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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 12.06.2018

DELIVERED ON : 22.11.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) (PD) No.224 of 2015

and

M.P. (MD) No.1 of 2015

1.Bhuvaneswari

2.Rajeswari .. Petitioners/Respondent 1 to 2/Plaintiff 1 to 2

vs

1.Palanivelu .. Respondent /Petitioner/2nd Defendant

2.Muthamil Selvi

3.Senthilkumar

4.The Sub Registrar,
Thiruvidaimaruthur.

5.The District Registrar,
Kumbakonam.

6.The District Collector,
Thanjavur District. .. Respondents/ Respondents/Defendants 1, 3 to 6

Civil Revision Petition filed under Article 227 of Constitution of India against the Fair and Decreeal order dated 19.06.2014 in I.A.No.71 of 2014 in O.S.No.59 of 2011 on the file of the Principal Subordinate Court, Kumbakonam.

For Petitioners	: Mr.H.Lakshmi Shankar
For Respondents	: Mr.M.R.S.Prabhu (for R1)
	Mr.M.P.Senthil (for R2)
	M/s.VPM.Vaishnavi
	Government Advocate
	(for respondents 4 to 6)
	No Appearance (for R3)

**ORDER**

This Civil Revision Petition has been filed by the petitioners against the order dated 19.06.2014 passed in I.A.No.71 of 2014 in O.S.No.59 of 2011 on the file of the learned Principal Sub-Court, Kumbakonam.

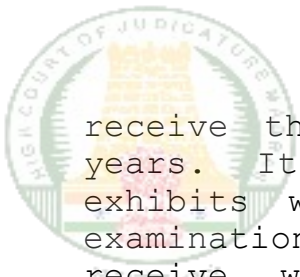
2. The petitioners are plaintiffs, 1st respondent is the 2nd defendant, respondents 2 and 3 are defendants 1 and 3 and respondents 4 to 6 are defendants 4 to 6 in the suit.

3. For convenience, the parties are referred to as per their array in the suit.

4. The plaintiffs have filed the suit for declaration that the plaintiffs 1 and 2 and the 3rd defendant are the absolute owner of "A" schedule properties and consequently, direct the 1st defendant to deliver suit "A" schedule properties to the plaintiffs within the stipulated time granted by this Court, failing which to deliver possession through Court of law and also sought declaration to declare that the plaintiffs 1 and 2 and 3rd defendant are the absolute owner of the "B" schedule properties and permanent injunction restraining the defendants 1 and 2 in any way interfering with the plaintiffs' peaceful possession and enjoyment of the plaintiff "B" schedule properties. Alternatively, the plaintiffs have sought for preliminary decree for partition to declare that the plaintiffs and the 3rd defendant are entitled to get 2/3rd share over the suit properties and pass final decree for actual partition and separate possession of the plaintiffs and the 3rd defendant's 2/3rd share over the suit properties by metes and bounds after appointing a commissioner for the above purpose and after considering the report and objections of the parties, if any.

5. Pending suit, the 2nd defendant filed I.A.No.71 of 2014 under Order 8, Rule 6-A of CPC seeking to receive the written statement/counter claim stating that due to illness, the 2nd defendant has not appeared before the Court on 16.03.2012 and filed the written statement and for non-filing of the written statement, the 2nd defendant was called absent and set ex parte. The non-appearance of the 2nd defendant on 16.03.2012 was neither wilful nor wanton and the 2nd defendant has got good case on merits. Hence, the 2nd defendant prayed for setting aside the ex parte order and to receive the written statement/counter claim filed along with the petition.

6. Resisting the petition, the plaintiffs have filed counter stating that it is not true that the 2nd defendant was unable to attend the Court on 16.03.2012 because of his illness and the 2nd defendant never appeared before the Court. There was no valid reason to set aside the ex parte order dated 16.03.2012. The 2nd defendant filed petitions to set aside the ex parte order and to



receive the written statement/counter claim after a lapse of 2 years. It is stated that in the case on hand PW1 was examined and exhibits were marked. When the suit was posted for cross-examination of PW1, the 2nd defendant had filed the petition to receive written statement/counter claim. According to the plaintiffs, once evidence recorded, counter claim cannot be filed. Hence, prayed for dismissal of the petition.

7. Upon consideration of the rival submissions, the trial Court allowed the petition. Aggrieved by the same, the plaintiffs have filed this Civil Revision Petition.

8. Challenging the impugned order, the learned counsel for the plaintiffs submitted that the trial Court ought not to have allowed the petition and ought not to have entertained the filing of counter claim after the commencement of trial, as it is vexatious and beyond the period of limitation. The trial Court ought to have seen that the time for filing written statement has expired and nearly three years after the institution of the suit and after remaining ex parte for more than two years, the 2nd defendant has filed the counter claim and the same is not maintainable. He would submit that the trial Court ought to have seen that I.A.No.71 of 2014 was an abuse of process of Court especially after the commencement of trial. The reasoning of the trial Court that it can be allowed to avoid multiplicity of proceedings cannot be the sole ground.

9. Per contra, the learned counsel for the 2nd defendant submitted that since the 2nd defendant was not well, he could not appear before the Court on 16.03.2012 and filed the written statement and the 2nd defendant filed petition to set aside the ex parte order along with written statement/counter claim. He would submit that if the written statement/counter claim of the 2nd defendant is received, no prejudice would be caused to the plaintiffs as in the case on hand just evidence commenced and that the trial Court has rightly allowed the petition. Therefore, there is no necessity to interfere with the order of the trial Court. In support, the learned counsel relied upon the following decisions:

(i) Murugan (died) and others v. Karuppiyah and others, reported in 2012-5-L.W. 521.

