

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.997 of 2018

ORDER:

This Revision is filed under Article 227 of the Constitution of India challenging the Docket Order dt.28.11.2017 of the Additional Junior Civil Judge, Ranga Reddy District at Malkajgiri, regarding counter claim raised by the petitioners in O.S.No.295 of 2016.

2. Petitioners are the defendants in the above suit.
3. The respondents filed the said suit against the petitioners for a perpetual injunction restraining the petitioners from encroaching or interfering with the peaceful possession and enjoyment of the respondents over the suit schedule property.
4. Written statement, along with counter claim, was raised by the petitioners seeking the relief of declaration with regard to a road, mandatory injunction and damages.
5. The Court below passed the following Docket Order on 28.11.2017:

“Perused the documents on record along with case record. The property claimed by the Plaintiff is totally different from the property claimed by the defendant.

There is no ground to entertain this counter claim petition as it does not form part of suit schedule property.

Counter claim is not maintainable.”

6. Assailing the same, this Revision is filed.

7. Counsel for the petitioner contends that the view of the Court below that merely because property claimed by the petitioners is different from the property claimed by the respondents, counter claim cannot be entertained, is not valid in law. He also relied upon a decision of this Court in ***Sugesan and Co. Pvt. Ltd., Madras v. Hindustan Machine Tools Ltd., Lamp Division, Hyderabad***¹.

8. Counsel for the respondents refuted the said contentions and supported the order passed by the Court below.

9. In the decision cited in ***Sugesan and Co. Pvt. Ltd.***'s case(1 supra), this Court has held that the language employed in Order VIII Rule 6A CPC is to be interpreted to mean that cause of action for a defendant to file a counter claim need not also be necessary in relation to cause of action of the plaintiff, and it can be different from that claimed by the plaintiff altogether.

¹ 2004(3) ALT 267

10. The Supreme Court in ***Sh. Jag Mohan Chawla & Anr vs Dera Radha Swami Satsang & Ors.***² also held that under Order VIII Rule 6A CPC, counter claim made by a defendant can be an independent cause of action which can be subject matter of an independent suit, and need not be of the same nature as the original action of the plaintiff, and it need not relate or be connected with the original cause of action or matter pleaded by the plaintiff.

11. In view of this settled legal position, the order passed by the Court below cannot be sustained.

12. Accordingly, this Civil Revision Petition is allowed; the Docket Order dt.28.11.2017 of the Additional Junior Civil Judge, Ranga Reddy District at Malkajgiri is set aside; and the said Court is directed to entertain the counter claim filed by the petitioners, if it is otherwise in order, and consider the same along with the claim made in the suit. No order as to costs.

13. Consequently, miscellaneous petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

11th July, 2019.
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² 1996(4) SCC 699