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C.R.P (PD) No.4955 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2024

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P (PD) No.4955 of 2024

&

C.M.P.No.27872 of 2024

Mrs.Rajeswariammal (died)

1. Mr.Sundar

2. Mrs.Jayalakshmi

... Petitioners

Vs

Lumdy Joe Reebea

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 05.09.2024 in Counter Claim SR.No.10600 of 2022 in O.S.No.185 of 2020 on the file of Principal District Munsif Court at Alandur, Chengalpattu District and to number the counterclaim.

For Petitioner : Mr.C.Venkatesan

ORDER

This Civil Revision Petition arises against the order of return of Counter Claim SR.No.10600 of 2022 in O.S.No.185 of 2020 by learned Principal District Munsif Court at Alandur, dated 05.09.2024.



2. The Civil Revision Petitioners are the defendants in the suit.

O.S.No.185 of 2020 is a suit for permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit premises. The suit premises has been described as an extent of 572 sq.ft comprised in Door No.2/33 bearing S.Nos.R.S.1622, 1623/2 and GLRS 256/213.

3. The claim of the plaintiff is that she had obtained the property from one Murali. Murali had got the property from his father Vasudevan Pillai. Vasudevan Pillai had obtained the property by way of a partition deed dated 24.04.1969. After she had acquired the said property, she wanted to demolish the existing superstructure and put up a new one. Considering that the defendants are neighbours, she constructed a temporary toilet so as to enable the defendants to enjoy the property.

4. The second defendant claimed that some of the property, which belongs to him, had been taken over by the plaintiff. Hence, a surveyor was called upon to survey the land and he did so on 17.08.2020. Finally, the survey was completed on 28.08.2020 and the boundaries of the plaintiff's property were identified. Since the defendants continued to interfere with her possession, she came forward with the suit.



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5. On being served with summons, the defendants filed a counter claim. According to them, the plaintiff's predecessor was only entitled to 572 sq.ft in S.No.1622 and R.S.No.1623. They pleaded that the remaining extent of 1303 sq.ft in the said survey number belonged to one Rajeswariammal. Rajeswariammal passed away on 13.04.1992. She left behind several legal heirs, of whom one of her sons is Narayanan. Narayanan is the father of the second defendant and the third defendant is his wife. They claim that they are residing in the suit property. They pleaded that under the guise of purchase, the plaintiff is attempting to interfere with their possession of the property situated in Door No.2/34 in R.S.No.1623.

6. The learned District Munsif repeatedly returned the counter claim. Finally, the learned District Munsif held that as the property in the plaint is different from property in the counter claim, counter claim cannot be entertained. Hence, this revision.

7. I heard Mr.Venkatesan for the civil revision petitioner and I have gone through the records.



8. In terms of Order VIII Rule 6A of the Code of Civil Procedure, 1908, a defendant, in addition to his written statement or set-off, which may be set up therein, can also present a counter claim against the claim of the plaintiff. This counter claim can relate to any right or claim on the basis of the cause of action against the plaintiff, which has arisen either before or after the filing of the suit. The only limitation is that the cause action should have accrued before the defendant has delivered his defence.

9. In this particular case, the entire dispute is to the extent of the property which the plaintiff is entitled to enjoy and extent of the property which the defendants are entitled to. In fact, a perusal of the sale deed executed in favour of the plaintiff shows that the property of Tmt.Rajeswariammal is shown as the boundary. The learned District Munsif seems to be under the impression that a counter claim should also relate to the same property. The law does not require any such requirement. The position of law has been settled by the Supreme Court in ***Jag Mohan Chawla and Another vs. Dera Radha Swami Satsang & Ors. (1996) 4 SCC 699*** and ***Dr.K.Rajasekaran Vs. M.Rajeswari (2014) 2 LW 1015***.



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10. In the light of the pronouncements of the Supreme Court and this Court, this Civil Revision Petition is allowed. The order of the learned Principal District Munsif at Alandur in Counter Claim SR.No.10600 of 2022 dated 05.09.2024 is set aside. The learned Judge shall receive the counter claim and proceed further. Consequently, the connected miscellaneous petition is closed. There shall be no order as to costs.

13.12.2024

Index : Yes/No

Neutral Citation : Yes/No

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To

1. The Principal District Munsif Court
at Alandur, Chengalpattu District

2. The Section Officer
VR Section
Madras High Court



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V. LAKSHMINARAYANAN, J.

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