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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Judgment Reserved on : 06.09.2019

Judgment Pronounced on : 12.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

C.R.P. (MD) .No.42 of 2012

and

M.P. (MD) .No.1 of 2012

A.V.Murugan

.. Petitioner/Petitioner/Defendant

Vs.

1.K.Maheswari

.. 1st Respondent/ 1st Respondent/
Plaintiff

2.M.Renuka

3.M.Prakash

4.M.Amutha

5.R.Jeeva

6.Dr.R.Rathinam (Died)

7.Kamaraj

.. Respondents 2-7/ Proposed parties/
Defendants 2-7

8.R.Rajithkumar

9.R.Vithyakumar

.. Respondents 8 & 9

[Respondents 8 & 9 are brought on record as LR's of the deceased 6th respondent and 5th respondent recorded as LR of the deceased 6th respondent vide order, dated 03.07.2015 made in M.P.1/15 in C.R.P. (MD). No.42 of 2012]

PRAYER:- Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order, dated 18.08.2011 in I.A.No.155 of 2010 in O.S.No.259 of 2008 on the file of the learned Principal Sub Judge, Dindigul.

For Petitioner

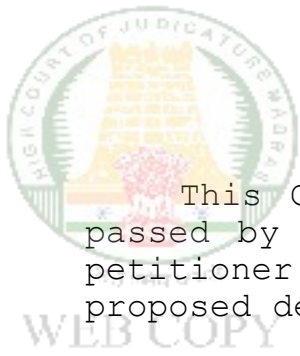
: Mr.H.Lakshmi Shankar

For Respondents

: Mr.S.Anand Chandrasekar
for M/s.Sarvabhuman Associates
for R1

Mr.J.Barathan
for R2 to R4

Mr.K.M.Vijayakumar
for R5, R6, R8 and R9.



ORDER

This Civil Revision Petition has been filed against the order passed by the Court below dismissing the application filed by the petitioner under Order I Rule X(2) of C.P.C., to implead the proposed defendants.

2. The petitioner is the defendant before the Court below. The first respondent filed a suit claiming for the relief of partition and to allot half share in her favour. The case of the plaintiff is that the suit property was purchased by the plaintiff and the defendant (petitioner herein) jointly, vide registered sale deed, dated 26.09.2001, and that the plaintiff is entitled for half share in the suit property and the defendant is not willing to enjoy the property jointly with the plaintiff.

3. The defendant (petitioner) took a specific plea that the plaintiff along with her husband and other close relatives and some others had entered into an understanding for the purchase of properties from one Fathima Tanning Company and plot out the properties and sell it to third parties. The total extent of the property was 15 acres and 69 cents. As per the agreement, the advance amount was paid to Fathima Tanning Company and the balance amount was agreed to be paid from time to time, as and when the plotted properties are sold. Pursuant to the agreement, various extents of properties were sold and the money was paid to Fathima Tanning Company. It was further contended that the property was held not only for the benefit of the plaintiff and the defendant but also on behalf of the other persons, who are involved in the joint venture. The defendant has specifically stated that he is entitled for 77.273% in the property, one S.R.Masilamani is entitled for 9.901% and the plaintiff and her husband are entitled for 13.636% in the suit property. Therefore, according to the defendant, the husband of the plaintiff, S.R.Masilamani, Dr.Rathinam and R.Jeeva are necessary parties in the suit.

4. The defendant in the written statement itself has made a counter claim by valuing his share in the property and had also paid the court fee.

5. The petitioner as the defendant, filed an application before the Court below to implead the proposed defendants 2 to 7 as parties in the suit. This application was filed on the ground that they are necessary and proper parties to decide the suit.

6. The Court below dismissed the application on the ground that as per the sale deed, the plaintiff and defendant are the only owners of the property and the plaintiff is claiming for 50% share in the property and therefore, there is no requirement to add others as a party in the suit as they are not the owners of the property



has further held that if at all the defendant wants to claim any additional share, he can always examine the proposed defendants as witnesses and prove his entitlement.

7. The learned counsel for the petitioner submitted that the petitioner has filed a counter-claim and the same has to be treated as a plaint in a cross-suit, in accordance with the provisions under Order VIII Rule 6(A) of C.P.C., and therefore, the defendant is entitled

to implead the necessary parties and the Court below did not take this fundamental issue into consideration. The learned counsel further submitted that the proposed defendants are proper and necessary parties and their presence is required for a complete and effective adjudication of the dispute involved in the suit.

