



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.04.2021

Pronounced on : 18.06.2021

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

WEB COPY

**CRP (MD) .No. 164 of 2021
and CMP (MD) No. 995 of 2021**

1. M. Loorthuammal
2. S.R. Fathima : Petitioner

Vs.

S.R. Joseph Michael Fedric : Respondent

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order passed in I.A.No.4 of 2019 in O.S.No.56 of 2014 dated 07.09.2020 on the file of I Additional District Court, Tirunelveli.

For petitioner : Mr. H. Arumugam
For Respondent : Mr. P. Thiyagarajan

ORDER

This Civil Revision is directed against the order passed in I.A.No. 4 of 2019 in O.S.No..56 of 2014 dated 07.09.2020 on the file of I Additional District Court, Thirunelveli, allowing the petition filed under Order 8 Rule 9 CPC.

2.The revision petitioners are the plaintiffs and the respondent is the 8th defendant in O.S.No. 56 of 2014 on the file of the I Additional District Court, Thirunelveli.

3.For the sake of convenience and brevity, the parties hereinafter will be referred as per their ranking/status before the trial Court.

4. Admittedly, the plaintiffs 1 and 2 and the defendants 1 to 9 are the brothers and sisters and they are the sons and daughters of Soosai Rayappan Pattangkattiyar and Marisesuvadiyal. The plaintiffs, alleging that their parents had died intestate and hence, the plaintiffs and the defendants 1 to 9 are entitled to get 1/11 shares each in the suit properties, filed the above suit for partition. The third defendant has taken a defence that Marisesuvadiyal has executed a registered Will dated 21.03.1990 bequeathing all the properties to the third defendant and the 8th defendant, that the plaintiffs and the other defendants are not entitled to claim any share in the properties, that the plaintiffs have suppressed the sale transactions and the existence of houses in



third schedule of the suit property, that they have also suppressed the release deeds executed by the defendants 1, 4, 5, 7 and 9 in favour of the third defendant and that the suit is liable to be dismissed. The third defendant has filed a separate written statement stating that the written statement filed by the third defendant (wrongly mentioned as second defendant) can be treated as part of his written statement.

5. When the suit was in part heard stage, the 8th defendant has filed a petition under Order 8 Rule 9 CPC seeking permission to file the additional written statement in I.A.No. 4 of 2019 along with additional written statement. But, it is pertinent to note that the proposed additional written statement is shown to be filed under Order 8 Rule 1, 6, 6 A(1), 6(B), 9 and Section 151 CPC. The 8th defendant, through the above petition, has sought permission of the Court for not receiving the additional written statement, but additional written statement cum counter claim.

6. The 8th defendant, in the affidavit filed in support of his petition in I.A.No.4 of 2019, alleging that he was working in various parts of India and also in Dubai for several years, that his brother 3rd defendant had agreed to take care of the pending case on his behalf also, that he had subscribed his signature in the vakalat and in blank papers so as to file the written statement, that the copies of the plaint and the written statement filed were not at all furnished to him by his brother, that in January 2019, he came to know that written statement and additional written statement were filed on behalf of the 8th defendant for name sake, that the third defendant has suppressed the execution of the Will by the mother and the release deeds by the defendants 4 and 7, that he came to know that the third defendant had sold 54.50 cents of lands fraudulently, that all the above fraudulent sales are to be declared as null and void and that therefore, he was forced to file the additional written statement-cum- counter claim along with the above application for receiving the same.

7. It is the specific case of the plaintiffs that the 8th defendant has filed his separate additional written statement on 27.08.2015, that subsequently, he filed an additional written statement jointly with the third defendant on 14.06.2017, that the 8th defendant has filed a petition seeking permission to examine the witnesses by filing an affidavit in support of the same, that the 8th defendant is fully aware of the entire court proceedings and that when the case was posted for the evidence of the defendants 3 and 8, the above petition came to be filed to drag on the proceedings and in collusion with the third defendant.

8. As rightly contended by the learned counsel for the revision petitioners, the 8th defendant in his affidavit filed in support of the above petition, has levelled serious allegations against his brother, third defendant. But admittedly, he was not made a party



in the above petition. Since the 8th defendant has raised so many allegations, it is for the third defendant to answer those allegations and charges.

