

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2020

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.R.P.(PD) No.857 of 2020

1.Umarani  
2.Kathiresan (Minor) ...Petitioners

..Vs..

1.Suseela  
2.Valarmathi  
3.Thilagavathi  
4.Dhanalakshmi ...Respondents

**PRAYER:** Civil Revision Petition filed under Article 227 of Constitution of India, against the order and Decreetal order dated 27.09.2019 passed in I.A.No.1413 of 2005 in O.S.No.429 of 2003 by the Principal Subordinate Judge, Namakkal.

For Petitioners :Mr.T.R.Rajaraman  
For M/s.P.Veena

For R1 :No appearance

For R2 :Mr.N.Manokaran,  
For Mr.R.Gokula Krishnan

For R3 :No appearance

For R4 :Not ready in notice

**ORDER**

Heard Mr.T.R.Rajaraman, learned Senior Counsel appearing for the petitioners, Mr.N.Manokaran, learned counsel appearing for the second respondent-Valarmathi alone.

2. Notice to the other respondents is dispensed with.

3. Originally, one suseela has filed O.S.No.429 of 2003 on the file of the Principal Subordinate Court, Namakkal. Subsequently it was transferred and re-numbered as O.S.No.194 of 2004 before the Principal Sub-Court, Namakkal for partition, wherein the third defendant Umarani therein filed a counter claim in respect of the properties in question . The said suit filed by the said Suseela was dismissed for default on 15.02.2011. Subsequently, she filed an I.A. to restore the suit with a petition to condone the delay of 1623 days. When the case is taken up for trial, the same was not pressed and hence, the I.A 1413 of 2015 was dismissed as not pressed. Aggrieved against the said order, the respondents 3 & 4 in the said I.A have preferred this Civil Revision Petition under Article 227 Constitution of India.

4. Mr.T.R.Rajaraman, learned Counsel appearing for the petitioner contended that the Trial Court has committed an grave error in dismissing the suit for default without considering the pendency of the counter claim made in the suit.

5. Admittedly, the trial Court/Principal Sub-Judge, Namakkal without seeing that there is a counter claim in the partition suit ought not to have dismissed the suit in entirety for dismissed for default on the default of the plaintiff on 15.02.2011.

6. Mr.N.Manokaran, learned counsel appearing for the first respondent herein could contend that the trial Court has committed an error in dismissing the suit in entirety without looking into the pendency of the counter claim. However, the petitioners herein were not diligent enough to bring the same to the knowledge of the Court nor even filed any petition for restoration of the suit and hence, their action in seeking the relief of restoration of the counter claim in the application filed by the petitioners herein is improper.

7. On a perusal of the decree passed in O.S.No.194/2004 dated 15.02.2011, it is seen that the suit was dismissed for default and there is no reference with regard to the counter claim claimed by the defendant and hence, I find that the above contention raised by the learned counsel Mr.T.R.Rajaraman is found to have force. Since the I.A is filed by the petitioners in I.A.No.1413/2015, he himself as not pressed the I.A and there cannot be any C.R.P against such order. In this view of the matter, this Court cannot proceed with I.A.No.1413/2015.

8. Taking into consideration of the decree passed in O.S.No.194 of 2004 dated 15.02.2011, I find that there is no reference with regard to the counter claim made by the defendants 3 and 4 in the suit. When there is no disposal in respect of the counter claim in the suit approach adopted by the Sub-Judge, Namakkal on the ground that once the plaint is defaulted in conducting the suit, the entire suit goes against the provisions of the C.P.C. Even when the plaintiff is not prosecuting his plaint resulting in dismissal of the suit. The duty is caused upon a Judge to entertain and continue the proceedings in respect of the counter claim.

9. Admittedly, no such order has been passed by the trial Court till date and hence, in exercise of powers conferred upon this Court under Article 227 of the Constitution of India, I hereby direct the learned Sub-Judge, Namakkal to take O.S.No.194 of 2004 only in respect of the counter claim alone. As observed earlier, the I.A to condone the delay in restoration of the suit was dismissed, the suit need not be proceeded. It is brought to my notice that Valarmathi-the second respondent in the very same suit also filed an independent suit which is made over to Mahila Court, Namakkal is pending in O.S.No.195/2015 and parties are same and properties are same and hence, the suit in O.S.No.194 of 2004-only in respect of counter claim is restored to file and shall stand transferred to Mahila Court to be tried along with O.S.No.195/2015. It is

hereby made clear that the evidence shall be recorded in the oldest suit as per the practice and convention.

10. With the above observations, this Civil Revision Petition is disposed of. Time limit prescribed by the earlier order in C.R.P.No.2209/17 is to be complied with and if the parties are not settle with the pleadings, they have to settle with the pleadings within a period of two weeks from the date of receipt of a copy of this order. No costs.

02.11.2020

nvi

Index:Yes/No  
Speaking Order:Yes/No

To

The Principal Subordinate Judge, Namakkal.

WEB COPY

C.R.P.(PD) No.857 of 2020

RMT.TEEKAA RAMAN,J.,

nvi



C.R.P.(PD) No.857 of 2020

WEB COPY

02.11.2020