



C.R.P. (PD) No.4260 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.10.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

Civil Revision Petition (PD) No.4260 of 2024
and C.M.P.No.23690 of 2024

K.Ganapathy

.. Petitioner

Versus

1.M.Bakkiyalakshmi
2.Manoharan
3.M.Dinesh

.. Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 02.07.2024 made in I.A.No.3 of 2024 in O.S.No.1283 of 2022 on the file of the IV Additional District Munsif Court, Coimbatore.

For the Petitioner : Mr.Sireesh
for Mr.N.Manoharan



C.R.P. (PD) No.4260 of 2024

WEB COPY

ORDER

This Civil Revision Petition arises against the order passed by the IV Additional District Munsif, Coimbatore in I.A.No.3 of 2024 in O.S.No.1283 of 2022 dated 02.07.2024.

2. The Civil Revision Petitioner is the plaintiff. He presented O.S.No.1283 of 2022 seeking permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit schedule mentioned property. Summons was served on the defendants. The defendants entered appearance and filed a detailed written statement. Together with the statement, they made a counter claim that the plaintiff had constructed a house in Survey No.1102/26, as stated in the plaint, but had taken advantage of such construction and had encroached on the common passage in Survey No.1102/25. Therefore, they sought for a mandatory injunction to direct the plaintiff to remove the encroachment over the common passage leading to Kamarajar Street comprised in Survey No.1102/25.



C.R.P. (PD) No.4260 of 2024

WEB COPY

3. The plaintiff took out an application under Order VIII Rule 6C of the Code of Civil Procedure seeking exclusion of the counter claim. The grounds on which they wanted exclusion being,

(i) that if it is a common passage, only the State authorities have the right to question the same and not the defendants.

(ii) the defendants have no right to prefer a counter claim to the suit as it is not a claim of the plaintiff with respect to Survey No.1102/26.

4. The respondents/defendants filed a detailed counter opposing the said application. They pointed out, on account of plaintiff's construction, the Revenue Inspector of Perur Taluk in Coimbatore, at the instance of the defendants, had initiated proceedings for demolition. They further pointed out, suppressing the demolition notice dated 07.12.2022, the plaintiff had presented a suit and obtained an order of *status quo* in I.A.No.2 of 2022. On account of this order, the offending construction continued to be standing in and over the alleged common pathway.

5. The learned Trial Judge on the basis of this pleadings came to a conclusion that the counter claim should stay on her file. Consequently, she



C.R.P. (PD) No.4260 of 2024

dismissed the petition. Hence, this revision.

WEB COPY

6. Heard, Mr.Sireesh for Mr.N.Manoharan for the Civil Revision Petitioner.

7. Mr.Sireesh, argues on the basis of the Judgment of the Supreme Court in ***Sathyender and Others Vs. Saroj*** ((2022) 13 SCR 342), a counter claim can be set up only against the claim of the plaintiff and since there is no claim by the plaintiff with respect to Survey No.1102/25 and the suit relating to Survey No.1102/26, it is not entertainable.

8. I have carefully considered the submissions of Mr.Sireesh. The provision to file a counter claim is under Order VIII Rule 6A of CPC. A counter claim can be presented by the defendants as against the plaintiff for a separate and independent cause of action. This position no longer *res integra*. It has been settled by the Supreme Court in ***Sh. Jag Mohan Chawla and Anr. Vs. Dera Radha Swami Satsang and Ors.*** (1996 4 SCC 699). Infact, the very Judgment that has been relied upon by Mr.Sireesh confirms the view taken by the Supreme Court in 1996.



C.R.P. (PD) No.4260 of 2024

WEB COPY

9. The plea of the plaintiff is that he is the owner of the property, over which, he has put up the tin shed. It is the case of the defendants that the tin shed is not on the plaintiff's property, but on the common passage. Whether the property belongs to the plaintiff or is a common passage would necessarily has to be decided, at the time of trial. If the plaintiff proves title to the property, automatically, the counter claim will fail. In case, the defendants are able to prove that the property is a common property, the defendants would be entitled to the decree in the counter claim. That being the situation, the claim and the counter claim being inextricably mixed, I do not find any error in the order of the IV Additional District Munsif, in deciding to keep the counter claim on her file.

10. In addition, an order under Order VIII Rule 6C of CPC is a discretionary order. When the Trial Judge exercises the discretionary order in a judicial manner, this Court should not normally interfere with the same, in exercise of the powers under Article 227 of the Constitution of India.



C.R.P. (PD) No.4260 of 2024

WEB COPY

11. In the light of the above, this Civil Revision Petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

23.10.2024

Index : Yes / No
Internet: Yes / No
Speaking order / Non-speaking order
Neutral Citation : Yes / No
Jer

To
The IV Additional District Munsif, Coimbatore.



WEB COPY



C.R.P. (PD) No.4260 of 2024

V.LAKSHMINARAYANAN, J.,

Jer

Civil Revision Petition (PD) No.4260 of 2024

23.10.2024