

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.10.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.2475 of 2015
and M.P.No.1 of 2015

Jayalakshmi ... Petitioner

Vs.

1.Pattammal @ Kuppammal @
Pattou @ Pappalle (died)

2.Vengadessin

3.Sivasankar

4.Indrany

5.Sarasvady @ Kasthuri

(Respondents 2 to 5 are the legal
heirs of the deceased 1st respondent viz.,
Pattammal @ Kuppammal @ Pattou @
Pappalle as per the memo dated 01.09.2021
and vide Court order dated 03.09.2021 in
C.R.P.(PD)No.2475 of 2015)

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the
Constitution of India against the fair and decretal order dated 08.06.2015
made in I.A.No.268 of 2015 in O.S.No.98 of 2012 on the file of the III

Additional District Court, Pondicherry.

For Petitioner : Mrs.R.Sripriya
for Mr.V.Raghavachari

R1 : died

For R2 to R5 : No appearance

ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”.)

Civil Revision Petition is filed against the fair and decretal order dated 08.06.2015 made in I.A.No.268 of 2015 in O.S.No.98 of 2012 on the file of the III Additional District Court, Pondicherry.

2.The petitioner is 5th defendant, the respondents 1 to 3 are defendants 1, 2 and 4, 4th respondent is plaintiff and 5th respondent is 3rd defendant in O.S.No.98 of 2012 on the file of III Additional District Court, Pondicherry. The 4th respondent filed the said suit against the petitioner, respondents 1 to 3 and 5th respondent for partition, declaration

and other relief. The 1st respondent filed written statement and the same was adopted by the petitioner, respondents 2 and 3. Thereafter, the respondents 1 to 3 and petitioner filed I.A.No.268 of 2015 under Order VIII Rule 6-A, 8 read with Section 151 of C.P.C. for permission to file additional written statement and counter-claim.

3. According to the petitioner and respondents 1 to 3, the 4th respondent filed the suit for partition and other relief including relief to set aside the sale deed dated 29.04.2009 executed by the 1st respondent in favour of the petitioner. According to the petitioner, the suit property is individual property of the 1st respondent. The petitioner purchased item No.3 of the suit property for valuable sale consideration and the 1st respondent has given the sale proceeds to all her children including 4th respondent. Considering the pitiable condition of the 4th respondent, the petitioner permitted the 4th respondent to occupy a portion of Item No.3 of the property till her children are settled. The son and daughter of 4th respondent got employment and the 4th respondent acted against the

interest of the petitioner. Hence she withdrew the permission given to the 4th respondent. Those facts were not made in the written statement filed by her mother, the 1st respondent herein. Hence, it is necessary to file additional written statement and counter-claim.

4.The respondents 4 and 5 did not file any counter affidavit.

5. The learned Judge dismissed the I.A. holding that written statement was filed on 02.07.2013, the present petition is filed on 12.03.2015 without any additional written statement and counter-claim, only to drag on the proceedings.

6.Against the said fair and decretal order dated 08.06.2015 made in I.A.No.268 of 2015 in O.S.No.98 of 2012, the petitioner has come out with the present Civil Revision Petition.

7.The learned counsel appearing for the petitioner contended that the learned Judge failed to consider that only after leave being granted, a counter-claim can be filed. The 4th respondent did not file counter affidavit in the I.A. filed by the petitioner. The petitioner permitted the 4th respondent to occupy the portion of the suit property only due to her pitiable condition. The reason given by the learned Judge that the present petition is filed only to drag on the proceedings is erroneous. On the other hand, if the petition is not allowed, the petitioner cannot defend the case effectively.

8.The 1st respondent died. Though notice has been served on the respondents 2 to 5 and their names are printed in the cause list, there is no representation for them either in person or through counsel.

9.Heard the learned counsel appearing for the petitioner and perused the entire materials available on record.

10.From the materials on record, it is seen that the present I.A. is filed for permission to file additional written statement and counter-claim. The defendants have right to file counter claim as per Order VIII Rule 6-A of C.P.C. The said Rule reads as follows:

Order VIII Rule 6-A:

“6-A. Counter-claim by defendant_(1) A defendant in a suit may, in addition to his right of pleading a set-off under rule 6, set up, by way of counter-claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not:

Provided that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the Court.

(2) Such counter-claim shall 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.

(3) The plaintiff shall be at liberty to file a written

statement in answer to the counter-claim of the defendant within such period as may be fixed by the Court.

(4) The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints.”

