

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.1306 of 2018

ORDER:

Heard counsel for petitioner. Though notice was sent to the respondents and they have been served, there is no representation on their behalf.

2. This Revision is filed assailing the Docket Order dt.19.12.2017 in O.S.No.180 of 2010 of the Principal Junior Civil Judge, Gadwal, holding that counter claim made by defendants 1 to 3/respondents 1 to 3 is maintainable, when an oral objection was taken by the counsel for petitioner/plaintiff that such counter claim is not maintainable.

3. I am of the opinion that Court below could not have expressed any opinion on the maintainability of the counter claim without there being any application filed by the petitioner to decide the said issue as a preliminary issue, and without there being any counter affidavit filed by respondents 1 to 3.

4. Therefore, this Civil Revision Petition is allowed; the Docket Order dt.19.12.2017 in O.S.No.180 of 2010 of the Principal Junior Civil Judge, Gadwal, holding that the counter claim of respondents 1 to 3 is maintainable is set aside; and the Court below is directed to frame an issue on the maintainability of the counter claim made by respondents 1 to 3 and decide the same while deciding the suit. No order as to costs.

5. Consequently, Miscellaneous Petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

31st January, 2019.

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