



C.R.P.Nos.483 and 817 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.10.2022

PRONOUNCED ON : 28.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.Nos.483 and 817 of 2022
and
C.M.P.Nos.2536 and 4108 of 2022

C.R.P.No.483 of 2022:

1.P.Sreenivasulu Reddy
2.Suneelamma

... Petitioners

VS

1.U.Vishwanatha Reddy
2.N.Cheluma Murthy
3.B.Radha Ramaniah
4.N.Venku Reddy
5.P.Shyam Kumar Reddy

... Respondents

Prayer: Civil Revision Petition is filed under Section 227 of the Constitution of India, praying to set aside the fair order and decreetal order in I.A.No.3 of 2020 in O.S.No.220 of 2014 on the file of the Additional Sub-Judge, Hosur, dated 15.12.2021.

For Petitioners : Mr.V.Raghavachari



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For Respondent : Mr.P.T.Perumal (for R1)
: Ms.K.Aparnadevi
for Mr.P.Subha Reddy (for R2)
: R3-Left
: Mr.P.Satheesh Kumar (for R4 and R5)

C.R.P.No.817 of 2022:

1.P.Sreenivasulu Reddy
2.Suneelamma

... Petitioners

vs

1.U.Vishwanatha Reddy
2.N.Cheluma Murthy
3.B.Radharamaniah
4.N.Venku Reddy
5.P.Shyam Kumar Reddy
6.N.Lalitha Murthy
7.A.Harish

... Respondents

Prayer: Civil Revision Petition is filed under Section 227 of the Constitution of India, praying to set aside the fair order and decreetal order in I.A.No.1 of 2019 in O.S.No.220 of 2014 on the file of the Additional Sub-Judge, Hosur, dated 15.12.2021.

For Petitioners : Mr.V.Raghavachari

For Respondent : Mr.P.T.Perumal (for R1)



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: Ms.K.Aparnadevi
for Mr.P.Subha Reddy (for R2 and R6)

: Mr.P.Satheesh Kumar (for R4 and R5)

: Mr.M.Loganathan (for R7)

COMMON ORDER

The Civil Revision Petition in C.R.P.No.817 of 2022 is filed by the revision petitioners/2nd and 3rd defendants, challenging the order dated 15.12.2021 passed by the Court below dismissing the petition in I.A.No.1 of 2019 filed by the revision petitioners seeking leave of the Court to file counter claim in the suit for injunction filed by the 1st respondent.

2. The Civil Revision Petition in C.R.No.483 of 2022 is filed by the revision petitioner challenging the order dated 15.12.2021 passed by the Court below allowing the application in I.A.No.3 of 2020 filed by the 1st respondent seeking leave of the Court to withdraw the suit for injunction filed by him.



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3. The 1st respondent herein filed a suit for permanent injunction restraining the 2nd respondent herein/1st defendant from alienating the suit properties. According to the 1st respondent, he, revision petitioners and the other respondents entered into a partnership in the name and style of 'M/s.CITI FARMS AND RESORTS' for doing real estate development business. The 1st respondent further averred that each of the partners invested certain percentage of partnership capital and the suit properties were purchased through the above said partnership firm. It was submitted that the 2nd respondent/1st defendant was permitted to act as Managing Partner of the firm and he tried to alienate the properties of the firm to obtain wrongful gain and consequently, the 1st respondent was constrained to file above said suit seeking permanent injunction against the 2nd respondent herein from alienating the suit properties. Since the petitioners and other respondents also having interest in the partnership, they were also arrayed as parties/defendants in the suit.

4. The petitioners filed a written statement and resisted the suit by raising a plea that no partner can alienate the property of the partnership firm



as if it belonged to him individually. The exclusive title and possession of the

1st respondent was denied in the written statement. It was also stated that since the dispute revolves around the properties of the firm, the rights of the parties has to be determined under the partnership deed and not by general law. The petitioners specifically raised a point that partnership deed provided for settlement of the dispute among partners by arbitration and on that ground, the plaint was liable to be rejected. It was also submitted that the 1st respondent himself executed various sale deeds in respect of the properties of the firm in his individual capacity by undervaluing the property.

