



CRP No.517 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2024

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

CRP No.517 of 2024 and

CMP No.2423 of 2024

Sankar

rep. by Power Agent Rajavelu

... Petitioner

/vs/

Abdulkalam Asath (died)

1. Mohammed Farook
2. Yasin @ Rafiq
3. Mohammed Rasul
4. Hanifabeevi
5. Basheera Begam
6. Mohamed Jiber
7. Suhel Akthar
8. Abuhuraria

... Respondents

PRAYER : Civil Revision Petition filed under Section 227 of the Constitution of India to set aside the order dated 17.11.2023 made in I.A.No.753/2023 in O.S.No.256 of 2017 on the file of the Subordinate Judge, Thittakudi, Cuddalore District.

For Petitioner ... Mr. S.Senthilnathan



CRP No.517 of 2024

ORDER

WEB COPY

This civil revision petition has been filed to set aside the order dated 17.11.2023 made in I.A.No.753/2023 in O.S.No.256 of 2017 by the learned Subordinate Judge, Thittakudi, Cuddalore District.

2. The petitioner herein is the first defendant and the respondents herein are the plaintiffs in the above said suit in O.S.No.256/2017, which was filed seeking declaration, declaring that the suit second schedule property belonged to the plaintiffs; and possession of the above property from the defendants through the Advocate Commissioner and also damages for use and occupation. In the above said suit, the petitioner has filed written statement. Subsequently, the petitioner has filed I.A.No.753/2023 to receive counter claim along with additional written statement and it was dismissed. Challenging the same, the civil revision petition has been filed.

3. Heard the learned counsel for the petitioner and I have perused the materials on record.



4. A perusal of the records shows that, in the above said suit, the petitioner has filed his written statement on 29.08.2013 and the evidence of plaintiff side was closed on 07.09.2022 itself. Thereafter, after getting several adjournment to adduce his evidence, the petitioner has filed the above petition to receive the counter claim along with additional written statement, that too after a lapse of 10 years. In the counter claim, the petitioner/first defendant seeking declaration that he is owner of the second item of the suit property. At this juncture, it is the contention of the learned counsel for the petitioner that, though the petitioner has filed the above counter claim belatedly, he is having the case against the first respondent/plaintiff and hence, it has to be decided along with the case of the plaintiff.

5. The learned Judge, while deciding the above petition, has relied upon the following decisions of the Hon'ble Supreme Court,

(i) *Rohit Singh & Others Vs. State of Bihar, reported in 2006 (12) SCC 734,*

(ii) *Ashok Kumar Kalra Vs. Wing Cdr Surendra Agnihotri, reported in 2020-2- CTC 437 (SC) (DB)*



As per the above decisions of the Hon'ble Supreme Court, the learned Judge has held that the counter claim can be filed even after framing of issues, but before recording evidence and since the petitioner has filed the counter claim after recording evidence, it cannot be entertained. Further, in the impugned order, the learned judge has observed as follows.

*" The plaint was filed on 28.02.2013 and the petitioner entered appearance in the suit on 05.04.2013. So no doubt, the petitioner had knowledge of denial of his title over item No.2 of the suit properties, even before 05.04.2013. If it is so, the counter claim seeking the relief of declaration in respect of item No.2, after a period of 10 years is hopelessly barred by limitation, as per article 58 of the Limitation Act. On this Context, this court also wants to rely upon a decision of the Hon'ble Apex Court in **M/s South Konkan Distilleries & others Vs. Prabhakar Gananan Naik & others, on 9th September 2008**".*

In view of the above, this court is of the view that, after recording evidence and development of legal proceedings, it is improper to entertain the counter claim filed by the petitioner. As such, the Trial Court, after making elaborate discussion and by giving reasons, has rightly dismissed the petition, and hence, there is no infirmity to interfere over the same.



CRP No.517 of 2024

6. Accordingly, this civil revision petition is dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

26.02.2024

Index : Yes/No

Internet : Yes/No

mst

To

The Subordinate Judge, Thittakudi, Cuddalore District.



WEB COPY



CRP No.517 of 2024

V.SIVAGNANAM ,J.

mst

CRP No.517 of 2024

26.02.2024