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C.R.P. No. 2724 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2022

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No. 2724 of 2017
and
C.M.P. No. 12951 of 2017

Kumar,
S/o. Rajamani

... Petitioner

Versus

Rajamani (died)

2. Revathy,
W/o. Late Rajamani

3. Gomathi,
D/o. Late Rajamani

4. Rajalakshmi,
D/o. Late Rajamani

5. Bakkiyalakshmi,
D/o. Late Rajamani

(R2 to R5 brought on record as LRs of deceased sole respondent viz., Rajamani vide court order dated 15.09.2022 made in C.M.P.No.2855 of 2022 in C.R.P. No.2724 of 2017)

... Respondents



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PRAYER : Civil Revision Petition is filed under Art. 227 of Constitution of India, praying to set aside the fair and decreetal order dated 15.12.2016 made in I.A.No. 274 of 2016 in O.S.No. 135 of 2013 on the file of the District Munsif Court, Jayankondam.

For Petitioner : Mr.M.Senthil Vadivu

For Respondents : R1 – died

Ms.A.Salomi for R2 to R5

ORDER

The Revision Petitioner is the defendant in the suit in O.S.No. 135 of 2013 on the file of learned District Munsif, Jayankondam, filed by his father Rajamani for the relief of declaration and consequential injunction in respect of the suit property in Survey No.340/1, Plot No.6 at Jayankondam Town Panchayat, Udayarpalayam Taluk, Ariyalur Dt.

2. The defendant also contested the suit by filing written statement stating that the property was purchased when he was a minor by appointing his mother as guardian and he became absolute owner of the property and



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only at the permission of this defendant, the plaintiff, his wife and his daughter are residing in that house. Now, when the plaintiff wanted to share the property, he has caused interference. So, after filing written statement, the revision petitioner filed an application in I.A.No. 274 of 2016 to receive the counter claim. The said application was strongly objected by the plaintiff stating that the application was belated one. After filing the written statement, the said application was filed to receive the counter claim, as such is not maintainable in law. On considering submissions of both sides, the trial judge held that the counter claim was filed at the time of examination of P.W.1 and also after framing of issues, the said application was filed, as such is not maintainable in law. Accordingly, the said application was dismissed.

3. Challenging the said findings, the defendant preferred the present Civil Revision Petition. The learned counsel for Revision Petitioner submitted that he is having valid right over the suit property. Hence, to prove his claim, he filed the said application to receive counter claim when the trial was not begin. In spite of receiving the same, the trial court



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erroneously dismissed the application, thereby his valid defence in the suit is defeated. Hence, he prayed to set aside the findings of the trial court.

4. The learned counsel for respondents submitted that the counter claim filed by the revision petitioner not within time and after filing of the written statement, he filed the said application nearly about 1 ½ years later and even after framing of issues, it was filed, as such, is not maintainable in law. To support their claim, the learned counsel relied on authority in the case of *Vijay Prakash Jarath vs. Tej Prakash Jarath* reported in **2016 (11) SCC 800**. Hence, he prayed to dismiss this Civil Revision Petition.

5. Heard and considered rival submissions made by learned counsel for revision petitioner as well as respondents and perused the records.

6. On perusal of authority relied on by the learned counsel for respondents, the ratio laid down by the Hon'ble Apex Court in the said judgment is acceptable one. But, on seeing the relief claimed in the suit, based on alleged sale deed, the defendant claiming right over the property



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and his father, who filed the suit contented that he alone purchased the property in the name of minor and a house was also constructed by him. So, to adjudicate the issue between the parties, more particularly, the title of the property, necessary issue is to be framed before the commencement of trial. Now, the counter claim was filed at the time of examination of P.W.1 and all the exhibits were marked. Moreover, based on the alleged sale deed, the Revision Petitioner claiming absolute right over the property. Furthermore, in the counter claim, he contented that his father and mother were permitted to reside in the property. So, he has to necessarily prove his defence. To avoid multiplicity of proceedings, the receiving of counter claim would not cause hardship to the plaintiffs, however, all these defence already raised by the defendant by filing written statement. Hence, the findings rendered by the trial court is liable to be set aside.

7. In the result, this Civil Revision Petition is allowed and the order passed by the trial court in I.A.No. 274 of 2016 is set aside. However, the suit is in the year of 2013 and during the pendency of proceedings, sole plaintiff Rajamani died, hence, his legal heirs are impleaded in the proceedings, and the application filed to receive counter claim is allowed.



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However, liberty is granted to the plaintiffs to file their additional written statement to the counter claim. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

8. Furthermore, on considering the facts and circumstances, this Court is inclined to refer the matter to Legal Services Authority at Jayankondam to settle the dispute between the parties and the said authority is directed to take up the matter for not less than two hearings. Thereafter, if the matter is not settled, the same may be referred to the trial court and the trial court is directed to dispose the case within a period of six months from the date of receipt of copy of this order. Both the parties are directed to appear before the Legal Services Authority, on 03.11.2022 without fail.

27.09.2022

Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
rpp

To

District Munsif, Jayankondam.

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T.V.THAMILSELVI, J.

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