8. The learned counsel, in order to substantiate his submission, relied upon the following judgments:

"1. **Vediammal and others vs. M.Kandasamy and others** reported in **1997 MLJ 529** and

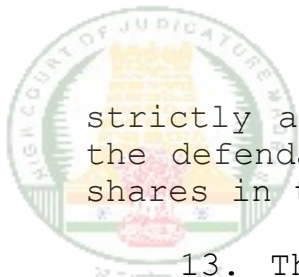
2. **Sarojini Amma vs. Dakshayani Amma**, reported in **1996 (2) KLT 74.**"

9. Per contra, the learned counsel appearing on behalf of the first respondent (Plaintiff), submitted that even as per the sale deed, through which the suit property was purchased, only the plaintiff and the defendant are shown as the joint owners of the property and therefore, there is no requirement to add any other party as a defendant in the suit. The learned counsel further submitted that the proposed defendants did not even contest the application filed before the Court below and that itself shows that they are not interested in impleading themselves as a party in the suit. The learned counsel concluded his arguments by submitting that the Court below has given cogent reasons for dismissing the application filed by the petitioner and that there are no grounds to interfere with the same.

10. This Court has carefully considered the submissions made on either side and the materials placed on record.

11. The pleadings as found in the plaint clearly mentions the fact that the suit property was purchased jointly by the plaintiff and the defendant through registered sale deed, dated 26.09.2001 and therefore, the plaintiff and the defendant are entitled for half share in the suit property. The defendant has made a counter-claim in the written statement filed by him and has also paid the necessary Court fee.

12. It is for the plaintiff to choose a party as a defendant since he is the "*dominus litis*" and no one can force the plaintiff to add any party as a defendant in the suit. This concept will not



strictly apply in a suit for partition since in such a suit, even the defendants can be considered as plaintiffs as they are claiming shares in the property.

13. The test for determining as to whether a party should be impleaded in a suit, will depend upon the fact as to whether they are necessary/proper party. Necessary party is one, without whom no effective order can be made. Proper party is one, whose presence is necessary for a complete and final decision. It must be borne in mind that a person having relevant evidence may be a necessary witness, but not a proper party to be impleaded in a suit. Enquiry in such an application would be whether enforceable legal right of such proposed party would be affected by determination of issues in the suit. This fundamental principle of law regarding impleading a party as a defendant in a suit is well settled through a catena of decisions.

14. In the present case, the petitioner has filed a counter-claim. The very language of Order VIII Rule 6(A) of C.P.C., shows that a defendant in a suit can seek for a counter-claim. Such counter-claim will have the same effect as a cross-suit, so as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and on the counter-claim. The counter-claim shall be treated as a plaint and it is governed by the Rules applicable to plaints. Even if the main suit is stayed, discontinued or dismissed, counter-claim can be proceeded with independently. Since the counter-claim is considered like an independent suit, in the eyes of law, any order passed in the counter-claim is considered to be a decree against which an independent appeal can be filed under Section 96 of C.P.C.

15. At this juncture, it will be relevant to rely upon the judgment in **Vediammal and others vs. M.Kandasamy and others** referred supra. The relevant portions of the judgments is extracted hereunder:

" 27. From the above decisions, the following principles emerge:

A counter-claim is really a suit, though the same is taken in the written statement. Just as a suit is filed by the plaintiff, defendant seeks a relief against the plaintiff on a cause of action which he has against the plaintiff. It is an independent cause of action which could also be agitated in a separate suit. It is to avoid multiplicity of proceedings, defendant is given liberty to file a counter-claim and get adjudication. Issues are suggested in both the original claim as well as in the counter-claim, and both are disposed of by a common judgment (Order 8, Rule 6-A(2), C.P.C. says that there can be a final judgment in the same suit, both on the original claim and counter-claim). In common



parlance, 'common judgment' means, 'decision arrived simultaneously in more than one suit tried together.' In view of the legal position under Order 8, Rule 6-A, C.P.C, a counter-claim or set-off can be made in many forms in a suit. But they need not be given separate numbers. The counter-claim is also said to be a weapon on evidence and enables the defendant to enforce the claim against the plaintiff as effectively as an independent action. As stated earlier, it is an enabling provision which gives a right to the defendant that instead of filing an independent action, he can seek that relief in a suit filed by plaintiff against him. Originally, there was a doubt whether the counter-claim filed in a suit for recovery of money and whether there should be nexus to the cause of action on which the suit is instituted. The legal position is now settled in view of the judgment reported in *Shri Jag Mohan Chawla v. Dera Radha Swami Satsang J.T.* (1996) 5 S.C. 428, wherein their Lordships have held thus:

