



C.R.P.No.1095 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P. No.1095 of 2024

and

C.M.P. No.5699 of 2024

1. Nagarathinam W/o. P. Subramaniam
2. Balamurugan S/o. P. Subramaniam
3. Kalyani W/o. P. Subramniam C/o. Balamurugan ... Petitioners

vs.

Padmavathi W/o. Marimuthu. ... Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the order passed by the learned District Munsif, Udumalpet dated 05.06.2023 made in I.A. No.173 of 2023 in O.S. No.137 of 2004 by permitting the petitioners to file a counter claim.

For Petitioners : Mr. N. Thiagarajan
For Respondent : S. Prabhu [for Caveator]



C.R.P.No.1095 of 2024

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ORDER

The Civil Revision Petition is filed challenging the order passed by the Trial Court dismissing the counter claim filed by the petitioners.

2. The respondent herein filed a Suit for Partition in O.S. No.137 of 2004 on the file of District Munsif Court, Udumalpet. The petitioners herein were arrayed as defendants 4 to 6 in the said Suit. Originally the father of the petitioners was arrayed as 2nd defendant and he died the pending Suit. Thereafter, the petitioners herein were brought on record as legal representatives and ranked as defendants 4 to 6. Subsequently, the petitioners filed an additional written statement on 10.02.2011. Admittedly, the Trial Court in the Suit has already commenced. When the trial was in the stage of cross examination of PW1, the instant application had been filed by the petitioners seeking leave of the Court to file a counter claim with regard to the Will allegedly executed by the 1st defendant dated 26.01.2008.

3. The petitioners by way of counter claim want declaration that the Will executed by the 1st defendant dated 26.01.2008 was valid and the same



C.R.P.No.1095 of 2024

was binding on the respondent / plaintiff. The said petition filed by the petitioners was dismissed by the Trial Court on the ground that any events which have come into existence subsequent to delivery of defence, cannot be a basis for raising counter claim. The Apex Court in ***Ashok Kumar Kalra vs. Wing CDR Surendra Agnihotri reported in MANU/SC/1590/20109*** held that “counter claim cannot be filed subsequent to settlement of issues”. In such circumstances, the counter claim filed by the petitioners after commencement of trial is not maintainable and the same was rightly dismissed by the Trial Court. Hence I do not find any error in the impugned order and accordingly, the Civil Revision Petition is liable to be dismissed.

4. The learned counsel appearing for the petitioners submits that earlier, the petitioners filed an additional written statement raising their plea regarding the Will executed by the 1st defendant and the same was dismissed by the Trial Court. Admittedly, the same petitioners preferred a revision in C.R.P. No.448 of 2023 and the same is pending before this Court. It is made clear that the dismissal of this Civil Revision Petition with prayer for permission to file counter claim by the petitioners, will not affect the right of the petitioner in other Civil Revision Petition in C.R.P. No.448 of 2023.



C.R.P.No.1095 of 2024

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No costs. Consequently, connected miscellaneous petition is closed.

22.03.2024

Index : Yes / No

Speaking order : Yes / No

Neutral Citation : Yes / No

mjs

To

The District Munsif, Udumalpet.



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C.R.P.No.1095 of 2024

S.SOUNTHAR, J.

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C.R.P.No.1095 of 2024

22.03.2024