



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :09.03.2022

CORAM:

THE HONOURABLE MRS. JUSTICE S.ANANTHI

C.R.P(MD) .No.1670 of 2021

and

C.M.P(MD) .No.9031 of 2021

P.Karthi

...Petitioner/Defendant

Vs.

M.Balamurugan

...Respondent/Plaintiff

PRAYER : This Civil Revision Petition is filed under Section 227 of the Constitution of India, to set aside the order passed in I.A.No.450 of 2021 in O.S.No.100 of 2013, dated 13.09.2021 on the file of the District Munsif Court, Vadipatti by allowing this Civil Revision Petition.

For Petitioner : Mr.V.S.Kishok Kumar

For Respondent : Mr.S.Manohar

O R D E R

This Civil Revision Petition has been filed to set aside the order passed in I.A.No.450 of 2021 in O.S.No.100 of 2013, dated 13.09.2021 on the file of the learned District Munsif, Vadipatti.

2.I.A.No.450 of 2021 was filed by the revision petitioner/defendant under Section 151 of CPC, to receive the counter claim statement, which was dismissed by the learned District Munsif, Vadipatti. Aggrieved by the said order, the revision petitioner/defendant has filed this Civil Revision Petition.

3.Originally the written statement was filed by the revision petitioner/defendant on 15.12.2015, in which, he has not stated anything about partition deed dated 18.10.1985 and in view of the same, S.No.580/27 was marked as northern side wall of the plaintiff's property. When the case is posted for cross examination of PW1, he filed counter claim regarding S.No.580/27 in the year 2021. The counter claim of the revision



petitioner/defendant has to be filed even before filing written statement.

4.As per judgment reported in **2016-4-L.W.296 in the case of Vijay Prakash Jarath vs Tej Prakash Jarath**, counter claim can be filed after adducing evidence. But in this case on hand, the subject matter is different. He already raised plea in his written statement that pathway is exclusively belonged to him. The trial Court can decide the issue on the basis of written statement. Since the suit property is also different and the counter claim was filed belatedly, the trial Court has rightly dismissed the said .I.A.No.450 of 2021. This Court finds no valid reason to interfere with the order of the Court below. The revision petitioner/defendant had any right over S.No.580/27 and if he has any dispute regarding S.No.580/27, he can file separate suit.

5.In view of the above, this Civil Revision Petition is dismissed by confirming the order, dated 13.09.2021 made in I.A.No.450 of 2021 in O.S.No.100 of 2013 on the file of the District Munsif Court, Vadipatti. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vsd

To

The District Munsif,
Vadipatti.

+1 CC to M/s.V.S.KISHOK KUMAR, Advocate
(SR-11472[F] dated 11/03/2022)

+1 CC to M/s.S.MANO HAR, Advocate
(SR-11065[F] dated 10/03/2022)

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SP/29/04/2022/2P/4C

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