(ii) N.Vijayalakshmi v. Janakiyammal and others, reported in 2017(1) CTC 315.

(iii) A.Nandagopala Krishnan v. Antony, reported in 2012 (4) CTC 807.

(iv) Dr.K.Rajasekaran and others v. M.Rajeswari, reported in 2014-2-L.W. 1015.

<https://hcservices.ecourts.gov.in/hcservices/>

10. I heard Mr.H.Lakshmi Shankar, learned counsel for the



petitioners, Mr.MRS.Prabhu, learned counsel for the 1st respondent, Mr.M.P.Senthil, learned counsel for the 2nd respondent and also Mrs.VPM.Vaishnavi, learned Government Advocate for the respondents 4 to 6 and also perused the materials available on record. No representation on behalf of the 3rd respondent.

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11. It appears that since the 2nd defendant had not filed the written statement, he remained ex parte on 16.03.2012. Pending trial, the 2nd defendant filed I.A.Nos.71 and 72 of 2014 to set aside the ex parte order and to receive the written statement. The trial Court allowed both I.A.Nos.71 and 72 of 2014 on contest. While allowing both I.As., the trial Court observed that the 2nd plaintiff was examined as P.W.1 and marked Exs.A1 to A30 and when the chief examination of P.W.1 was pending, the 2nd defendant had filed the petition to set aside the ex parte order and to receive the written statement/counter claim. The trial Court further observed that if the counter claim is received no prejudice would be caused to the plaintiffs.

12. Contending that after examination of P.W.1, the counter-claim of the 2nd defendant cannot be entertained, the learned counsel relied upon the decision in T.M.Durairaj v. S.Arulprakash, reported in 2014 (1) CTC 79.

13. In T.M.Durairaj v. S.Arulprakash, supra, the learned Single Judge of this Court held as under:

"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 PW1 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."

14. By relying upon the decision in Murugan (died) and others v. Karuppiah and others, supra, the learned counsel for the 2nd defendant submitted that counter claim has to be entertained for avoiding multiplicity of proceedings and also save Court's time.

15. In Murugan (died) and others v. Karuppiah and others, supra, the learned Single Judge of this Court held:

"6. ... 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 proceedings, 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."

16. In N.Vijayalakshmi v. Janakiyammal and others, supra, the learned Single Judge of this Court observed as under:

"6. A reading of the above provision viz., Order 8, Rule 6-A(1) of CPC does not, on the face of it, bar the filing of the Counter-claim by the Defendant after he had filed the Written Statement. The above Rule 6-A(1) only states that 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."

17. In A.Nandagopala Krishnan v. Antony, supra, the learned Single Judge held:

"10. In view of the above position in law, the Application of the Defendant is not liable to be dismissed on the ground that it had been filed after filing of the Written Statement. It cannot be disputed that the right to prefer Counter-claim has been statutorily granted to the Defendant in order to avoid multiplicity of Suits between the same parties and the same subject matter though based on different cause of action and grounds. Such a procedure helps rival parties to get their dispute adjudicated upon the same proceedings by leading same set of evidence and having common arguments. Therefore, one of the purposes of permitting filing of Counter-claim is to ensure speedy justice by avoiding procedural repetitions and technicalities. Though it is held that it should be before the commencement of the trial, but a liberal construction of the rule is called for even in a case as in the present case where the defence evidence has not commenced."

18. In Dr.K.Rajasekaran and others v. M.Rajeswari, supra, another learned Single Judge of this Court observed as under:

"4. ... The defendant can claim any property by way of counter claim in respect of any cause of action that has accrued to him even though it is independent of the cause of action averred by the plaintiff and the same cause of action can be adjudicated without relegating the defendant to file a separate suit. So, the view is to avoid multiplicity of proceedings, especially when the dispute is between the same parties."

19. The plaintiffs have filed the suit for declaration and for possession in respect of plaint "A" schedule and declaration and injunction in respect of plaint "B" schedule and also alternatively for partition of the suit properties.



However, there are several reported views of different High Courts observing that in any event, counter claim should be made before recording of evidence and cannot be made after issues are framed and evidence closed.

25. In the present case, P.W.1 was examined chief in part and the suit is pending for continuation of the chief examination of P.W.1. As rightly held by the trial Court, at this stage, if the written statement/counter claim is received no prejudice would be caused to the plaintiffs. In order to avoid multiplicity of proceedings, especially, when the dispute is between the same parties, the written statement/counter claim made by the 2nd defendant can be received.

26. As stated supra, in the instant case the evidence commenced with the recording of the oral testimony of P.W.1 that too chief examination of P.W.1 is in part and the evidence is not closed. In such view of the matter, the 2nd defendant is entitled to put forth his counter claim. If the counter claim is not received, much hardship would be caused to the 2nd defendant. Taking note of the fact that in order to avoid multiplicity of proceedings, the trial Court allowed the petition to receive the counter claim.

27. For the foregoing reasons, this Court is of the view that there is no legal ground made out for interference with the order impugned and the Civil Revision Petition is liable to be dismissed.

28. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(cs-II)

/True Copy/

Sub Assistant Registrar(cs-III)

To
The Principal Sub Judge,
Kumbakonam.

+1cc to Mr.V.K.Vijayaragavan Advocate in SR.No.96440
+1cc to Mr.H.Lakshmi Shankar Advocate in SR.No.96205

order made in
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and
M.P. (MD) No.1 of 2015
22.11.2018