right given to the Defendant under Order 8, Rule 6-A can be exercised. In fact while dealing with Order 6, Rule 17 in two cases namely, Nair Service, etc. vs. K.C.Alexander, AIR 1968 SC 1165 and Jai Jai Ram Manohar Lal vs. National Building and Material Supply, AIR 1969 SC 1267, the following principle is evolved: "mere delay and laches in making the application for amendment is not a ground for refusal of the amendment. Amendment is discretionary

matter and although amendment at a late stage is not to be granted as a matter of course the Court must bear in favour of doing full and complete justice in the case where the party against whom the amendment is to be allowed can be compensated by costs or otherwise."

9. Whereas the learned counsel for the revision petitioner/plaintiff relied on the judgment of the Honble Supreme Court reported in 2008-2-LW 974 [Bollepanda P.Poonacha and another vs. K.M.Madapa]. The relevant paragraph is extracted as follows:

"10. The provision of Order VIII Rule 6A must be considered having regard to the aforementioned provisions. A right to file counter-claim is an additional right. It may be filed in respect of any right or claim, the cause of action therefor, however, must accrue either before or after the filing of the suit but before the defendant has raised his defence. Respondent in his application for amendment of written statement categorically raised the plea that the appellants had trespassed on the lands, in question, in the summer of 1998. Cause of action for filing the counter-claim

inter alia was said to have arisen at that time. It was so explicitly stated in the said application. The said application, in our opinion, was, thus, clearly not maintainable. The decision of Sri Ryaz Ahmed (supra) is based on the decision of this Court in Baldev Singh and Others Vs. Manohar Singh and Another [(2006) 6 SCC 498]." "

(iv) **2013 (2) CTC 735 (A.Mohamed Sulaiman and another v. A.Ameena Beevi (deceased) and others);**

"32. In an unreported decision of this Court made in C.R.P.(PD) No. 1713 of 2012 (Premalatha & Others Vs. Karuppiah and another) dated 3.10.2012, it has been held at paragraphs 6 and 7 as follows:-

"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 CPC, 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.

.. ..

....

37. All the above decisions relied on by both sides only indicate that an issue which is raised by the defendant by way of counter claim even arising out of fresh cause of action can be considered

within the same suit as a cross-suit in order to avoid multiplicity of proceedings between the parties. In this case the counter claim made by the first defendant cannot be said to be as the one outside the scope and lis between the parties in the suit. The plaintiff filed the suit for partition of her 1/6th share of the suit property. The first defendant supported the plaintiff and claims her 1/6th share also. But the defendants 2 and 3 claimed that the first defendant had released her right of 1/6th share in the suit property by way of disputed release deed."

8. The learned counsel for the respondent reiterated the averments made in the counter affidavit filed in I.A.No.716 of 2014 and in support of his contentions, relied on the following judgments:

(i) **(2003) 7 SCC 350 (Ramesh Chand Ardawatiya v. Anil Panjwani);**

"26. A perusal of the abovesaid provisions shows that it is the Amendment Act of 1976 which has conferred a statutory right on a defendant to file a counter-claim. The relevant words of Rule 6A are --

"A defendant in a suit may, in addition to

his right of pleading a set-off under Rule 6,.....before the defendant has delivered his defence or before the time limited for delivering his defence has expired".

These words go to show that a pleading by way of counter-claim runs with the right of filing a written statement and that such right to set up a counter-claim is in addition to the right of pleading a set-off conferred by Rule 6. A set-off has to be pleaded in the written statement. The counter-claim must necessarily find its place in the written statement. Once the right of the defendant to file written statement has been lost or the time limited for delivery of the defence has expired then neither can the written statement be filed as of right nor a counter-claim can be allowed to be raised, for the counter-claim under Rule 6-A must find its place in the written statement. The Court has a discretion to permit a written statement being filed belatedly and, therefore, has a discretion also to permit a written statement containing a plea in the nature of set-off or counter-claim being filed belatedly but needless to say such discretion shall be exercised in a reasonable manner keeping in view all the facts and circumstances of the case including the conduct of the defendant, and the fact whether a belated leave of the Court would cause prejudice to

the plaintiff or take away a vested right which has accrued to the plaintiff by lapse of time.”

(ii) **2014(1) CTC 79 (T.M.Durairaj v. S.Arulprakash);**

"21. It is to be noted that a counter- claim cannot be filed once recording of evidence has commenced, in the considered opinion of this Court. It is true that the object of Order 8 Rule 6-A of Civil Procedure Code is to avoid plurality of proceedings. Also that, the ingredients of Order 8, Rule 9 of Civil Procedure Code and Order 6, Rule 17 of Civil Procedure Code, both are contextually different. But a counter-claim cannot be filed belatedly and the law of limitation squarely applies to a counter-claim. Even though a counter- claim is to be construed/treated as a separate suit and deemed instituted in Court on which it is made, an amendment introducing counter-claim when the trial of the main case has started is to be rejected, as opined by this Court. If a Court refuses to entertain a belated counter-claim, the same would not prejudice the Defendant because in spite of the counter-claim having been refused to be entertained he is always at liberty to file his own suit based on the cause of action for the said counter-claim as per decision in Ramesh Chand Ardawatiya V. Anil Panjwani, 2003 (7) SCC 350 at

page 368.

