



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.06.2018

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) No. 782 of 2018 (NPD)

Kuzhandaisamy

... Petitioner/Petitioner/
1st Defendant

Vs.

G.Kutha Baksh (Died)

... Respondent/Respondent/
Plaintiff

1.A.Lashman

2.T.S.Padmanaba Rao

3.Pethuraja

4.K.Nayim

... Respondents/Respondents/
Defendants

Prayer.: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the petition and order in I.A.SR.8075 of 2017 in O.S.No.586 of 2012, dated 18.08.2017 on the file of the Additional Sub-Court, Madurai.

For Petitioner : Mr.V.Raghavachari
For R1 to R3 : No appearance
For R4 : Mr.M.Ponniah

O R D E R

This Civil Revision Petition is filed against the order dated 18.08.2017 passed in I.A.SR.8075 of 2017 in O.S.No.586 of 2012, by the learned Additional Sub-Court, Madurai.

2.Originally, the respondent/plaintiff has filed a suit in O.S.No.586 of 2012 for declaration and permanent injunction. The petitioner herein, who is the first defendant in the suit, has filed a counter claim for permanent injunction against the plaintiff. The said suit was dismissed for default and on the same day, the learned Judge has dismissed the counter claim also without passing any order on merits. Since the petitioner herein has appeared before the Court on the next date of hearing, after dismissing the suit as well as the counter claim, the petitioner herein has filed an application in I.A.SR 8075 of 2017 to reopen the case. Now, the learned Judge has dismissed the I.A., by saying that though the petitioner, who is the first defendant filed a counter claim for permanent injunction against the sole plaintiff, who died later on, there is no cause of action as against the legal heirs of the plaintiff for the relief of permanent injunction. Challenging the said order, the present civil



revision petition is filed.

4. Heard the learned counsel for the petitioner and perused the materials placed before this Court.

5. On a perusal of the order passing in I.A.SR8075 of 2017, dated 18.08.2017, it is seen that the learned Judge has totally lacking on the part of the merits of the case as well as the Judicial view. Once a suit has been filed by the plaintiff for declaration and permanent injunction and the defendant has filed a counter claim for bare injunction, when the suit was dismissed for default and the counter claim was also dismissed without giving any valid reasons, the order passed by the learned Judge in the I.A is totally against the law. Once the counter claim is pending and the parties are appear before the Court, the Court should take into hearing all the petition and thereafter pass orders on merits only. Because of dismissing the suit for default, the Court cannot dismiss the counter claim simply on the ground that the suit was dismissed for default. In support of his claim, the learned counsel for the petitioner has produced the judgment of the Division Bench in the case of **M.S.Mohammed Yahya v. M.S.Mohammed Jaffer and another**, reported in **1988-2-L.W.123 489**, in which, the relevant portion is extracted hereunder:

"5.As for the reliance made on the expression that Court has to pronounce a final judgment in the same suit, it is referable to such of those instance in which they got disposed of together. As to whether a Court is bound to render separate judgments or a single judgment, the latter portion states that it shall be by a single judgment. This expression has no relevance about the counter-claim surviving the disposal of the suit and being treated as a separate suit."

The Division Bench clearly held that the counter claim should not be dismissed because of the dismissal of the suit.

6. The learned counsel for the respondents would submit that the respondents have filed a restoration application, which was allowed and now, the suit is taken on file. Therefore, I am inclined to pass the following order:

7. This Civil Revision Petition is allowed by setting aside the order dated 18.08.2017 passed in I.A.SR8075 of 2017 in O.S.No.586 of 2012 and the learned Additional Sub-Court, Madurai is directed to number the application in I.A.SR8075 of 2017 and allow the same formally by giving notice to the other side within a period of two weeks from the date of receipt of a copy of this order. Thereafter the Trial Court is directed to dispose of the suit and counter claim on merits and in accordance with law within a period of six months. No costs.



/True Copy/

Sub Assistant Registrar

To

1. The Additional Sub-ordinate Judge,
Madurai.

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

+1 CC to Mr.V.RAGHAVACHARI, Advocate in SR.No.69425

+1 CC to Mr.M.PONNIAH, Advocate in SR.No.69644

NS

RJ/SV/SAR-3/16/07/2018 - 3P/6C

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