



C.R.P(MD)No.328 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **05.04.2023**

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.328 of 2020

and

C.M.P(MD)No.1883 of 2020

Krishnasamy

... Petitioner/Petitioner/
2nd Defendant

Vs.

Periyasamy

... Respondent/Respondent/
Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records pertaining to the order, dated 22.11.2019 made in I.A.No.260 of 2019 in O.S.No.207 of 2013 on the file of the Principal District Munsif Cum Judicial Magistrate Court, Peraiyur.

For Petitioner : Mr.Silambarasan

For Respondent : Mr.Nallathambi Raj
For Mr.K.Samidurai

ORDER

The present civil revision petition has been filed against the order,



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dated 22.11.2019 made in I.A.No.260 of 2019 in O.S.No.207 of 2013 on the file of the District Munsif Cum Judicial Magistrate Court, Peraiyur.

2. The petitioner is the second defendant before the District Munsif Cum Judicial Magistrate Court, Peraiyur in O.S.No.207 of 2013 filed by the respondent herein. Originally, the suit is of the year 2009. Subsequently, it was renumbered as O.S.No.207 of 2013. After the trial was complete and the case was listed for arguments, the petitioner has filed an application for amending the written statement under Order 6 Rule 17 of C.P.C. The reasons given by the petitioner in the affidavit filed in support of the I.A.No.260 of 2019 are that the respondent herein has colluded with the first defendant, who is none other than the son of the respondent herein.

3. It is further submitted that the property was mortgaged by the first defendant (not a party to the present proceeding) and that the petitioner has been in possession of the suit schedule property as a mortgagee from the year 1987. That apart, it is submitted that the petitioner has exercised his right over the property as an owner of the



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property all through from the year 1987. Therefore, to avoid multiplicity of the proceedings, the petitioner was constrained to file I.A.No.260 of 2019 in O.S.No.207 of 2013.

4. The learned counsel for the petitioner has placed reliance on the decision of the Hon'ble Supreme Court in the case of ***Life Insurance Corporation of India Vs Sanjeev Builders Private Limited and others*** (Civil Appeal No.5909 of 2022). A specific reference is made to paragraph No.17, which reads as under:

"17. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the following questions of law fall for the consideration of this Court:

1. Whether the High Court committed any material irregularity or jurisdictional error going to the root of the matter in passing the impugned order?

2. Whether the provisions of Order II Rule 2 CPC can be made applicable to an amendment application?

3. Whether the amendment of plaint for the purpose of enhancing the amount towards damages could be said to be hit by the doctrine of constructive res judicata?

4. Whether the judgment and order passed by a coordinate Bench of this Court in the case of Life Insurance Corporation of India (supra) between the same parties has any bearing on the present appeal?

5. Whether the present appeal is covered by the proviso to Section 21(5) and Section 22(2) respaly of the Specific Relief Act, 1963 (47 of 1963) (for short, 'the Act 1963')?"



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5. Per contra, the learned counsel for the respondent/plaintiff submits that the order passed by the District Munsif Cum Judicial Magistrate Court, Peraiyur vide impugned fair and decreetal order, dated 22.11.2019 does not call for any interference. It is submitted that the application itself was an abuse of Court proceedings and therefore, liable to be dismissed. That apart, it is submitted that the suit is of the year 2009 and the trial was completed in the year 2019 and at the stage when the case was to be argued, the petitioner (second defendant) in the suit has filed I.A.No.260 of 2019 only with a view to protract the litigation and to force the Court not to pass any final judgment and decree in the suit. The learned counsel for the respondent reiterates that the decision of the Hon'ble Supreme Court in the impugned order in the case of **Ashok Kumar Kalra Vs Wing Cdr.Surendra Agnihorthi and others** is applicable in four corners.

6. The learned counsel for the respondent has also placed reliance on the decision of this Court rendered in CRP(MD)Nos.1472 to 1474 of 2018, dated 18.06.2018. A specific reference is made to paragraph 12, which reads as under:



"12. In this regard, it is pertinent to refer the provision of Order VIII Rule 6A (1) of CPC, which is extracted hereunder:

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"A defendant in a suit may, in addition to his right of pleading a set-off under rule 6, set up, by way of counter claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not:

Provided that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the Court."

In this case, admittedly counter claim was not filed before the revision petitioners/defendants has filed written statement or before the time limit extended for filing written statement. The revision petitioners/defendant filed application to receive counter claim only after completion of trial and not before filing written statement."

7. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondent.

8. The suit has been filed only for a declaration and recovery of possession of the property. The suit was instituted in the year 2009 as O.S.No.429 of 2009, which was subsequently re-numbered as O.S.No. 207 of 2013 before the District Munsif Cum Judicial Magistrate Court, Peraiyur. The petitioner appears to have filed a written statement on 05.03.2010. Nothing precluded the petitioner from filing a counter claim



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immediately along with the written statement in accordance with Order VIII of C.P.C., instead the petitioner waited for the trial to get over and for the case to be listed for arguments.

9. In my view, the order passed by the Trial Court does not call for any interference as clearly the intention of the petitioner is to protract the litigation and to delay the judgment to be pronounced in the case particularly after the trial was over. The decision of the Hon'ble Supreme Court in the case of *Life Insurance Corporation of India Vs Sanjeev Builders Private Limited and others* also does not further case of the petitioner.

10. In this case, clearly, injustice and prejudice will be caused if the order is interfered. Therefore, I do not find any reasons to interfere with the impugned order. Hence, the present Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

05.04.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No



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To

- 1.The District Munsif cum
Judicial Magistrate Court, Peraiyur..
- 2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.SARAVANAN,J.

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