22. On a careful consideration of respective contentions and although the object of Order 8, Rule 6-A, as regards the 'counter-claim' is to avoid plurality of proceedings, yet, this Court is of the considered view that in main suit O.S.No.283 of 2005 on the file of the Second Additional District Munsif, Coimbatore, the issues were framed and also that P.W.1 was examined in full. Further, when the trial has commenced, the Revision Petitioner/1st Defendant, in the considered opinion of this Court, is not entitled to project the counter-claim by way of additional written statement. That apart, the Petitioner/1st Defendant cannot, either as a matter of routine or as a course, claim any right to file the additional written statement in the form of counter-claim. "

(iii) **(1987) 3 SCC 265 (Mahendra Kumar and another v.**

State of Madhya Pradesh and others);

"15. The next point that remains to be considered is whether Rule 6-A(1) of Order VIII of the Code of Civil Procedure bars the filing of a counter-claim after the filing of a written statement. This point need not detain us long, for

Rule 6-A(1) does not, on the face of it, bar the filing of a counter-claim by the defendant after he had filed the written statement. What is laid down under Rule 6-A(1) is that a counter-claim can be filed, provided the cause of action had accrued to the defendant before the defendant had 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. The High Court, in our opinion, has misread and misunderstood the provision of Rule 6-A(1) in holding that as the appellants had filed the counter-claim after the filing of the written statement, the counter-claim was not maintainable. The finding of the High Court does not get any support from Rule 6-A(1) of the Code of Civil Procedure. As the cause of action for the counter-claim had arisen before the filing of the written statement, the counter-claim was, therefore, quite maintainable. Under Article 113 of the Limitation Act, 1963, the period of limitation of three years from the date the right to sue accrues, has been provided for any suit for which no period of limitation is provided elsewhere in the Schedule. It is not disputed that a counter-claim, which is treated as a suit under section 3(2)(b) of the Limitation Act has been filed by the appellants within three years from the date of

accrual to them of the right to sue. The learned District Judge and the High Court were wrong in dismissing the counter-claim.”

9. Heard the learned counsel for the petitioners as well as the respondent and perused the materials available on record.

10. From the judgments relied on by the learned counsel for the petitioners and respondent, the following principles emerge -

(i) The defendant is given additional right under Order VIII Rule 6A CPC to file counter claim against the claim of plaintiff.

(ii) The defendant is entitled to file counter claim in respect of cause of action that accrued to the defendant against the plaintiff before or after filing of the suit but before the defendant delivered his defence or before time limited for delivering his defence expired.

(iii) The Court has discretionary power to extend the time for filing written statement as well as for filing counter claim. This discretion has to be exercised judicially and it should not prejudice the plaintiff.

(iv) Scope of Order VI Rule 17 and Order VIII Rule 6A CPC are different.

(v) The purpose of permitting the defendant to file counter claim is to avoid multiplicity of proceedings.

(vi) The words "before the defendant has delivered his defence or time limited for delivering his defence expired" had been interpreted as before the defendant let in evidence.

(vii) The defendant can file his counter claim in respect of cause of action that accrued to him either before or after filing of the suit but before filing of his written statement. In respect of cause of action that arises after filing of the written statement, the remedy available to the defendant is to file a suit on his own, even if his prayer for filing counter claim is rejected.

11. In the averments made in the affidavit filed in support of the present application for permission to file additional written statement, the petitioners in addition to stating that certain particulars were not stated in the written statement earlier, have

also stated about the subsequent event took place on 14.06.2014 for the purpose of filing additional written statement. According to the petitioners, on 14.06.2014, the respondent damaged the underground pipe line laid in the common cart track.

12. From the averments made in the affidavit filed by the petitioners, it is seen that the petitioners are seeking to file counter claim in respect of alleged incident that took place on 14.06.2014. The petitioners have filed written statement on 01.11.2005, long before the alleged incident that took place on 14.06.2014. In the judgment reported in **1987 (3) SCC 265 [Mahendra Kumar and another v. State of Madhya Pradesh and others]**, the Hon'ble Apex Court has held that defendant can file counter claim in respect of cause of action that accrued before the defendant delivered his defence or the time limited for delivering his defence expired. The relevant portion of the said judgment is extracted hereunder for better appreciation -

“What is laid down under Rule 6-A(1) is that a counter-claim can be filed, provided the cause of action had accrued to the defendant before the

defendant had 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."

