



C.R.P.(MD)No.1391 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(MD)No.1391 of 2023

and

C.M.P.(MD)No.6900 of 2023

Thangamarimuthu

...Petitioner/Respondent/Plaintiff

-Vs-

1.Subbamal

2.Ramar

3.Marichamy

4.Ramalakshmi

5.Murugalakshmi

... Respondents/Petitioners/Defendants

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, praying to call for the records pertaining to I.A.No.2 of 2023 in O.S.No.57 of 2021 passed by the learned District Munsif Court, Sattur, by its fair and decreetal order dated 13.02.2023, set aside the same.

For Petitioner : Mr.C.M.Arumugam



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ORDER

This petition has been filed challenging the order dated 13.02.2023 passed in I.A.No.2 of 2023 in O.S.No.57 of 2021, by the learned District Munsif Court, Sattur.

2.The petitioner is the plaintiff in O.S.No.57 of 2021 on the file of the District Munsif Court, Sattur. The suit has been filed by the plaintiff for a bare injunction to restrain the respondents from interfering with the peaceful possession of the suit schedule property. In the suit, the respondents have also continuing filed their written statement containing their counter claim. After the petitioner was examined as P.W.1 and at the time of cross-examination, the respondents/defendants have filed an application for amending the schedule in the counter claim that was filed along with the written statement which has been allowed by the impugned order.

3.The learned counsel for the petitioner would submit that the Trial Court has committed an error in allowing the application, inasmuch as in the application filed for amending the schedule to the written statement containing the counter



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claim, the respondent has not given any details of the document, based on which, the relief in the counter claim is sought for. It is, therefore, submitted that the impugned order has been passed in a mechanical manner and therefore, it is liable to be interfered with.

4. That apart, it is submitted that the amendment is after the commencement of Trial. Therefore, the amendment under Order 6 Rule 7 of C.P.C., ought not to have been allowed as a matter of right.

5. I have considered the rival submission made by the learned counsel for the petitioner and I have also perused the impugned order. The amendment to the written statement containing counter claim was filed after commencement of Trial, because only after P.W.1 was examined, the respondents became aware of the content of exhibits marked on behalf of the plaintiff, the petitioner herein and failure to bring documents. Order 8 Rule 1(A) of C.P.C., contemplates, filing of document within thirty days from the date of service of summons on him along with the written statement in his defence by the defendant. Same applies to documents in support of counter-claim.



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6. Order 8 Rule 1(A) of C.P.C., which reads as under:

“[1. Written statement.- The document shall, within thirty days from the date of service of summons on him, present a written statement of his defence:

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.]

[1-A. Duty of defendant to produce documents upon which relief is claimed or relied upon by him.-

(1) Where the defendant bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for set-off or counter-claim, he shall enter such document in a list, and shall, at the same time, deliver the document and a copy thereof, to be filed with the written statement.”

7. Sub-rule 1(A) was inserted in the Civil Procedure Code by an amendment to the Civil Procedure Code in the year 1999 with effect from 01.07.2002. Civil Rules of Practice that was framed by this Court in the year 1971, has not been amended. Thus, there is a lacuna in the rules, as a result of which, the



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procedure for filing the documents as is required under Rule1-A of Order 8 of C.P.C., is not being complied with by the defendants. Although there is a failure on the part of the respondent to give the particulars of the documents along with the counter claim, based on which, the respondents prayed for the delay is excusable as the very purpose of the trial is to elicit truth and in course of Trial the parties are entitled to introduce evidence which was by oversight was missed out. based on which, the respondents sought for an alternative relief as counter claim.

8.In view of the above, the amendment that has been allowed by the impugned order cannot be questioned. The amendment has merely allowed amendment to the pleadings to the written statement of the respondent containing the counter claim. There is no final determining the *inter se* right of the parties to the suit with the passing of the impugned order.

9.Therefore, I do not find any reason to interfere with the impugned order. However, all issues are left open to be canvassed before the Trial Court.



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Considering the fact that the impugned order has allowed the amendment to the counter claim, the Court shall permit the petitioner to file an additional reply statement in terms of Order 8 Rule 9 of C.P.C and thereafter, proceed to dispose of the suit as expeditiously as possible, preferably, within a period of 15 months from the date of receipt of a copy of this order.

10. In view of the above, the Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

16.06.2023

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

1. The District Munsif Court,
Sattur.
2. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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C.SARAVANAN, J.
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