...The counter-claim could be treated as a cross-suit and it could be decided in the same suit without relegating the parties to a fresh suit. It is true that in money suits, decree must be conformable to Order 20, Rule 18, C.P.C. but the object of the amendments introduced by Rules 6-A to 6-G are conferment of a statutory right to the defendant to set up a counter-claim independent of the claim on the basis of which the plaintiff laid the suit, on his own cause of action. In Sub-rule (1) of Rule 6-A, the language is so couched with words of wide width as to enable the parties to bring his own independent cause of action in respect of any claim that would be the subject-matter of an independent suit. Thereby, it is not longer confined to money claim or to cause of action of the same nature as original action of the plaintiff. It need not relate to or be connected with the original cause of action or matter pleaded by the plaintiff. The words "any right or claim in respect of a cause of action accruing with the defendant" would show that the cause of action from which the counter-claim arises need not necessarily arise from or have any nexus with the cause of action of the plaintiff that occasioned to lay the suit. The only limitation is that the cause of action should arise before the time fixed for filing the written statement expires. The defendant may set up a cause of action which has accrued to him even after the institution of the suit. The counterclaim expressly is treated as a cross suit with all the indicia of pleadings as a plaintiff including the duty to aver his



cause of action and also payment of the requisite court-fee thereon. Instead of relegating the defendant to an independent suit, to avoid, multiplicity of the proceeding and needless protection, the legislature intended to try both the suit and the counter-claim in the same suit as suit and cross-suit and have them disposed of in the same trial. In other words, a defendant can claim any right by way of a 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 have the same cause of action adjudicated without relegating the defendant to file a separate suit....

[Italics supplied] The said decision has been subsequently followed by the Bombay High Court in the decision reported in *Hemraj v. Yamunabai* (1996) 2 Mah.L.J. 844. From the judgment of the Supreme Court, it is clear that the scope of a counter-claim is in the nature of a cross-suit for all purposes.

28. This view of mine is supported by the decision reported in *Shivkali Bai v. Meera Devi* 1991 M.P.L.J. 102, wherein a learned Judge of that High Court held thus:

Counter-claim being in the nature of cross-suit, is not affected by the dismissal of plaintiff's suit. The counter claim has to be disposed of on merits. Therefore, the dismissal of plaintiff's suit on the ground of non-joinder of necessary party would not affect the counter claim of the defendant.

The only difference is, instead of filing two suits having two registered numbers, relief is sought for in the same suit by both plaintiff and defendant. The inference is irresistible therefore, that a counter-claim will be a suit. It must have a cause of action and that cause of action can be independently enforced. Necessary court-fee must be paid on the relief sought for."

16.The next question is whether counter-claim can be filed in a suit for partition against the plaintiff. It will be relevant to rely upon the judgment of this Court in ***A.Mohamed Sulaiman and others vs. A.Ameena Beevi (deceased) and others.***, reported in **2013 (2) CTC 735**. In the said judgment, this Court had considered the issue as to whether in a suit for partition, one defendant can set up a counter-claim as against the other defendants. This Court had dealt with the entire law in detail.



17. The relevant portions of the judgment is extracted hereunder:

" 17. The next question will be as to whether the first defendant can make a counter claim against the other co-defendants. Learned counsel for the petitioner strongly relied on Order 8 Rule 6A of Civil Procedure Code to contend that any counter claim can be made only as against the plaintiff in a suit and not against the defendant. Therefore, he submitted that the application filed by the first defendant is not maintainable.

