



C.R.P(PD)No.2338 of 2021
and CMP.No.17708 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(PD)No. 2338 of 2021

and

CMP.No.17708 of 2021

K.Poornachandran

..Petitioner

Vs.

P.Thiyagarajan

..Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 02.08.2021 made in IA.No.03 of 2021 in OS.No.218 of 2018 on the file of the II-Additional District Munsif Court, Erode.

For Petitioner : Mrs.Shasi for Mr.M.Guruprasad

ORDER

This revision is directed against the order rejecting an application filed by the defendant seeking to introduce a counter claim.



C.R.P(PD)No.2338 of 2021
and CMP.No.17708 of 2021

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2.The suit was filed in the year 2018 seeking permanent injunction restraining the defendant from interfering with the plaintiff's possession of the suit property. Even in the original written statement, the defendant had claimed that the plaintiff had trespassed over a portion of the defendant's property during the 1st week of May, 2017. Issues were framed and the trial had commenced. The plaintiff's evidence is almost complete. At this juncture, the defendant had come up with the instant application in IA.No.3 of 2021 seeking to introduce the counter claim. The prayer in the counter claim is for demarcation of the property and for injunction restraining the plaintiff from interfering with the peaceful possession and enjoyment of the counter claim properties by the defendant. The said application was opposed on the ground of delay and maintainability.

3.The learned Trial Judge, upon consideration of the facts and circumstances as well as the law relating to filing of counter claims held that the counter claim, which is based on a cause of action that took place in May 2017 cannot be maintained after trial had commenced. On the above premise, the learned Trial Judge dismissed the application.



C.R.P(PD)No.2338 of 2021
and CMP.No.17708 of 2021

WEB COPY

4.I have heard Mrs.Shasi, learned counsel appearing for the petitioner.

5.The learned counsel appearing for the petitioner would submit that the rejection of this application would bar the defendant from even instituting a fresh suit, which would still be in time, since the cause of action had arisen in May 2017, I do not see any justification for apprehension of the learned counsel. The learned Trial Judge has only held that this counter claim is barred, he has not decided on the right of the defendant to institute a separate suit in respect of his cause of action that were subject matter of the counter claim.

6.The learned Trial Judge has concluded that the properties in the suit and the properties in the counter claim are different but they are adjacent properties. I therefore, do not see any reason to interfere with the conclusion of the Trial Judge except to observe that the dismissal of this application will not bar the defendant from filing a separate suit in respect of



C.R.P(PD)No.2338 of 2021
and CMP.No.17708 of 2021

his right over the properties that were subject matter of the counter claim.

This civil revision petition therefore, fails and it is accordingly dismissed.

No costs. Consequently, connected miscellaneous petition is closed.

22.11.2021

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C.R.P(PD)No.2338 of 2021
and CMP.No.17708 of 2021

To:-

The II-Additional District Munsif Court,
Erode.



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C.R.P(PD)No.2338 of 2021
and CMP.No.17708 of 2021

R.SUBRAMANIAN, J.

KKN

C.R.P(PD)No. 2338 of 2021
and
CMP.No.17708 of 2021

22.11.2021