



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.09.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRP(MD)No.2115 of 2016 (PD)

and

CMP(MD)No.9921 of 2016

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1.Arumugapandi
2.Rathinasigamani ... Petitioners/Petitioners/Plaintiffs No.4&5
Vs.

1.Moorthy
2.Selvakumar
3.Jeyapandiyan
4.Padmanaban
5.Jeyapandi
6.Susila
7.Jansirani ... Respondents No.1 to 7/Defendants 1 to 7

8.Maharajan
9.Karunakaran
10.Jeyalakshmi ... Respondents 8 to 10/Plaintiffs 1 to 3

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 07.06.2016 passed in I.A No.120 of 2016 in O.S No.177 of 2008 on the file of the learned Principal Subordinate Judge, Tirunelveli.

For Petitioners : Mr.V.Balaji

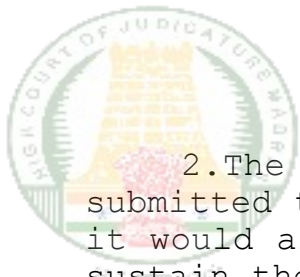
For Respondents : Ms.Amala for Mr.T.Cibichakraborty
for R1 to R4

RR 5, 6, 8, 9 & 10 - No appearance

R7 - Tapal returned for want of correct address.

ORDER

The respondents 8 to 10 herein filed O.S No.177 of 2008 seeking a declaration that the suit firm that was started on 10.11.2000 stood dissolved and for other reliefs. The petitioners herein were shown as defendants 8 and 9 originally. The defendants filed a counter claim on 15.11.2008 and also paid the necessary court fees. Subsequently, the original plaintiffs wanted to withdraw the suit itself. Therefore, the revision petitioners herein applied for transposing themselves as plaintiffs 4 and 5. Transposition was allowed. The trial commenced. The first petitioner herein was examined as PW.1. It was seen from his evidence that he went beyond the original plaint pleadings. It was indicated to the first petitioner herein that the pleadings will have to be properly amended. Therefore, the petitioners herein filed I.A No.120 of 2016 for amending the plaint. The said I.A was dismissed by order dated 07.06.2016. Questioning the same, this civil revision petition has been filed.



2.The learned counsel appearing for the contesting respondents submitted that if the plaint is allowed to be amended as sought for, it would alter the character of the suit. She wanted this Court to sustain the order impugned in this civil revision petition.

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3.It is not in dispute that the revision petitioners had filed their counter claim as early as in the year 2008. As per Order 8 Rule 6 A (4) of CPC, the counter claim shall be treated as a plaint and governed by the rules applicable to plaints. Therefore, the petitioners should either be permitted to amend the plaint or they should be allowed to adduce evidence in respect of the counter claim. This was the submission of the learned counsel for the revision petitioner.

4.I am of the view that the revision petitioners cannot be allowed to tinker with the original plaint. However, they can be allowed to adduce evidence in support of the counter claim. Therefore, even while sustaining the order impugned in this civil revision petition, the petitioners are given liberty to adduce evidence in support of the counter claim in terms of the Order 8 Rule 6 A of CPC.

5.With this liberty, this civil revision petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar(CS-I)

To
The Principal Subordinate Judge,
Tirunelveli.

+1CC to Mr.V.Balaji, Advocate, SR.No. 85728

+1CC to Mr.T.Cibichakraborty, Advocate, SR.No. 85744

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ES/SKN/RSK/SAR 1/02.11.2018/2P/4C