5. The written statement of the revision petitioners were filed on 16.12.2015 and issues in the suits were settled on 08.11.2018. Thereafter, the revision petitioners have come up with a petition seeking leave of the Court to file counter claim in I.A.No.1 of 2019. The said petition was filed on 13.08.2019. By way of counter claim the revision petitioners sought for nearly 8 reliefs. The 1st relief sought for by the revision petitioners was a declaration that they were entitled to 1/5th share in the suit properties being the trading asset of the partnership firm. The 2nd prayer was for rendition of



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accounts by respondents herein with regard to the partnership business. By prayers 3 to 8 in the counter claim the revision petitioners sought for a declaration that various sale deeds executed by the respondents 1, 2 and 6 herein in favour of the respondents 1, 6, 5 and 7 on various dates from 01.10.2018 to 26.10.2018 were void *ab initio*.

6. The 1st respondent on his part filed a petition in I.A.No.3 of 2020 seeking leave of the Court to withdraw the suit as he was unable to get along with the case was on the ground of illness.

7. By orders impugned in these revisions, the Court below dismissed the petition filed by the revision petitioners seeking leave of the Court to raise counter claim and allowed the petition filed by the 1st respondent seeking leave of the Court to withdraw the suit. Aggrieved by the same, the petitioners are before this Court.

8. Mr.V.Raghavachari, learned counsel for the petitioners assail the order passed by the Court below and submitted that the dismissal of the



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petition for raising counter claim on the ground that counter claim cannot be filed subsequent to the settlement of the issues is contrary to the judgement rendered by the Hon'ble Apex Court in ***Ashok Kumar Kalra vs. Wing CDR.Surendra Agnihotri*** reported in ***(2020) 2 SCC 394***. The learned counsel by drawing the attention of this Court to paragraph 18 of the said judgment, submitted that the defendant cannot be permitted to file counter claim after issues are framed and after the suit has proceeded substantially, but in the case on hand, the trial in the suit has not been commenced and therefore, the suit has not been proceeded substantially and consequently, the reasoning given by the Trial Court for dismissing the petition is erroneous.

9. The learned counsel further submitted that though the 1st respondent prayed for a bare injunction, the reading of the averments contained in the plaint would indicate that the suit is regarding partnership business and hence, the revision petitioners who are defendants 2 and 3, being partners of the firm, can also be treated as plaintiffs.



10. On the basis of the pleadings, the learned counsel requested the Court to transpose the 2nd and 3rd defendants as plaintiffs and permit the revision petitioners to pursue the suit by refusing leave to 1st respondent to withdraw the suit.

11. Per contra, Mr.P.T.Perumal, learned counsel appearing for the 1st respondent supported the order passed by the Court below by relying on *Ashok Kumar Kalra* case cited supra wherein the Hon'ble Apex Court categorically held that outer limit for filing counter claim is date of settlement of issues. The learned counsel further submitted that the prayer Nos.3 to 8 made in the counter claim relates to sale deed which came into existence subsequent to the delivery of the defence by the revision petitioners and consequently, in view of the clear wordings in Order VIII Rule 6A (1) of the Civil Procedure Code, the revision petitioners are not entitled to maintain counter claim in respect of cause of action that accrued subsequent to the filing of the written statement. The learned counsel further submitted that the suit filed by the 1st respondent is only for bare injunction and it cannot be treated as a suit seeking any relief concerning partnership business.



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Therefore, the petitioners herein/defendants 2 and 3 cannot be treated as plaintiffs.

12. Heard the arguments of Mr.V.Raghavachari, learned counsel for the revision petitioners in both CRPs, Mr.P.T.Perumal, learned counsel for the 1st respondent in both CRPs, Ms.K.Aparnadevi, learned counsel for the 2nd respondent in both CRPs and 6th respondent in C.R.P.No.817 of 2022, Mr.P.Satheesh Kumar, learned counsel for the 4th and 5th respondents in both CRPs and Mr.M.Loganathan, learned counsel for the 7th respondent in C.R.P.No.817 of 2022 and perused the typed-set of papers.

