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C.R.P. (PD) No. 1063 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **22.12.2021**

CORAM:

THE HONOURABLE Mr. JUSTICE S.S.SUNDAR

C.R.P. (PD) No.1063 of 2019
and C.M.P. No.6985 of 2019

1. A.Kalaiselvan
2. C.Premkumar

...Petitioners

Versus

Chitra

...Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order passed by the Sub-Ordinate Judge at Poonamallee, Chennai – 600 056, in I.A. No.788 of 2018 in O.S. No.240 of 2010, dated 22.11.2018.

For Petitioners	: Mr. A.Ramaswamy
For Respondent	: Mr. M.Karthikeyan

ORDER

This Civil Revision Petition is directed against the order passed by the learned Sub-Judge, Poonamallee in I.A. No.788 of 2018 in O.S. No.240 of 2010.



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2. The defendant in the suit in O.S. No. 240 of 2010 is the revision petitioner before this Court challenging the order passed by the learned Subordinate Judge, Poonamallee, in I.A. No.788 of 2018 in O.S. No.240 of 2010, dismissing the counter claim raised by the second defendant in the suit.

3. Brief facts that are necessary for the disposal of this Civil Revision Petition are as follows:

The respondent in this Civil Revision Petition filed a suit in O.S. No.240 of 2010 before the Sub Court, Poonamallee, for declaration that the plaintiff is the owner of the property and for consequential injunction. The suit was originally filed against one Kalaiselvan who has been shown as defendant in his individual capacity. The defendant filed a written statement stating that as per the general Power of Attorney executed by one Mr. C.Premkumar, the defendant is in peaceful possession and maintaining the scheduled mentioned property till date. The stand taken by the defendant in the written statement triggered the respondent plaintiff to implead the said C.Premkumar as the second defendant in the suit. Hence, the respondent filed I.A. No.595 of 2015 to implead the second defendant as party in the suit and to rank him as second defendant. The said application was allowed even though it was formally



objected by the first defendant in the suit. Later the plaint was amended showing the newly impleaded second defendant as a party to the suit. It was only after carrying out the amendment in the year 2018, summons were sent to the second defendant. On receipt of notice, the second defendant filed a counter claim under Order 8 Rule 6 A C.P.C. It is to be noted that the second defendant was represented by the Power of Attorney agent. In the counter claim, the second defendant prayed for a declaration to declare the second defendant as absolute owner of the suit property and for mandatory injunction against the respondent to remove the super structure alleged to have been constructed by the plaintiff in the ground and first floor of the suit scheduled property. The said application was opposed on the ground that it is barred by limitation and on other grounds. The lower Court dismissed the application mainly on the ground that the counter claim which was filed only on 12.08.2018 by the second defendant who represented by Power of Attorney agent / first defendant, is not maintainable. Aggrieved by the same, this Civil Revision Petition is preferred by the defendant.

4. Learned counsel for the petitioners submitted that the trial Court rejected the counter claim without applying judicial mind and that the trial Court failed to consider the merits of the counter claim. It is submitted by the



learned counsel that the decision of the lower Court is against the scope of

WEB ORDER 8 Rule 6A C.P.C.

5. In the present case, this Court is not convinced with the reasons stated by the lower Court to reject the counter claim. The trial Court was of the view that the second defendant who was already represented by Power of Attorney agent namely the first defendant can not file counter claim several years after the plaint. The conclusion of the lower Court is basically wrong and absurd. The suit was filed against the first defendant originally in his individual capacity. Though it is contended that the first defendant was in possession of the property as the Power of Attorney agent of the second defendant, the suit cannot be taken as one filed against the second defendant. The lower Court having allowed the application to implead the second defendant cannot jump into the conclusion that the presence of first defendant would be considered as the presence of the second defendant. This Court need not go into the factual details regarding the sustainability of the counter claim on merits. However, the counter claim cannot be rejected on the ground that the second defendant who has filed counter claim was represented by his Power of Attorney agent / first defendant who was already on record. The order of lower Court is therefore erroneous and unsustainable in law.



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6. Accordingly, the Civil Revision Petition is **dismissed**. No costs. Consequently, connected miscellaneous petition is closed. However, the disposal of this Civil Revision Petition cannot be taken as an order accepting the counter claim. It is open to the respondent to raise his objection with regard to the merits of the counter claim at the time of the trial.

Learned counsel on either side have made a joint request to direct the lower Court to dispose of the suit within a time frame. Considering the fact that the pleadings are complete, the learned Subordinate Judge, Poonamallee, is directed to expedite the trial as expeditiously as possible preferably within a period of four months from the date of receipt of a copy of this order.

22.12.2021

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Speaking Order / Non-Speaking Order
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The Subordinate Judge, Poonamallee.
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S.S.SUNDAR, J .,

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[Virtual Mode]

WEB C S.S.SUNDAR, J.,

Today the above Civil Revision Petition is posted under the caption "For Being Mentioned" at the instance of the learned counsel for the revision petitioners.

2.Learned counsel for the petitioners submitted that this Court on 22.12.2021 had allowed the above Revision Petition. However, on verifying the Case Status in the website, it was found that the above Revision Petition was dismissed by this Court. Learned counsel further submitted that this Court was of the view that the order of the Trial Court was erroneous and hence, was inclined to allow the Revision. But, due to inadvertence, it has been shown as "dismissed" in the website and prays for clarification.

3.This Court perused the order passed in the above Revision dated 22.12.2021. Though this Court was of the considered view that the order of the Trial Court was erroneous and unsustainable in law, it is seen in paragraph No.6 of the said order that due to inadvertence, it has been wrongly mentioned as "dismissed" in stead of "**allowed**".

4.Hence, this Court clarifies that the above Civil Revision Petition stands **allowed**.

5.Registry is directed to make necessary correction in paragraph No.6 of the order dated 22.12.2021 and issue order copy on **05.01.2022** as it is submitted by the learned counsel that the next date of hearing before the Trial Court is on **07.01.2022**.

04.01.2022

AP

Internet: Yes