13. Further, in the decision reported in **2014 (1) CTC 79 [T.M.Durairaj v. Arul Prakash]**, it has been held that after commencement of trial, a counter claim cannot be entertained and it will not prevent the defendant from filing a suit for the said relief. The relevant portion reads as follows -

"Even though a counter-claim is to be construed/treated as a separate suit and deemed instituted in Court on which it is made, an amendment introducing counter-claim when the trial of the main case has started is to be rejected, as opined by this Court. If a Court refuses to entertain a belated counter-claim, the same would not prejudice the Defendant because in spite of the counter-claim having been refused to be entertained he is always at liberty to file his own suit based on the cause of action for the said counter-claim as per decision in Ramesh Chand Ardawatiya V. Anil Panjwani, 2003 (7) SCC 350 at page 368."

14. The Hon'ble Apex Court in the judgment reported in **(2016) 11 SCC 800 (Vijay Prakash Jarath v. Tej Prakash Jarath)** held that cause of action for the counter claim should accrue before the defendant filed written statement. The relevant portion reads as follows:

"9. A perusal sub-rule (1) of Rule 6-A of Order 8, leaves no room for any doubt, that the cause of action in respect of which a counter claim can be filed, should accrue before the defendant has delivered his defence, namely, before the defendant has filed a written statement. ... "

In the present case, cause of action for the counter claim arose after petitioners filed their written statement and after the chief examination of respondent as P.W.1.

15. In view of the above judgments, counter claim of the petitioners is not maintainable as the cause of action has arisen after they filed written statement. Further, the petitioners have filed additional written statement raising various new pleas. The petitioners have not stated any reason for not taking these pleas in

the written statement. The contention of the petitioners that due to their illiteracy, they could not properly instruct their counsel is not a valid reason for permission to file additional written statement.

16. For the above reasons, the Civil Revision Petition is dismissed as devoid of merits. It is made clear that it is open to the petitioners to file suit for the relief as claimed in the counter claim as per law. No costs. Consequently, connected Miscellaneous Petition is closed.

26.02.2018

Index:Yes/No
Speaking/Non-speaking order

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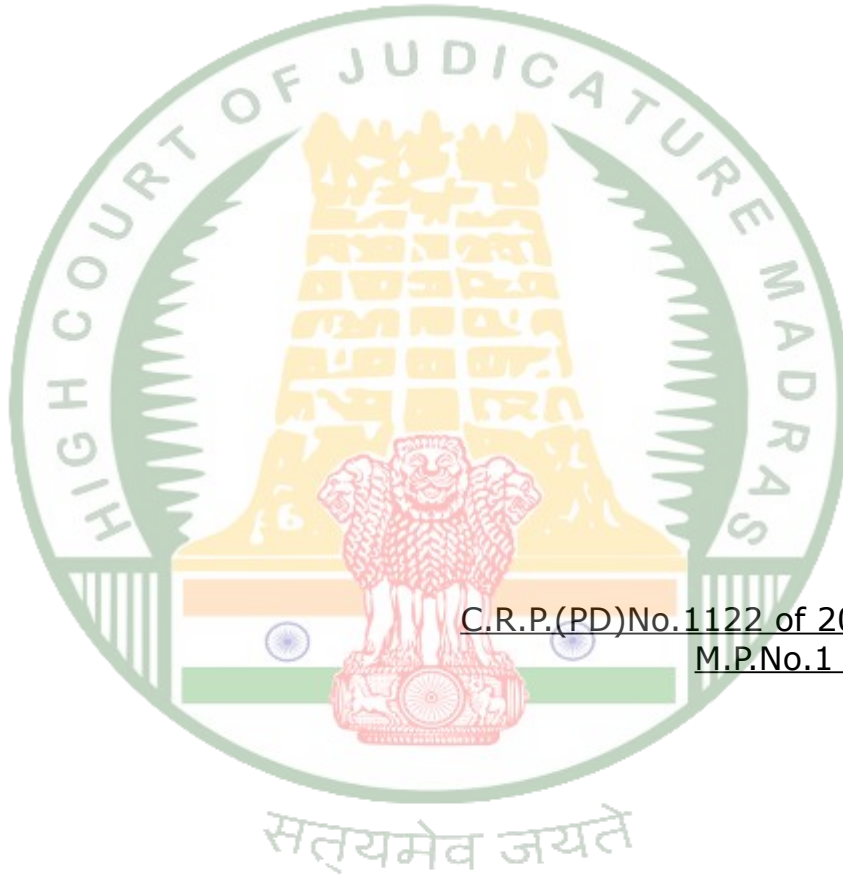
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