13. The 1st legal question that arises in this revision is whether counter claim filed by the revision petitioners subsequent to settlement of issues is maintainable or not.

14. The law in this respect is exhaustively considered by the Three Member Bench of the Hon'ble Apex Court in ***Ashok Kumar Kalra vs. Wing CDR.Surendra Agnihotri*** reported in ***(2020) 2 SCC 394***. The learned counsel



for the petitioners by relying on paragraph 18 of the said judgment submitted that the defendant cannot be permitted to file counter claim only in case where the issues have been framed and the suit has been proceeded substantially.

15. It was submitted that in the present case, the trial has not been commenced and when no recording of evidence is commenced, it cannot be said that the suit has been substantially proceeded. But however, in paragraph 21 of the said judgment, the Hon'ble Apex Court in more than two places emphatically held that outer limit for filing counter claim is the date of framing of issues. The relevant observation of the Hon'ble Apex Court is as follows:-

“21. We sum up our findings, that Order VIII Rule 6A of the CPC does not put an embargo on filing the counterclaim 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 counterclaim 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 counterclaim, which is



pegged till the issues are framed. The court in such cases have the discretion to entertain filing of the counterclaim, 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. Defendant's assertion of his right.*
- v. Similarity of cause of action between the main suit and the counterclaim.*
- 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."*

(emphasis supplied)

16. The learned counsel for the petitioners pointed out paragraph 60 of the said judgement wherein it was held that in exceptional circumstances the counter claim may be permitted to be filed after a written statement till date of stage of commencement of recording of evidence. However, in paragraph 21 of the said judgement, Two Hon'ble Judges forming majority opinion emphatically held that the outer limit for filing counter claim would be date



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of framing of issues. Therefore, I hold the reason given by the Trial Court that counter claim filed by the respondents subsequent to the settlement of issues is not maintainable is correct and in accordance with law laid down by Apex Court in **Ashok Kumar Kalra** case (cited supra).

17. It is also seen that the prayers 3 to 8 made in the counter claim are relating to the sale deeds which came into existence subsequent to the delivery of defence by the revision petitioners.

18. In view of the clear wording in Order VIII Rule 6A (1) of the Civil Procedure Code, counter claim cannot be permitted to be filed in respect of cause of action arose subsequent to the filing of the written statement. Hence, 6 prayers out of 8 prayers made in the counter claim filed by the revision petitioners are not maintainable, as cause of action for the same arose subsequent to delivery of defence by petitioners.

19. In view of the exclusion of limitation period from 15.03.2020 to 28.02.2022 due to outbreak of Covid-19, as per the order passed by the



Hon'ble Apex Court, even today, the petitioners are entitled to maintain a separate suit for the relief sought for in the counter claim. In that case, by refusing to file counter claim the revision petitioners are not at all prejudiced. When the order impugned in this revision does not cause any prejudice to the person applying for revision, this Court is not bound to interfere with the order impugned even assuming it is erroneous.

20. In the case on hand, as already held the counter claim raised by the revision petitioners is not maintainable and the order passed by the Court below refusing leave to file counter claim is perfectly in accordance with law. The 1st respondent filed a simple suit for bare injunction restraining the 2nd respondent from alienating the suit properties. Now, by pointing out his health condition, he wants to withdraw the suit.

21. Having regard to the prayer in the suit it is upto 1st respondent/plaintiff decide whether the suit is to be pursued or not. When he is not willing to pursue the suit, the Court below justified in granting leave to withdraw the suit especially when the grant of such leave does not cause



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prejudice to the revision petitioners.

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22. It is always open to the revision petitioners to file separate suit in respect of the remedies sought for by them in the counter claim.

23. In view of the discussions made above, I do not find any illegality or irregularity in the order passed by the Court below warranting interference by this Court.

24. Accordingly, the Civil Revision Petitions are dismissed. In the facts and circumstances of the case, there shall be no order as to costs. Consequently, the connected civil miscellaneous petitions are closed.

28.11.2022

Index : Yes / No

Speaking Order : Yes / No

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To

WEB COPY The Additional Sub-Judge, Hosur.



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S.SOUNTHAR, J.

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