As per Sub-rule (1) of Rule 6-A, the defendant has right to file a counter-claim, if cause of action has arisen before filing of the suit or after filing of the suit, but the defendant must file counter-claim before he has filed his defence or before the time limit for delivering his defence has expired. In the present case, the petitioner and the respondents 1 to 3 have already filed written statement and they did not make any counter-claim against the 4th respondent.

11. The present issue was referred to a larger Bench, a three Judges Bench of the Hon'ble Apex Court in the judgment reported in **(2020) 2 SCC 394 (Ashok Kumar Kalra v. Wing CDR. Surendra Agnihotri and others)** elaborately considered the stage upto which the defendant is entitled to file a counter-claim. It was held that purpose of introducing

Rule 6-A in Order VIII C.P.C. is to avoid multiplicity of proceedings by driving the parties to file separate suit and dispute between the parties is decided finally. If the provision is interpreted in such a way, to allow belated filing of the counter-claim, the provision itself becomes redundant, the purpose of Rule 6-A will be defeated and will result in miscarriage of justice. The Court must exercise its discretion judicially and it should not cause prejudice to other party. The Hon'ble Apex Court in paragraph 18 of the judgment held as follows:

“18.As discussed by us in the preceding paragraphs, the whole purpose of the procedural law is to ensure that the legal process is made more effective in the process of delivering substantial justice. Particularly, the purpose of introducing Rule 6-A in Order VIII of the CPC is to avoid multiplicity of proceedings by driving the parties to file separate suit and see that the dispute between the parties is decided finally. If the provision is interpreted in such a way, to allow delayed filing of the counter-claim, the provision itself becomes redundant and the purpose for which the amendment is made will be defeated and

ultimately it leads to flagrant miscarriage of justice. At the same time, there cannot be a rigid and hyper-technical approach that the provision stipulates that the counter-claim has to be filed along with the written statement and beyond that, the Court has no power. The Courts, taking into consideration the reasons stated in support of the counter-claim, should adopt a balanced approach keeping in mind the object behind the amendment and to subserve the ends of justice. There cannot be any hard and fast rule to say that in a particular time the counter-claim has to be filed, by curtailing the discretion conferred on the Courts. The trial court has to exercise the discretion judiciously and come to a definite conclusion that by allowing the counter-claim, no prejudice is caused to the opposite party, process is not unduly delayed and the same is in the best interest of justice and as per the objects sought to be achieved through the amendment. But however, we are of the considered opinion that the defendant cannot be permitted to file counter-claim after the issues are framed and after the suit has proceeded substantially. It would defeat the cause of justice and be detrimental to the principle of speedy

justice as enshrined in the objects and reasons for the particular amendment to CPC.”

12.The three Judges Bench of the Hon'ble Apex Court after considering the issues elaborately in paragraph 21 of the judgment reported in **(2020) 2 SCC 394 cited supra**, held that outer limit for filing counter-claim is pegged till the issues are framed. The Hon'ble Apex Court has also enumerated certain facts, which have to be considered by the Court in the application filed for leave to file counter-claim. Paragraph 21 reads as follows:

“21. We sum up our findings, that Order VIII Rule 6-A CPC does not put an embargo on filing the counter-claim after filing the written statement, rather the restriction is only with respect to the accrual of the cause of action. Having said so, this does not give absolute right to the defendant to file the counter-claim with substantive delay, even if the limitation period prescribed has not elapsed. The court has to take into consideration the outer limit for filing the counter-claim, which is pegged till the issues are framed. The court in such cases have the discretion to

entertain filing of the counter-claim, after taking into consideration and evaluating inclusive factors provided below which are only illustrative, though not exhaustive:

- (i). Period of delay.
- (ii). Prescribed limitation period for the cause of action pleaded.
- (iii). Reason for the delay.
- (iv). Defendants assertion of his right.
- (v). Similarity of cause of action between the main suit and the counter-claim.
- (vi). Cost of fresh litigation.
- (vii). Injustice and abuse of process.
- (viii). Prejudice to the opposite party.
- (ix). And facts and circumstances of each case.
- (x). In any case, not after framing of the issues.”

13.In the present case, the issues in the suit were framed by the learned III Additional District Judge, Pondicherry, on 03.12.2013 and the present petition is filed only on 06.02.2015. In view of the same, the judgment of the Hon'ble Apex Court referred to above is squarely applicable to the facts of the present case and the petitioner is not entitled

to the relief sought for in the application.