18. A perusal of the Order 8 Rule 6A of CPC , no doubt contemplates that a counter claim in a suit has to be made against the plaintiff. A careful perusal of Rule 6A would indicate that it is not very specific that the counter claim by a defendant has to be made only against the plaintiff. In other words, in a given circumstances, it does not specifically bar the filing of a counter claim against the co-defendant as well. Why I am expressing this view is that the plea of the parties and relief sought for vary in every suit and only by taking into consideration of the facts and circumstances of each case, it has to be determined as to whether such counter claim raised by a defendant can be restricted or permitted only against the plaintiff or it can be extended even to the other co-defendant. For instance, in a suit for partition, the parties are being interchangeable and therefore a defendant therein can be considered to be a person suing. At this juncture, I would like to rely on the decision of a learned single Judge in C.Kasinathan Vs. N.Athiappan Servan and others (1997(II) CTC 717) at paragraph 7 as follows:-

"7. The lower appellate Judge has not properly considered the other question that Section 4(1) of the Act will come into play only when the alienees sue for partition. In Sri Booman V. Kupppammal Achi, 1968 (2) MLJ 36, it was held that a defendant in a partition suit can be considered to be a person suing. In Siba Prasad V. Bibhuti Bhusan, AIR 1989 Cal. 35, a similar decision was taken to this effect. In Valliammal V. Rajathiammal and 11 Others 1993(2) LW 334 also the learned Judge has taken the same view. "

19. Therefore, when a defendant in a partition suit can be considered as a party suing also, I am of the view that such defendant can also make a counter



claim under Order 8 Rule 6A in a partition suit against the co-defendant. When such claim is exercised, certainly, the person making such plea becomes the plaintiff insofar as that relief is concerned and the person against whom such claim is made, becomes the defendant in the very same suit. That is why sub-clause (2) of Order 8 Rule 6A was very specific in saying that such counter claim shall have the same effect as a cross suit so as to enable the court to pronounce the final judgment in the same suit both on the original claim and on the counter claim. Therefore, in my considered view, it cannot be said that Order 8 Rule 6A in stricto sensu is applicable only as against the plaintiff and not against a co-defendant.

20. Even otherwise, an overall consideration of the facts and circumstances of the case would necessarily warrant the Court below to consider the said issue raised by the first defendant, while deciding the suit filed by the plaintiff, in view of the fact that the first defendant also claimed 1/6th share in the suit property. Therefore, for adjudication of her claim, necessarily the rival claim made by the defendants 2 and 3 based on the disputed settlement has also to be gone into by the court below. While considering such rival claim of the defendants 2 and 3, necessarily the Court below has to go into the question with regard to the validity of the said settlement deed which has been raised by the first defendant in her original written statement itself. Therefore, even in the absence of the application under Order 8 Rule 6A, the Court below is bound to consider this issue in order to arrive at a just and proper conclusion and to decide the lis between the parties without relegating any one of them to agitate an issue, which is relevant and germane to the main issue, to be agitated and adjudicated upon in a separate proceedings.

21. Now let me consider the various case laws relied on by both sides. The decisions relied on by the learned counsel for the petitioner are discussed hereunder:-

22. In Karuppayammal and another Vs. S.Ramalingam Pillai and others (2000 (1) L.W. 593) the learned single Judge of this Court held that the counter claim by a defendant can be maintained only as against plaintiff and not as against the defendant. The facts of the said case reveal that the subject



matter suit is one for recovery of possession and for mesne profits. In the said suit, a third party filed an application seeking to implead himself as third defendant and also prayed for a declaration of his title to the suit property and for direction to the defendants 1 and 2 therein to deliver possession of the same. Thus, the learned judge found that the defendant cannot seek counter claim against co-defendant. In this case, the subject matter suit is for partition and therefore the status of the parties in this suit cannot be equated with the status of the parties in other suits with other reliefs. It is well settled that in a partition suit the defendant can be considered to be a person suing. This position has been reiterated by this court in a decision reported in 1998 (1) MLJ 137 (C.Kasinathan Vs. N.Athiappan Servai and Others) . Therefore, when a defendant in a partition suit can be considered to be a person suing, then a counter claim can also be made against such defendant by another co-defendant. In fact, when a counter claim is made, the person viz., the defendant who makes such claim becomes the plaintiff insofar as that claim is concerned and person against whom such claim is made becomes the defendant. Sub-clause (2) of Rule 6A of Order 8 CPC makes it clear that such counter claim shall have the same effect as a cross suit. Even if the plaintiff in the said suit discontinues or the suit itself is stayed or dismissed, still the counter claim can be proceeded with as contemplated under Order 8 Rule 6D . Therefore a combined reading of Order 8 Rule 6A(2) with Order 8 Rule 6D makes it abundantly clear that the counter claim in a partition suit can be made even against the co-defendant.

