

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.3368 of 2015 and
M.P.No.1 of 2015

1.Deivathal
2.Vijaykumar @ Kumar
3.Durairaja @ Durai

.. Petitioners

Vs.

1.Loganathan
2.Karuppasamy
3.Karunaiammal
4.Mayangathal
5.Palanathal

.. Respondents

सत्यमेव जयते

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 20.07.2015 made in I.A.No.92 of 2015 in O.S.No.268 of 2004 on the file of the District Munsif Court, Avinashi.

For Petitioners : Mr.M.Sivavarthanan

For R1 : Mr.S.Mukunth for

M/S.Sarvabhauman Associates

For R2 to R5 : No appearance

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 20.07.2015 made in I.A.No.92 of 2015 in O.S.No.268 of 2004 on the file of the District Munsif Court, Avinashi.

2. The petitioners are defendants 1 to 3, first respondent is fifth defendant, second respondent is fourth defendant and respondents 3 to 5 are the plaintiffs in O.S.No.268 of 2004 on the file of the District Munsif Court, Avinashi. The respondents 3 to 5 filed the said suit for partition against the petitioners. Pending suit, respondents 3 to 5 sold the property to the second respondent. The second respondent in turn sold a portion of the property to the first respondent. Subsequently, respondents 1 and 2 were impleaded as defendants 5 and 4 respectively in the suit.

3. First respondent filed I.A.No.92 of 2015 under Order VIII Rule 9 C.P.C., for permission to file additional written statement along with counter claim in the suit. According to the first respondent, the respondents 3 to 5, who are the plaintiffs sold the property to the second respondent by the deed of sale dated 26.12.2006 and the first respondent purchased a portion of the property from the second respondent by the deed of sale dated 31.01.2007. The respondents 3 to 5, in collusion with the petitioners, are not conducting the case properly. The first respondent filed I.A.No.221 of 2014 under Order I Rule 10 C.P.C., to transpose the first respondent as a plaintiff and respondents 3 to 5 as defendants 5 to 7 and to proceed the suit as plaintiff. The said application was dismissed by order dated 09.12.2014. In the said order, the learned Judge has given a direction to the first respondent to file counter claim to establish his right over the suit property. The first respondent, in the circumstances, has filed the present I.A.No.92 of 2015 for permission to file counter claim in the suit.

4. The petitioners filed counter affidavit and opposed the said application. According to the petitioners, if counter claim is allowed, it will exceed the pecuniary jurisdiction of the Court and prayed for

dismissal of the application.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and the order passed in I.A.No.221 of 2014, allowed the application permitting the first respondent to file counter claim in the suit, in the interest of justice, to avoid multiplicity of proceedings.

6. Against the said order dated 20.07.2015 made in I.A.No.92 of 2015 in O.S.No.268 of 2004, the present Civil Revision Petition is filed by the petitioners.

7. The learned counsel for the petitioners contended that as per proviso to Order VIII Rule 6-A C.P.C., counter claim cannot be made exceeding pecuniary limits of the Court. In the present case, first respondent has stated that the value of the property covered by the sale deeds are Rs.2,51,000/- and Rs.1,31,800/-, which exceeds the jurisdiction of the Court. The learned Judge failed to consider the fact that the first respondent has already filed the suit for partition in O.S.No.39 of 2012 on the file of the District Court, Coimbatore, as a co-sharer to the suit property and therefore, first respondent is not entitled to file counter claim in the suit.

8. Per contra, the learned counsel for the first respondent submitted that the respondents 3 to 5 sold the property to the second respondent and from the second respondent, first respondent has purchased a portion of the property and he has become a co-sharer. He is entitled to a decree in respect of his share of 60 cents in the suit property. In the earlier application in I.A.No.221 of 2014 filed by the first respondent under Order I Rule 10 C.P.C. for transposing him as a plaintiff, liberty was given to the first respondent to file counter claim. It is now not open to the petitioners to oppose the filing of counter claim.

9. Heard the learned counsel for the petitioners as well as the first respondent and perused the materials available on record. Though notice were served on the respondents 2 to 5 and their names are printed in the cause list, there is no representation on behalf of the respondents 2 to 5 either in person or through counsel.

10. From the materials available on record, it is seen that the first respondent has filed counter claim claiming decree for 60 cents in the suit property alleging that he has purchased the same from

the second respondent on 31.01.2007. According to the first respondent, a larger extent of the suit property was purchased by the second respondent from the respondents 3 to 5 by the deed of sale dated 26.12.2006. First respondent purchased 60 cents of the suit property from the second respondent on 31.01.2007. In view of such purchase, he has become a co-sharer and is entitled to decree to that extent.

11. From the records, it is seen that the suit was filed originally on 29.12.2003 and was numbered as O.S.No.646 of 2003 on the file of the Subordinate Court, Tiruppur. Subsequently, it was transferred to the file of the District Munsif Court, Avinashi and re-numbered as O.S.No.268 of 2004. The first respondent has purchased 60 cents after filing of the suit. A defendant can maintain a counter claim, only if cause of action for counter claim has arisen before he filed written statement. In the present case, first respondent has purchased the property from second respondent on 31.01.2007 and filed his written statement on 02.08.2012. A defendant is entitled to file counter claim before he lets in evidence and completes the same in the trial. Therefore, the first respondent can maintain a counter claim before he gives his evidence.

12. The Hon'ble Apex Court, in the judgment reported in **(2016) 11 SCC 800 (Vijay Prakash Jarath v. Tej Prakash Jarath)**, has held that the defendant can file counter claim before he gives evidence, even if the plaintiff has let in evidence and closed his side. This Court, in the judgment reported in **2012 (4) CTC 807 (A.Nandagopala Krishnan v. Antony)**, has also held that the defendant is entitled to file counter claim before he gives evidence. In the present case, right of the first respondent has accrued before he filed his written statement and the first respondent filed application before he gave evidence.

13. In view of the above facts, the Civil Revision Petition is dismissed as devoid of merits. No costs. Consequently, connected Miscellaneous Petition is closed.

सत्यमेव जयते

26.02.2018

Index:Yes/No

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V.M.VELUMANI,J.

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To

The District Munsif, Avinashi.



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