9. Rule 14 of the Civil Rules of Practice contemplates that if any application is made by the defendant, notice thereon shall be given to all the parties to the suit. Generally, if a plaintiff files an Interlocutory Application, he has to implead all the defendants as respondents in that petition. Similarly, if any one of the defendant files a petition, the impleadment of the plaintiff alone is not sufficient and he has to implead all other defendants as respondents, as all the parties to the lis must know what is going on in the suit proceedings. No doubt, there are certain exceptions to the general rule and in the petitions such as, filed under Order 7 Rule 11 CPC for rejection of plaint, the impleadment of all other defendants may not be necessary. In the case on hand, as already pointed out, the 8th defendant has filed the above petition only against the plaintiffs and thereby, excluding the other defendants, mainly the 3rd defendant, against whom, he raised so many allegations and basing on which, counter-claim was sought to be filed. Considering the above, as rightly contended by the learned counsel for the revision petitioners, the very filing of the petition by the respondent and the numbering of the petition by the Court are not proper and not in accordance with law.

10. As already pointed out, the 8th defendant has sought permission to file the additional statement-cum-counter claim and whereunder, he has claimed more than 9 prayers which includes to declare that 8 sale deeds executed between the period 1983 and 2009 are invalid. Order 8 Rule 6(A) to 6 (G) of CPC deal with counter-claim of the defendants. No doubt, in order to avoid multiplicity of proceedings, Rule 6(A) was inserted in the Code of Civil Procedure vide Amendment Act, 1976 and it is necessary to refer the same.

"6A. 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 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 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."

11. Considering the above, it is clear that the counter claim should relate to the cause of action, which may accrue before or even after filing the suit and that if the cause of action in the counter claim relates to one accrued after filing of the suit, it should be one accruing before the filing of the written statement or the time given for the same. In the impugned order, the learned District Judge has referred two Judgments relied on by the learned counsel for the plaintiffs and the first one is the recent Judgment of the Hon'ble Supreme Court reported in **2020 (2) MLJ 189 (SC) Ashok kumar Kalra Vs. Wing Cdr. Surendra Agnihotri and others**. A three Judge Bench of Hon'ble Supreme Court, while answering the reference and clarification sought by the Division Bench of the Hon'ble Supreme Court as to the interpretation of Order 8 Rule 6A of CPC. The relevant paragraph is extracted hereunder:

"20. We sum up our findings, that Order VIII Rule 6A of the 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."



12.Considering the above, it is very much clear that the counter claim has to be filed before framing of the issues and the same cannot be allowed, in any case, after framing of the issues. In the case on hand, admittedly, the plaintiffs side evidence was already completed and the suit stands posted for the evidence of the defendants 3 and 8. Applying the legal dictum laid down by the Hon'ble Apex Court, the counter claim of the 8th defendant cannot be received, as the trial was in part heard stage and more particularly, pending for the defendant's side evidence.

13. The learned District Judge, after referring the above Judgment of the Full Bench of the Hon'ble Supreme Court, I am at loss to understand as to how he allowed the counter claim in a casual manner. The reasons assigned by the learned District Judge that an opportunity should be given to the 8th defendant to contest the case on merits and also the fact that the plaintiffs have an opportunity to cross examine the defendants in respect of the averments raised in the additional written statement and thereby allowing the petition are not proper and very much against the position of law settled by the Hon'ble Supreme Court. As rightly pointed out by the learned counsel for the revision petitioners, it is pertinent to mention that the learned trial Judge has not even referred, the word "counter claim" anywhere in the order and he has proceeded and decided the petition as if the additional written statement was sought to be received and the impugned order was passed mechanically.

14. Considering the above, this Court has no hesitation to say that the application filed under Order 8 Rule 9 CPC, for receiving the additional written statement-cum-counter claim is legally not sustainable and consequently, the impugned order, dated 07.09.2020 passed in I.A.No. 4 of 2019 in O.S.No. 56 of 2014 is liable to be set aside and is set aside.

15. In the result, the Civil Revision Petition is allowed and the impugned order passed in I.A.No.4 of 2019 in O.S.No.56 of 2014, dated 07.09.2020 is set aside and the petition in I.A.No.4 of 2019 is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

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Sub Assistant Registrar(CS)

trp/das



To
I Additional District Court, Tirunelveli.

Copy to
The Section Officer,V.R.Section,
Madurai Bench of Madras High Court, Madurai.(2 copies)

+1 CC to M/s.P.THIYAGARJAN, Advocate (SR-19574[F] dated 18/06/2021)

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-19719[F] dated 21/06/2021)

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