23. The learned Judge in the above said decision reported in Karuppayammal and another Vs. S.Ramalingam Pillai and others (2000 (1) L.W. 593) has considered the said issue based on the facts and circumstances of the said case. Moreover Rule 6D and its effect was not placed and considered in that case. Therefore, I am of the view that the said decision of the learned Judge is factually distinguishable and the findings rendered therein can not be applied to the facts and circumstances of the present case.

24. At this juncture it is useful to refer the decisions of Patna High Court in Rajendra Upadhyays Vs. Madan Rai and Others (2007(4)PLJR 705) relied on



by the learned counsel for the respondent. In the said decision, the learned Judge has held that a counter claim has necessarily to be directed against the plaintiff in the suit and incidentally or along with the plaintiff it could also be claimed against the co-defendant. Therefore, in my considered view, it can not be said that under all circumstances, the counter claim can not be filed against the co-defendant.

25. The next decision relied on by the petitioner's counsel is reported in 2011 (2) L.W. 679 (S.Tajudeen Vs.S.V.Sambandan and Others). In the said decision a learned single Judge of this Court held that a counter claim shall be made by the defendant before he could deliver his defence and the same cannot be made after the time prescribed under Rule 6A. In this case, as the facts would reveal that the original written statement filed by the first defendant itself contains the required averments for counter claim, in my considered view, the above said decision relied on by the petitioner is also factually distinguishable.

26. Likewise the other decisions relied on by the petitioner's counsel are reported in AIR 1991 (Karnataka) 283 (1) (Smt. Parvathamamma Vs. K.R.Lokanath and others); 2002 (1) L.W. 765 (Athiganapathy Vs. A.V.Saminathan); AIR 2008 Uttarakhand 11 (Dr.T.D.Padalia and Another Vs. District Judge, Nainital and Others); 2008 (2) L.W. 974 (Bollepanda P.Poonacha and Another Vs. K.M.Madapa). In all those decisions the Courts have held that the counter claim can not be entertained either after evidence or trial or framing the issues. Hence, they are all factually distinguishable and not applicable to the case on hand, in view of my reasoning given while considering the decision reported in 2011 (2) L.W. 679 (S.Tajudeen Vs.S.V.Sambandan and Others).

27. So far as the other decisions relied on by the learned counsel for the petitioner reported in 2009 (10) SCC 84 (Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and others) and 2011 (6) CTC 477 Chinnu Padayachi and another Vs. Dhanalakshmi and others) are concerned both are in respect of amendment of pleadings under Order 6 Rule 17 . In my considered view, those decisions are not applicable to the case on hand.



28. The other decision relied on by the learned counsel for the petitioner is reported in 1999 (III) CTC 577 (Ramalathumi Ammal Vs. T.Jeevanatham). In the said decision, the learned single Judge of this Court held that if the counter claim in respect of a relief is barred by limitation, then the said claim cannot be permitted to be raised. The learned single Judge by relying on the decision of the Supreme Court reported in Mahendra Kumar Vs. State of M.P. (1987 (3) SCC 265) held that a counter claim to seek a declaration of a document as void cannot be made after the period of limitation. No doubt, it is true that a counter claim should not be barred by limitation and such a question is not only a question of law, but also a question of fact and consequently the same has to be gone into by the Court below by taking note of the pleadings and evidence let in by both parties. In fact, the Court below has gone into that aspect also and given a finding that the claim is not barred by limitation. Such finding has to be treated only as a prima facie finding and therefore, the issue regarding limitation has to be necessarily gone into at the time of final disposal of the suit and a finding has to be rendered on that aspect. The first defendant was categorical in her first written statement itself that she came to know about the existence of such a document only from the written statement filed by the by the defendants 2 and 3. Therefore, it is for the parties to convince the Court on the question of limitation.

29. The following are the decisions relied on by the learned counsel appearing for the contesting respondent.

30. In Kassem Gharami and Others Vs. Niamat Gharami and Others (1991 (2) CALLT 118 HC) the Calcutta High Court held that the counter claim cannot be rejected for non-payment of court fee. It is also held therein that the counter claim is to be treated as a cross suit and a counter claim cannot be rejected on the ground that the claim is barred by limitation when in the statement of allegation of such claim it cannot be said that it is so barred.

