



CRP (PD) No. 1742 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD) No. 1742 of 2021

And

C.M.P.No. 13508 of 2021

Arumugam

... Petitioner/Petitioner/
1st Defendant

Vs

1. Kandhasamy

... Respondent/Respondent/Plaintiff

2. Subramani

... Respondent/Respondent/2nd Defendant

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 15.02.2021 made in I.A.No. 04 of 2020 in O.S.No. 122 of 2010 on the file of the District Munsif Court, Perundurai, Erode.

For Petitioner : Mr. C.Ramaraj
For Respondents : Mr. T.Sundaravadhanan



ORDER

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The defendant in O.S.No. 122 of 2010, who is aggrieved by the order of the trial Court dismissing his application seeking leave to file a counter claim is on Revision.

2. The suit in O.S.No. 122 of 2010 was filed by the respondents herein seeking declaration of title to the suit properties, permanent injunction in respect of 'A' schedule property or in the alternative for partition of suit 'A' & 'B' schedule properties and allotment of an extent of 91 ½ cents to the plaintiffs and for separate possession.

3. The plaintiffs would claim title to 'A' schedule property on the ground that the plaintiffs had purchased the same under sale deed dated 29.10.1986 for valuable consideration. The defendants resist the suit contending that the vendor of the plaintiffs had not right over the property and the defendant, who has purchased the properties under the registered sale deed dated 15.06.1977. Claiming that the said purchase is with reference to specific boundaries of land which is now situate in S.No. 713/10 the defendants sought for dismissal of the suit.



4. Almost 10 years after the filing of the suit in the year 2020, the defendant came out with the instant application seeking to introduce a counter claim praying for declaration of title of a portion of the land in suit S.No. 713/10. This was resisted by the plaintiff contending that the very application for raising the counter claim is not maintainable as the counter claim itself is barred by limitation. The learned Trial Judge upheld the defence and dismissed the application.

5. Mr. C.Ramaraj, learned counsel appearing for the petitioner would vehemently contend that the trial Court was in error in dismissing the application filed under Order 8 Rule 9 seeking to raise the counter claim. He would also rely upon the Judgment of the Hon'ble Supreme Court in **2020 2 SCC 394 [Ashok Kumar Kalra -Vs- Wing Cdr. Surendra Agnihotri]**. Contending contra, Mr. T.Sundaravadhanan, learned counsel appearing for the respondent would submit that nodoubt the Hon'ble Supreme Court has held that counter claim can be entertained even after framing of issues but at the same time, it should be shown to be in time under the relevant law of limitation. According to the learned counsel, the plaintiff had asserted title



to the suit 'A' schedule property even in the year 2010 if the defendant wanted to assert title and get a declaration of his right over the said properties, it was for the defendant to have filed a counter claim within the time allowed under the Limitation Act i.e., three years from the date of assertion on hostile title by the plaintiff. Having not chosen to do that, according to the learned counsel, the defendant is not entitled to introduce the same by way of counter claim.

6. No doubt, the Hon'ble Supreme Court in *Ashok Kumar Kalra's* case referred supra, held that counter claim can be filed even after framing of issues. As rightly pointed out by the learned counsel for the respondent, the counter claim should be made within a time allowed by law. If the counter claim is barred by limitation, the same can not be received de hors framing of issues or otherwise in the suit.

7. Admittedly, the suit was filed in the year 2010 and the counter claim is now sought to be introduced in the year 2020. I do not think the same could be permitted. The learned Trial Judge had rejected the



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application on the ground of delay as well as on the ground that the trial of the suit is almost over. I am therefore not inclined to interfere with the order of the trial Court. Hence, this Civil Revision fails and accordingly, it is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed. No costs. However, it is open to the defendant to let in evidence to prove his title and succeed in getting the suit dismissed.

10.01.2022

vsg

Index: Yes/No

Speaking order / Non speaking order

To:

1. District Munsif Court, Perundurai.
2. The Section Officer,
VR Section,
Madras High Court, Chennai.



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R.SUBRAMANIAN, J.

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