



C.R.P.(MD)No.2206 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.10.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.2206 of 2023
and
C.M.P.(MD)No.11240 of 2023

C.Arivalagan

... Petitioner/Petitioner
1st Defendant

Vs.

1.K.Archunan

2.Arivuselvi

... Respondents/Respondents
Plaintiffs

Prayer : This Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records relating with the Executable Order and fair order, dated 19.04.2023 made in I.A.No.819 of 2022 in O.S.No.483 of 2014 on the file of the Principal District Munsif, Madurai Town and set aside the same.

For Petitioner : Mr.R.Suriyanarayanan

For Respondents : Mr.V.Nagendran, for R1 and R2.



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ORDER

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The Civil Revision Petition is directed against the order passed in I.A.No.819 of 2022 in O.S.No.483 of 2014 on the file of the Principal District Munsif, Madurai Town, dated 19.04.2023, dismissing the petition filed under Order VIII Rule 9 of C.P.C.

2. The respondents/plaintiffs have laid the above suit, seeking permanent injunction restraining the defendants therein from interfering with the suit 'A' schedule property and for mandatory injunction for closing the two doorways illegally put up on the eastern wall of the first defendant's house facing 'A' schedule property and the injunction for removing the encroachments made by the first defendant in 'B' schedule property.

3. When the suit was in part-heard stage, the revision petitioner/first defendant has filed the above application for accepting counter claim. The learned Principal District Munsif, after enquiry, dismissed the same.



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4. The learned counsel for the petitioner has relied on the judgment of the Hon'ble Supreme Court in ***Vijay Prakash Jarath Vs. Tej Prakash Jarath [Civil Appeal No.2308-2309 of 2016]***, dated 01.03.2016, in support of his claim and argued that the counter claim can be filed even after the commencement of trial. But in the said decision, the Hon'ble Apex Court, by observing that the plaintiffs' side evidence was still being recorded by the trial Court when the counter claim came to be filed and that they have also not shown that any prejudice would be caused to the plaintiffs if the counter claim was to be adjudicated upon, along with the main suit, allowed the appeal and restored the order of the trial Court, accepting the counter claim.

5. Moreover, the Full Bench of the Hon'ble Supreme Court in ***Ashok Kumar Kalra Vs. Wing CDR.Surendra Agnihotri and others*** reported in (2020) 2 SCC 394, has specifically held that the counter claim can be entertained after filing of written statement, but not after framing of issues. Hence, the impugned order dismissing the petition cannot be found fault with. Hence, this Court concludes that the Civil Revision Petition is devoid of merits and the same is liable to be dismissed.



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6. In the result, the Civil Revision Petition is dismissed.

Consequently, connected Miscellaneous Petition is closed. No costs.

19.10.2023

NCC :yes/No
Index :yes/No
Internet:yes/No
das

To

1. The Principal District Munsif, Madurai Town.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

das

Order made in
C.R.P.(MD)No.2206 of 2023
and
C.M.P.(MD)No.11240 of 2023

Dated : 19.10.2023