31. In Mahendra Kumar Vs. State of M.P. (1987 (3) SCC 265) , the Hon'ble Supreme Court has held at paragraph 15 as follows:-

"15. The next point that remains to be considered is whether Rule 6A(1) of Order VIII of the Code of Civil Procedure bars the filing of a counter-claim after



the filing of a written statement. This point need not detain us long, for Rule 6A(1) does not, on the face of it, bar the filing of a counter-claim by the defendant after he had filed the written statement. What is laid down under Rule 6A(1) is that a 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, whether such counterclaim is in the nature of a claim for damages or not. The High Court, in our opinion, has misread and misunderstood the provision of Rule 6A(1) in holding that as the appellants had filed the counter claim after the filing, of the written statement, the counter-claim was not maintainable. The finding of the High Court does not get any support from Rule 6A (1) of the Code of Civil Procedure. As the cause of action for the counter claim had arisen before the filing of the written statement, the counter-claim was, therefore, quite maintainable. "

32. In an unreported decision of this Court made in C.R.P.(PD) No. 1713 of 2012 (Premalatha & Others Vs. Karuppiah and another) dated 3.10.2012, it has been held at paragraphs 6 and 7 as follows:-

"6. The Hon'ble Supreme Court in the decision reported in Ramesh Chand Ardawatiya v. Anil Panjwani, 2003 (3) MLJ 26 (SC), held that there are three modes of pleading or setting up a counter-claim in a civil suit. Firstly, the written statement filed under Rule 1 may itself contain a counter-claim which in the light of Rule 1 read with Rule 6-A would be a counter-claim against the claim of the plaintiff preferred in exercise of legal right conferred by Rule 6-A. Secondly, a counter claim may be preferred by way of amendment incorporated subject to the leave of the Court in a written statement already filed. Thirdly, a counter-claim may be filed by way of a subsequent pleading under Rule 9. In the latter two cases, the counter-claim though referable to Rule 6-A cannot be brought on record as of right but shall be governed by the discretion vesting in the Court, either under Order 6, Rule 17 of the C.P.C., if sought to be introduced by way of amendment, or, subject to exercise of discretion conferred on the Court under Order 8, Rule 9 of the C.P.C., if sought to be placed on record by way of subsequent pleading." 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 pleadings, 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.

7. In view of the above said views expressed by the Hon'ble Supreme Court, I am of the view that there is no legal embargo for this Court to entertain the additional written statement with counter-claim and no prejudice would be caused to the other side.

33. In another unreported decision of Delhi High Court made in C.R.P.No.21 of 2010 (Sukhpreet Singh Vs. Kamaljeet Kaur) dated 4.2.2010, it is held that the relief can be either by way of counter claim or by way of separate suit. The Delhi High Court further pointed out that the object of the amendment to the Order 8 Rule 6A was to avoid multiplicity of proceedings, and as such the defendant has an option under the said provision to file a counter claim and if he chooses not to do so it cannot put an embargo on her to file a suit at a later stage.

34. The learned counsel further relied on the decision in Ganesh Tiwari and Another Vs. Ramakant Tiwari and Others (2007 (1) BLJR 831) of Jarkhand High Court, wherein it is held as follows:-

7. "The defendant may set up a cause of action which has accrued to him even after the institution of the suit. The counter-claim expressly is treated as a cross suit with all the indicia of pleadings as a plaint including the duty to aver his cause of action and also payment of the requisite court-fee thereon. Instead of relegating the defendant to an independent suit, to avert multiplicity of the proceeding and needless protection, the legislature intended to try both the suit and the counter-claim in the same suit as suit and cross suit and have them disposed of in the same trial. In other words, a defendant can claim any right by way of a 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 have the same cause of action adjudicated without relegating the defendant to file a separate suit."

.....



"Therefore, when the defendants in a suit have paid separate Court fee and sought partition and separate possession of their shares also, the suit cannot be dismissed as withdrawn or settled out of Court by plaintiff with other defendants."