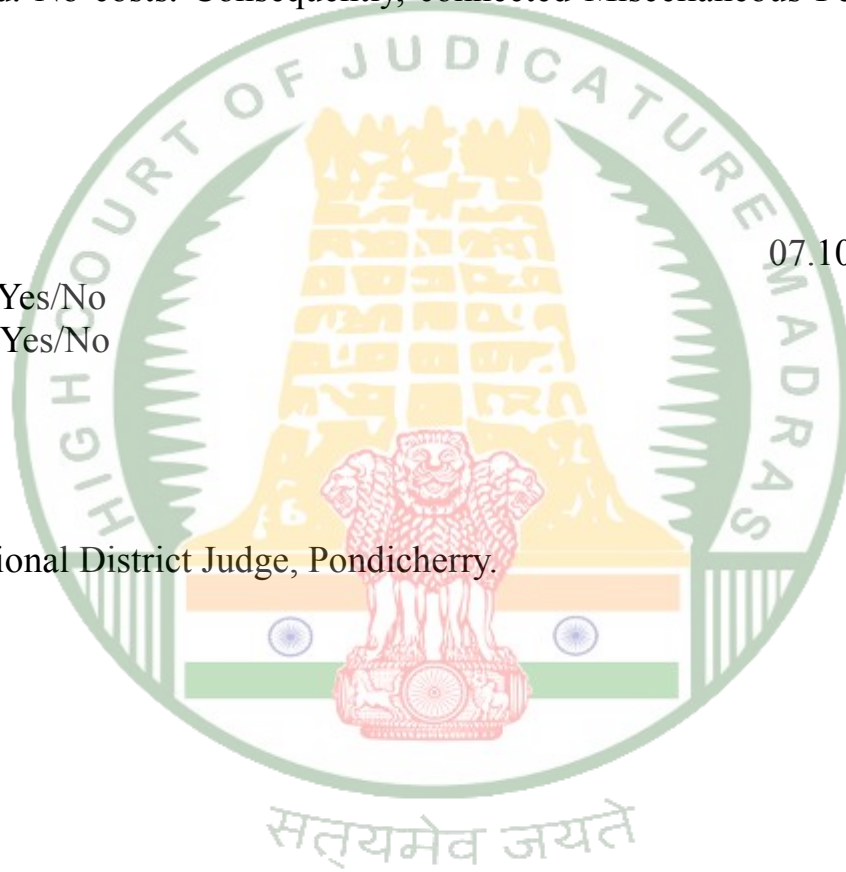
14.For the above reasons, the Civil Revision Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No
Internet: Yes/No
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To

III Additional District Judge, Pondicherry.

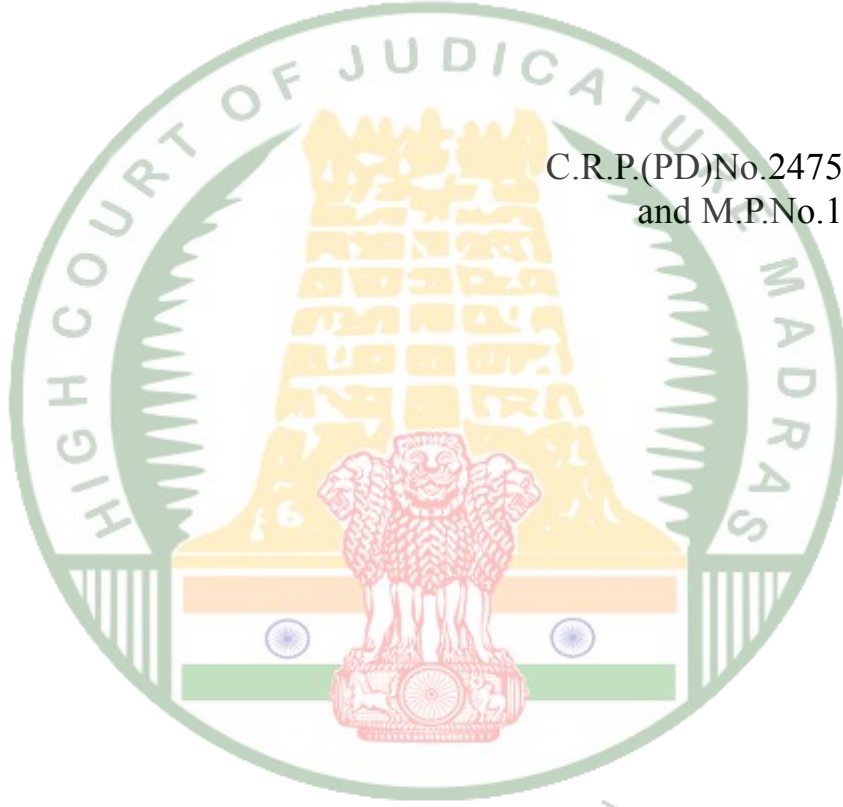


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V.M.VELUMANI,J.

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