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CRP.No.1586 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

CRP.No.1586 of 2019 and
CMP.No.10391 of 2019

1.Kanipriya
2.Poongodi
3.Karthiga
4.Saravanadevi

... Petitioners

Vs.

P.Murugesan

... Respondent

PRAYER: Civil Revision petition is filed under Article 227 of the Constitution of India praying to set aside the order and decretal order in IA.No.168 of 2018 in OS.No.163 of 2018 on the file of the District Munsif cum Judicial Magistrate, Vazhapadi dated 14.11.2018.

For Petitioners : M/s.R.Poornima

For Respondent : Ms.Jayashree Dharbar
for Mr.Karanand Uday

ORDER

This civil revision petition has been filed to set aside the order and decretal order in IA.No.168 of 2018 in OS.No.163 of 2018 on the file of the District Munsif cum Judicial Magistrate, Vazhapadi dated 14.11.2018,



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thereby dismissed the petition seeking permission to receive additional written statement with counter claim.

2. The respondent filed suit for declaration and permanent injunction on 19.08.2014. The petitioners filed written statement. Thereafter on 21.06.2017, the petitioners filed petition seeking permission to receive additional written statement along with counter claim. It was dismissed on the ground that the petitioners challenged the release deed beyond three years.

3. The learned counsel for the petitioners would submit that initially the suit was filed before the District Munsif Court, Salem and subsequently it was transferred to Additional District Munsif Court-I, Salem. While pending the said suit, the petitioners filed application to receive additional written statement along with counter claim. Thereafter, the main suit itself was transferred to the file of the District Munsif cum Judicial Magistrate, Valapadi. In the meanwhile, the petitioners filed present application on 21.06.2017. Therefore, within a period of three years, the petitioners filed counter claim. Therefore, it is maintainable and not barred by limitation.



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4. Per contra, the learned counsel for the respondent would submit that the suit is of the year 2014. Immediately, the petitioners filed written statement and simply denied the averments made in the plaint and no valid defence was put forth by them. After period of three years, the petitioners have come forward with this petition seeking permission to file additional written statement. In fact, the respondent categorically averred in the plaint that the suit property was derived by him by way of release deed in his favour and she relinquished her share in the suit property. Even then, the petitioners did not even whisper about the suit property in the first written statement. Therefore, the court below rightly dismissed the petition and it does not warrant any interference by this Court.

5. Heard, the learned counsel for the petitioners and the learned counsel for the respondent.

6. After filing the first written statement, the petitioners seek permission to file additional written statement along with counter claim on 21.06.2017 before the learned I Additional District Munsif, Salem. Subsequently, it was transferred to the file of the District Munsif cum Judicial



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Magistrate, Valapadi and renumbered as IA.No.168 of 2018. Therefore, the

trial court recorded that it was filed beyond three years for declaration.

Whereas on perusal of records, it was filed within a period of three years from

the date of initiation of the suit. That apart, the Hon'ble Supreme Court of India

in the case of **Ashok Kumar Kalra Vs. Wing CDR.Surendra Agnihotri and**

Others reported in **(2020) 2 SCC 394**, held as follows:

23. The above discussion lends support to the conclusion that even though Rule 6A permits the filing of a counterclaim after the written statement, the Court has the discretion to refuse such filing if it is done at a highly belated stage. However, in my considered opinion, to ensure speedy disposal of suits, propriety requires that such discretion should only be exercised till the framing of issues for trial. Allowing counterclaims beyond this stage would not only prolong the trial, but also prejudice the rights that may get vested with the plaintiff over the course of time.

24. At the same time, in exceptional circumstances, to prevent multiplicity of proceedings and a situation of effective retrial, the Court may entertain a counterclaim even after the framing of issues, so long as the Court has not started recording the evidence. This is because there is no significant development in the legal proceedings during the intervening period between framing of issues and commencement of recording of evidence. If a counterclaim is brought during



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such period, a new issue can still be framed by the Court, if needed, and evidence can be recorded accordingly, without seriously prejudicing the rights of either party to the suit.

7. Thus it is clear that the counter claim can be made even after commencement of recording the evidence. In exceptional cases, to prevent the multiplicity of proceedings and a situation of effective retrial, the trial court may entertain a counter claim even after framing of issues so long as the court has not started recording the evidence. Therefore, after making counter claim, the trial court can re-frame the issues after giving opportunity to file reply for the additional written statement for the plaintiff to file reply statement for the additional written statement.

8. That apart, Article 58 of the Limitation Act is very clear that to obtain any other declaration, period of limitation is three years from the right to sue first accrues. As such, the petitioners filed additional written statement along with counter claim within a period of three years.

9. In view of the above, the order and decretal order in IA.No.168 of 2018 in OS.No.163 of 2018 on the file of the District Munsif cum Judicial



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Magistrate, Vazhapadi dated 14.11.2018 is set aside and this civil revision petition is allowed. Consequently, connected miscellaneous petition is closed.

There shall be no order as to costs.

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Index :Yes/No

Internet : Yes/No

Speaking order/non-speaking order
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G.K.ILANTHIRAIYAN, J.

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To
The District Munsif cum Judicial Magistrate,
Vazhapadi

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