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".....Perhaps, the Court below has not correctly appreciated the provisions of Order VIII, Rule 6(A) to 6(D) of the Code of Civil Procedure. Sub-section (4) of Rule 6(A) clearly provides that counterclaim shall be treated as plaint and governed by the rules applicable to plaints. In other words, all provisions relating to a plaint provided in the Code of Civil Procedure and also relating to the valuation of the counter-claim and payment of Court-fee shall have to be followed. Merely because a separate suit for declaration in respect of the property sought to be included by way of counter-claim as joint family property would be maintainable, that cannot be a ground to disallow the counter-claim made by the defendants for deciding the question in the same suit. It is well settled that counter-claim could be treated as cross suit but could be decided in the same suit without relegating the parties to a fresh suit. Instead of relegating defendants to an independent suit and to avoid multiplicity of proceedings, provisions have been inserted under Order VIII, Rules 6(A) to 6(D) in the Code of Civil Procedure. "

35. The learned counsel for the respondent relied on the decision in Jag Mohan Chawla and Another Vs. Dera Radha Swami, Satsang and Others (1996 (4) SCC 699) wherein the Hon'ble Supreme Court held that the counter claim is aimed to avoid multiplicity of proceedings and therefore it is maintainable not only in respect of money suits but also in respect of other suits also.

36. He further relied on the decision in Bollepanda P. Poonacha and another Vs. K.M.Madapa (2008 (13) SCC 179) to contend that amendment of the written statement deserves more liberal consideration than the application for amendment of the plaint. In the said decision it is also observed by the Apex Court that a right to file counter claim is an additional right. It may be filed in respect of any right or claim, the cause of action therefor, however, must accrue either before or after the



filing of the suit but before the defendant has raised his defence. As I have already pointed out that the first defendant had raised her counter claim even in the original written statement at paragraph 10 , the same cannot be rejected.

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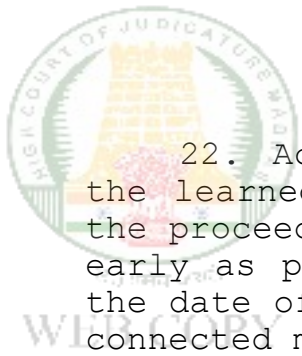
37. All the above decisions relied on by both sides only indicate that an issue which is raised by the defendant by way of counter claim even arising out of fresh cause of action can be considered within the same suit as a cross suit in order to avoid multiplicity of proceedings between the parties. In this case the counter claim made by the first defendant cannot be said to be as the one out side the scope and lis between the parties in the suit. The plaintiff filed the suit for partition of her 1/6th share of the suit property. The first defendant supported the plaintiff and claims her 1/6th share also. But the defendants 2 and 3 claimed that the first defendant had released her right of 1/6th share in the suit property by way of disputed release deed."

18. It is clear from the above judgment that even in a suit for partition, a defendant can set up a counter-claim. This Court has gone to the extent of saying that one defendant can set up a counter-claim against the other defendants. In the present case, the defendant has set up a counter-claim against the plaintiff. The counter-claim has been set up by pleading certain facts and as per the said pleadings, the defendant wants to add certain parties as defendants, since according to the defendant, they are proper and necessary parties and in their absence, no effective order can be passed and whose presence is necessary for complete and final decision.

19. As already held by this Court, a counter-claim is in the nature of a cross-suit and the defendant wants to implead these parties as defendant in the suit. The defendant is entitled to add them as defendants since he is the "*dominus litis*" insofar as the counter-claim is concerned.

20. The Court below has failed to take note of this important aspect and it has proceeded to consider the application like in a normal suit where the plaintiff is the "*dominus litis*" .

21. In view of the above, this Court finds that the order passed by the Court below suffers from illegality and therefore, the fair and final order passed in I.A.No.155 of 2010, dated 18.08.2011, is hereby set aside and the impleading petition in I.A.No.155 of 2010 in O.S.No.259 of 2008 filed by the petitioner (Defendant) is allowed.



22. Accordingly, this Civil Revision Petition is allowed and the learned Principal Sub Judge, Dindigul, is directed to complete the proceedings in O.S.No.259 of 2008 and also the counter-claim, as early as possible, preferably, within a period of four months from the date of receipt of a copy of this order. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To

The Principal Sub Judge,
Dindigul.

+1 CC to Mr.SARVABHAUMAN ASSOCIATES, Advocate SR-86440.

+1 CC to Mr.T.R.JEYAPALAM, Advocate SR-86469.

+1 CC to Mr.H.LAKSHMI SHANKAR, Advocate SR-86443.

**Order made in
C.R.P (MD) No.42 of 2012
12.09.2019**

CS(24.09.2019) 16P 5C