



WEB COPY



CRP.PD No.1302 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30/6/2023

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

C.R.P.PD.No.1302 of 2023

a n d

C.M.P.No.8768 of 2023

S. Parimala ... Petitioner

Vs

S. Kanchana ... Respondent

Prayer: Petition filed under Article 227 of the Constitution of India to set aside the order and decretal order dated 11/1/2023 in I.A.No.7 of 2022 in O.S.No.3215 of 2018 on the file of XI Assistant Judge, City Civil Court, Chennai.

For Petitioner ... Mr.Inamdar Ameenur Rahman Salam

For Caveator ... Mr.S.Saravana Kumar
(No appearance)

ORDER

This Civil Revision Petition is filed aggrieved by the dismissal of I.A.No.7 of 2022 in O.S.No.3215 of 2018, on the file of XI Assistant Judge, City Civil Court, Chennai, dated 11/1/2023.

2. The respondent/plaintiff has filed O.S.No.3215 of 2018 against



CRP.PD No.1302 of 2023

the petitioner/defendant for seeking delivery of possession of schedule of property and for consequential permanent injunction. The petitioner/defendant has filed a written statement on 14/12/2018. Issues have been framed. P.W.1 has been examined and posted for cross-examination. At this stage, the petitioner has filed I.A.No.7 of 2022, seeking permission to the petitioner to file additional written statement along with counter claim and the same was dismissed, aggrieved by the same, this Revision is filed.

3. Heard Mr.Inamdar Ameenur Rahman Salam, learned counsel for the petitioner and perused the materials available on record.

4. It is submitted by the learned counsel for the petitioner that the respondent/plaintiff has filed a suit for recovery of possession and perpetual injunction on the ground that respondent/plaintiff has purchased the suit schedule property under registered sale deed dated 17/11/2011 and the petitioner has filed a written statement stating that the respondent/plaintiff has no title over the schedule of property and that respondent/plaintiff has purchased the suit property under the registered sale deed, dated 23/9/1996 much prior to the date of purchase of the



property on 17/11/2021.

WEB COPY

5. It is submitted further that the petitioner/defendant has changed his counsel who has advised the petitioner/defendant to file the additional written statement along with a counter claim, seeking declaration that the sale deed dated 17/11/2011 on which the respondent/plaintiff is claiming title has to be declared as null and void.

6. It is the contention of the respondent/plaintiff that the petitioner has approached the Court for a leave to file additional written statement at a belated stage and that the relief sought for by the respondent in the proposed counter claim to declare sale deed dated 17/11/2011 is barred by limitation.

7. The respondent has sought for the relief of recovery of possession, basing on the strength of sale deed dated 23/09/1996. The petitioner while filing the written statement has asserted that the respondent has no valid title, as per the registered sale deed, dated 17/11/2011. However, he did not seek for any counter claim at that point of time. The respondent/plaintiff has filed suit for recovery of possession of the



schedule of property on the ground that the petitioner is the owner of the schedule of property. Similarly, since the petitioner/defendant filed written statement that the respondent/plaintiff is not the owner of the schedule property, she could have filed written statement with a counter claim for a declaration that the petitioner/defendant is the owner of the schedule of property and for a declaration that the sale deed which respondent/plaintiff is claiming title is null and void.

8. The cause of action arose for the defendant to challenge the sale deed of the respondent/plaintiff when the respondent has received summons in O.S.No.3215 of 2018 and also when the petitioner/defendant has filed the written statement. Limitation for seeking to declare any registered document as null and void would be three years as per Article 58 of the Limitation Act, 1963. Therefore, at this belated stage, after a lapse of more than three years from the date of arising of cause of action the defendant cannot be permitted to file an additional written statement with a counter claim seeking declaration of sale deed as null and void. The trial Court has rightly gave a finding that since the claim which is sought to be made by way of counter claim.



WEB COPY

9. Order VII Rule 6A of CPC provides that a defendant may seek counter-claim involving any claim in respect of cause of action against the plaintiff. Code of Civil Procedure does not provide for any time limit for filing of counter-claim. The Hon'ble Supreme Court in ***Ashok Kumar Kalra v. Surendra Agnihotri*** reported in MANU/SC/1590/2019 held that civil Court may permit filing of counter-claim after filing of written statement until framing of issues. It is also observed that in exceptional cases, it can be permitted even after framing of issues but before commencement of evidence.

10. The ground on which the petitioner shown is that the petitioner/defendant has changed the counsel and that his new counsel has advised him to file the additional written statement with counter claim. Change of a counsel will not give any special right to file additional pleadings. Therefore, the grounds on which the petitioner sought for filing of additional written statement along with counter claim are not at all convincing. However, in this case P.W.1 was already examined after framing of the issues. Further the claim of the petitioner/defendant to seek declaration in respect of document is also



CRP.PD No.1302 of 2023

barred by limitation. In view of the above, this Civil Revision Petition deserves dismissal.

11. In the result, this Civil Revision Petition is dismissed. No costs.

Consequently, the connected Civil Miscellaneous Petition is closed.

30/6/2023

mvs.

Index: Yes/No

website: Yes/No



WEB COPY



CRP.PD No.1302 of 2023

Dr.D.NAGARJUN,J

mvs.

To

XI Assistant Judge, City Civil Court, Chennai.

C.R.P.PD.No.1302 of 2023

30/6/2023