



C.R.P (MD) No. 721 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 08.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

C.R.P (MD) No. 721 of 2022

Sami Ayya

... Petitioner

Vs

1.Albona @ Albonse Roy

2.Aasha Rani

3.Prabhu Roy

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order and decree dated 08.10.2021 made in I.A.No.136 of 2020 in O.S.No.23 of 2017 on the file of the District Munsif cum Judicial Magistrate Court, Papanasam.

For Petitioner : Mr.G.Gomathi Sankar

For Respondents : No appearance

ORDER

This Civil Revision Petition is filed as against the fair and decretal order passed in I.A.No.126 of 2020 in O.S.No.23 of 2017, dated 08.10.2021.



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2.The respondents have filed the suit in O.S.No.23 of 2017 for bare injunction as against the petitioner / defendant. The defendant filed written statement in the suit stating that the plaintiffs have encroached upon the defendant's property and has laid pipelines with an intention to grab the property of the defendant. At the instance of the plaintiffs, Advocate Commissioner was appointed in the suit and after the report of the Advocate Commissioner, the petitioner/defendant has filed an interlocutory application in IA.No.136 of 2020 under Order VIII Rule 9 of CPC as a counter claim for recovery of possession, which was dismissed on the ground that no cause of action for filing the counter claim before the report of the Advocate Commissioner.

3.The learned Counsel for the petitioner submits that the trial Court dismissed the application that there is no cause of action for the petitioner to file counter claim while filing the written statement. The petitioner has taken a specific plea that the plaintiffs have encroached upon the defendant's property, however, the extent of the



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encroachment is not known. Therefore, the petitioner at that relevant point of time has made counter claim that the plaintiffs have encroached the property of the defendant.

4.The learned Counsel further by relying on the report of the Advocate Commissioner submits that the Advocate Commissioner report reveals that the plaintiffs have encroached upon the property of the defendant and only based on the report the petitioner has filed an application under Order VIII Rule 6(A) for counter claim, which has been dismissed by the trial Court without considering the reasons assigned therein.

5.The learned Counsel by referring the decision of the Hon'ble Supreme Court in **Ashok Kumar Vs Wing Cdr, Surendra Agnihotri**, reported in **2020(2) SCC 394** submits that there is no embargo to file counter claim after filing of the written statement provided there shall not be substantive delay. He further submits that the trial Court has dismissed the application only on the ground that in the written statement no counter claim has been raised.



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6. Though notice was ordered to and served on the respondents and their names are printed in the cause list, there is no representation for the respondents.

7. The trial Court has dismissed the application filed by the petitioner under Order VIII Rule 9 of CPC that as on the date of filing of the written statement there was no cause of action for raising counter claim. However, it is seen from records that this petitioner has taken a plea that the plaintiffs have encroached upon the property of the defendant and laid pipelines and suppressing these facts, the plaintiffs have filed the suit in a hurried manner. Therefore when the petitioner has taken a specific plea that the plaintiffs have encroached the property of the defendant, the trial court is not justified in dismissing the application on the ground of no cause of action as on the date of filing of the written statement. Further, in the decision cited supra, the Hon'ble Supreme Court has held that counter claim can be filed even after filing of the written statement.



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8. In view of the above, the civil revision petition is allowed. The impugned order is set aside. The trial Court is directed to take the counter claim on file and proceed further. No costs. Consequently connected miscellaneous petitions stand closed.

08.07.2022

dsk

To

The District Munsif
cum Judicial Magistrate,
Papanasam.



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B. PUGALENDHI, J.

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