



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.04.2022

CORAM

THE HONOURABLE MR. JUSTICE R. VIJAYAKUMAR

C.R.P. (PD) (MD) .No.1882 of 2017

WEB COPY

Muthusamy

...Petitioner/Petitioner/2nd Defendant

Vs

1.Meenakshi
2.Sundaravalli
3.Subbulaxmi

....Respondents 1 to 3/Respondents 1 to 3
/Defendants 5 to 7

PRAYER: Civil Revision Case is filed under Article 227 of Constitution of India, to set aside the order passed in I.A.No.3 of 2017 in O.S.No.105 of 2007 by the Subordinate Judge, Srivilliputhu on 24.08.2017 and consequently, dismiss the counter claim petition.

For Petitioner : Ms.P.Subathra Devi

For M/s.Polax Legal Solutions

For Respondents : Mr.M.Ashokkumar

O R D E R

The second defendant is the revision petitioner.

2.Originally the suit was filed in O.S.No.105 of 2007 on the file of the Subordinate Court, Srivilliputhur by third parties to the Civil Revision Petition seeking partition and separate possession. In the said suit, defendants 1, 5 and 7 filed a written statement along with counter claim seeking partition of their respective share and they paid Court fee also.

3.During the proceedings, the plaintiffs did not appear and the main suit was dismissed for default. Thereafter, the second defendant in the suit has chosen to file I.A.No.3 of 2017 to reject the counter claim on the ground that the counter claim is based upon the prayer in the plaint. Since the suit itself has been dismissed for default, counter claim cannot stand on its own. The said application was dismissed by the trial Judge. As against the same, the present Civil Revision Petition has been filed by the second defendant.

4.I have heard the counsel appearing on either side.



5. Even though a suit has been dismissed for default, counter claim can be proceeded independently as contemplated under Order 8 Rule 6-D of C.P.C. Hence, I do not find any illegality or irregularity in the order passed by the trial Court in dismissing the application filed for rejection of counter claim. This Civil Revision Petition stands dismissed. No costs.

Sd/-
Assistant Registrar(CO)

// True Copy //

/ /2022
Sub Assistant Registrar(CS)

msa

To

1. The Subordinate Judge
Srivilliputhur.

+1 CC to M/s.M. ASHOK KUMAR, Advocate
(SR-21677[F] dated 27/04/2022)

+1 CC to M/s.POLAX LEGAL SOLUTIONS, Advocate
(SR-22315[F] dated 28/04/2022)

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SP/12/05/2022/2P/4C