



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.09.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRP(MD)No.519 of 2018 (PD)
and
CMP(MD) No.2268 of 2018

Pabanasam

... Petitioner

Vs.

1.Ganapathy

2.Sankar Babu

... Respondents

Prayer : Civil Revision Petition is filed under Section is filed under Article 227 of the Constitution of India, to set aside the order of returned counter claim in SR No.6894 of 2017 in O.S No.500 of 2011 on the file of the Principal District Munsif Court, Tenkasi dated 08.09.2017 and direct the Principal District Munsif Court, Tenkasi to receive the counter claim filed by the petitioner.

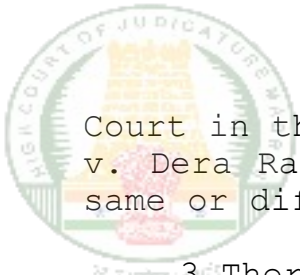
For Petitioner : Mr.R.J.Karthick

For Respondents : Mr.T.S.Mohamed Mohideen for R1

R2-Tapal returned.

ORDER

The second defendant in O.S No.500 of 2011 on the file of the Principal District Munsif Court, Tenkasi is the revision petitioner herein. It is a suit for declaration and permanent injunction. In the said suit, the defendants entered appearance and also filed written statement. Subsequently, it is alleged, the plaintiff committed encroachment of the portion of the suit said to be belonging to the revision petitioner herein. Therefore, the revision petitioner wanted to lodge a counter claim. The second defendant also wanted to file an additional written statement. The same was allowed. But, thereafter, the counter claim lodged by the revision petitioner was returned on the ground that the the prayer in respect of which the counter claim is sought appears to be different from the suit property. Questioning this return, this civil revision petition has been filed.



Court in the decision reported in AIR 1996 SC 2222 (Jag Mohan Chawla v. Dera Radha Swami Satsang) that counter claim in respect of the same or different property is also maintainable.

3. Therefore, the ground on which the court below returned the counter claim is clearly not sustainable in law. Therefore, this civil revision petition is allowed. The court below is directed to receive the counter claim and dispose of the same in accordance with law. The registry is directed to return the original counter claim filed by the revision petitioner herein for re-presentation before the court below. It is seen that the revision petitioner had affixed court fee stamp and the same shall be duly cancelled by the court below. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-I)

/True Copy/

Sub Assistant Registrar (CS-I)

To

The Principal District Munsif,
Tenkasi.

Copy To:

The Section Officer,
VR Section
Madurai Bench of Madras High Court,
Madurai. **(2 copies)**

Copy To:

The Section Officer,
ER Section
Madurai Bench of Madras High Court,
Madurai. **(2 copies)**

+ 1 CC TO Mr.R.J.Karthick , ADVOCATE IN SR No. 84016

skm

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