



C.R.P.No.2061 of 2022

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 02.04.2024**

**CORAM:**

**THE HONOURABLE MR.JUSTICE P.DHANABAL**

C.R.P.No.2061 of 2022

and

C.M.P.No.10601 of 2022

1. Sathishrajulu  
2.D.Monoharrajulu

...Petitioners

Vs

1. S.A.Elango Vethantham  
2. Visalakshi

...Respondents

**Prayer:** Civil Revision Petition filed under Section 227 of Constitution of India praying to allow the Revision Petition and thereby set aside the order dated 01.04.2022 made in I.A.No. 1 of 2022 in O.S.No. 41 of 2012 on the file of the Additional Sub Judge, Hosur and to receive the Additional Written Statement along with Counter Claim.

For Petitioners : Mr.A.R.Nixon

For R1 : Mrs.V.Srimathi  
For R2 : Not ready



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## **ORDER**

This revision Petition is filed as against the order passed in I.A.NO. 1 of 2022 in O.S.NO. 41 of 2012 dated 01.04.2022 on the file of the Additional Sub Judge, Hosur. Wherein the petitioners herein being the second and third defendants in the suit have filed I.A. to receive the Additional Written Statement along with Counter claim. The Trial Court dismissed the Petition in respect of the Counter Claim and passed the orders that the petitioners are at liberty to file additional Written Statement for the newly added relief. Aggrieved over the above said order, the present Civil Revision petition has been filed by the petitioners.

2. The brief averments of the petition filed by the petitioners are as follows:-

The Trial Court on 03.09.2021 directed the petitioners to file additional written statement if any on the amended pleadings and the case was adjourned on several occasions. On 29.10.2021, the petitioners have filed Additional

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Written Statement along with the counter claim. Thereafter, the said counter claim was returned for various reasons. In fact, when the Advocate Commissioner was appointed in the said case, he has filed sketch by demarcating the FMB sketch of the Government and reported to the Court stating that the petitioners building is constructed in the portion of Plaintiff's property. The petitioners made objections to the Advocate Commissioner report and subsequently filed an application to scrap the Advocate Commissioner Report. But the Court instead of scrapping the report directed the Commissioner to remeasure the property. The Advocate commissioner refused to comply with the order stating that there was no change in the report and based on the Advocate Commissioner's report, the plaintiff sought for amendment of plaint and the same was allowed. Thereafter, they filed C.R.P.No. 4215 of 2014 before the High Court and the High Court allowed the revision and permitted the plaintiff to amend the plaint through order dated 21.10.2021. Since the plaint is amended a fresh cause of action accrues on the petitioners after filing of the written statement and during the pendency of the suit. Hence, the petitioners filed counter claim as contemplated under Order 8



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Rule 6A of CPC. On receiving the counter claim no prejudice will be caused to the plaintiff. On the other hand based on the cause of action, the petitioners cannot file a separate suit. Hence, they filed this petition.

3. Brief averments of the counter filed by the respondents are as follows:-

The petition is not maintainable and same is liable to be dismissed. In fact, the Court adjourned the case for filing of Additional Written Statement on 06.08.2021 itself but due to non filing of additional Written Statement the Court recorded the fact on 16.08.2021 that Additional Written Statement was not filed. Thereafter on 04.10.2021, the Additional Written Statement was filed along with Counter claim. Thereafter the case was adjourned several times and then the petitioners filed a petition under Order 8 Rule 9 of CPC on 23.12.2021. The mentioning of Advocate Commissioner Report and FMB Sketch are totally unwarranted to this petition. Already orders in I.A.No. 44 of 2013 and I.A.No. 189 of 2012 were decided by this Court. Therefore the said defendants deemed to have accepted the finality of the orders of the said IAs.



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The defendants have failed to state that which or 'what point of time' FMB sketch was alleged to have been used by the Advocate Commissioner for demarcation. The defendants suppressed that joint patta granted was cancelled by DRO through order dated 12.11.2007. Against the said cancellation order, the second and third defendants filed the writ petition No. 520 of 2014 and the same was allowed on the ground that a comprehensive civil suit is pending between the parties and it will be open to the parties to raise all the contentions before the Trial Court. If the Counter claim is received, it will cause great prejudice to the respondents. The entire Additional Written Statement is about the time bar counter claims. Therefore, the petition is liable to be dismissed.

4. After hearing the both sides, the Trial Court has dismissed the petition by holding that the case is posted for examination of witness after framing the issues and some of the witnesses were also examined by the parties. Therefore at this stage, the counter claim cannot be entertained and if the petitioners have sufficient cause that they can file separate suit if it permissible in law and also permitted the petitioners to file Additional Written statement for the newly



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added relief. As against the said order, the present Civil Revision Petition is filed.

5. The learned counsel for the petitioners would contend that originally the suit was filed for relief of declaration and permanent injunction and thereafter the prayer was amended for mandatory injunction and recovery of possession based on the Advocate Commission report and the said amendment was dismissed by the Trial Court. Thereafter, the plaintiff preferred the revision petition before this Court and this Court was also allowed the revision petition and based on that, the amendment was carried out and thereafter the petitioners herein have filed Additional Written Statement on 04.10.2021. Thereafter, they filed a petition to receive the Additional Written Statement along with the counter claim.

6. Due to the amendment made by the plaintiffs, the fresh cause of action accrues to the defendants to file the counter claim. Therefore, the counter claim has to be received by the Trial Court. Without considering the above said



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aspects, the Trial Court dismissed the petition on the ground that already issues were framed and the witnesses were also examined. Therefore, the order passed by the Trial Court is liable to be dismissed.

7. The learned counsel for the respondents would contended that already the petitioners have filed Additional Written Statement on 04.10.2021 after the amendment application was allowed by this Court. Already they filed Additional Written Statement thereafter now they filed this petition to receive the Additional Written Statement along with counter claim. The Trial Court after elaborate discussion correctly dismissed the petition on the ground that already issues were framed and the evidences were also recorded by the parties. The Trial Court also referred the few judgments of the Hon'ble Supreme Court and then only dismissed the petition.

8. Heard both sides and perused the materials available on record.



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9. The main contention of the petitioners is that the plaintiff amended the prayer and after the amendment, the petitioners have filed the Additional Written Statement and thereafter they filed the petition to receive the Additional Written Statement along with the counter claim and the said petition was dismissed. The petitioners filed a counter claim only based on the amendment of the prayer amended by the plaintiff. Therefore the counter claim is hereby maintainable even after the stage of framing of the issues. According to the respondents, the petitioners already have filed Additional Written Statement on 04.10.2021 for the amended prayer and belatedly they filed the petition to receive the Additional Written Statement along with the counter claim. Therefore, the trial Court has dismissed the petition.

10. This Court perused the records, it is admitted fact that the respondents filed an amendment petition and the same was dismissed and the said dismissal order was challenged by the plaintiff through CRP No. 4215 of 2014 before this Court and the said CRP was allowed. Based on the order of this Court only, the prayer was amended. In that amended prayer, the



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petitioners herein have filed the Additional Written Statement on 04.10.2011.

Therefore the petitioners already filed the Additional Written Statement and now the counter claim is only in respect of the Advocate Commissioner report but already Advocate Commissioner report was filed and objections also filed by the petitioners and based on the objections, prayer also amended and now at this stage it is not appropriate to file once again the same application when the petitioners already filed objection for the Advocate Commissioner report.

11. It is for petitioner to agitate Commissioner report before the Trial Court and not by filing the counter claim to scrap and to declare the Advocate Commission report is not in accordance with the FMB Sketch of revenue authorities. Since, the Advocate Commissioner report was filed in the year 2012, the petitioners also already filed their objections and the matter went up to this Court through Civil Revision Petition and the petitioners can very well agitate the same before the Trial Court by raising defense through Additional Written Statement as permitted by the Trial Court.



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12. It is admitted fact that the witnesses were also recalled after the amendment and after filing the additional written statement, therefore as discussed supra, the petitioners are at liberty to cross examine the witnesses in respect of allegation made in the Additional Written Statement and objections made in the Advocate Commissioner report. Once the case is ripe for Trial and witnesses examined after framing issues, the counter claim cannot be entertained.

13. The Trial Court after elaborate discussion and referring the Judgment of the Hon'ble Supreme Court on ***S.L.P.(C) No. 23599 of 2018***, reported in ***2019 STPL 13865 SC*** in which it has held that the counter claim cannot be filed after framing of the issues and after examination of the witnesses, however permitted the petitioners to file Additional Written Statement. Therefore, there is no infirmity or perversity found in the order of the Trial Court while dismissing the applications filed by the petitioners, thereby does not warrant interference and the present Revision Petition is liable to be dismissed. The petitioners have already filed Additional Written Statement by



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agitating the Advocate Commissioner report as well as the defense raised by them for the amended prayer. It is for the Trial Court to consider the Additional Written Statement and the objections made by the petitioners in the Advocate Commissioner report and based on the above said Additional written statement, the Trial Court has to frame appropriate issues if necessary and dispose this case after affording chances to both the parties in respect of the amended prayer.

14. With aforesaid observations, this Civil Revision Petition is disposed of. Consequently connected Civil Miscellaneous petition is closed. No costs.

02.04.2024

Index : Yes/No  
Internet : Yes/No  
Citation : Yes/No

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**P.DHANABAL,J**

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