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C.R.P.No.4167 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.4167 of 2019 and
C.M.P.No.27149 of 2019

S.Tamil Kumaran

... Petitioner

Vs.

M.Devanathan

...Respondent

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code, praying to set aside the order and decree dated 20.08.2019 made in I.A.No.1 of 2019 in A.S.No.47 of 2017 on the file of learned Additional District Judge, Cuddalore and consequently allow the I.A.No.1 of 2019 in A.S.No.47 of 2017 on the file of learned Principal District Judge, Cuddalore for withdrawal of the counter claim filed by the petitioner herein.

For Petitioner : M/s.D.Ravichander

For Respondent :Mr.Mohammed Irfan Ali
for M/s.T.S.Baskaran



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ORDER

The Civil Revision Petition is filed challenging the order passed by the Court below dismissing the petition filed by the revision petitioner to withdraw his counter claim in O.S.No.109 of 2010.

2. The respondent herein filed a suit for specific performance of sale agreement dated 20.08.2008. Under the sale agreement, the respondent agreed to purchase the suit property for a sale consideration of Rs.2,15,000/- and an advance amount of Rs.15,000/- was paid on the date of agreement. The respondent by expressing his willingness to pay a balance sale consideration laid the suit for specific performance.

3. In the said suit, the petitioner filed a counter claim stating that on 20.08.2008 itself there was an another agreement between the parties styled as 'Opputhal Kaditham' where under the respondent agreed to pay a sum of Rs.6,10,000/- to the petitioner and get the property re-conveyed in his favour. Therefore, the counter claim was laid by the petitioner seeking direction to respondent to pay a sum of Rs.6,10,000/- to him before execution of sale deed in his favour.



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4. The Trial Court found that the respondent failed to prove his readiness and willingness to perform his part of the suit agreement (Ex.A1) and negatived the main prayer for specific performance. However, the Trial Court granted a decree in favour of petitioner in the counter claim by directing the respondent to pay a sum of Rs.3,95,000/- and get the sale deed executed in his favour. Aggrieved by the same, the petitioner preferred an appeal in A.S.No.47 of 2017 on the file of Principal District Judge, Cuddalore. In the said appeal, the petitioner preferred a petition to withdraw the main counter claim in I.A.No.1 of 2019 and the same was dismissed by the Appellate Court on the ground that when rights of the parties crystallized in the nature of a decree, the person aggrieved by the decree who preferred an appeal is not entitled to withdraw the main suit/counter claim. Aggrieved by the said order, the petitioner is before this Court.

5. The learned counsel for the petitioner submitted that the counter claim made by the petitioner seeking recovery of Rs.3,95,000/- from the respondent is contingent upon suit agreement and when the main suit itself is



dismissed negating the prayer for specific performance made by the respondent, the prayer made by the petitioner in counter claim had become infructuous and therefore, the petitioner may be permitted to withdraw the counter claim.

6. The learned counsel for the respondent opposed the revision on the ground that when the rights of the parties are crystallized in the nature of a decree passed by the Court, a person who suffered a decree cannot defeat the decree by withdrawing the suit or counter claim as the case may be. In this case, the learned counsel relied on the judgment of the Hon'ble Apex Court in the case of ***R.Rathinavel Chettiar and Another Vs V.Sivaraman and Others*** reported in ***(1999) 4 SCC 89*** .

7. Admittedly, in the case on hand, the counter claim filed by the petitioner is decreed and the respondent was directed to pay a sum of Rs. 3,95,000/- and get the sale deed executed in his favour. Aggrieved by the same, the petitioner herein preferred first appeal and the same is pending. Now, the petitioner wants to withdraw the counter claim. If the counter claim



is allowed to be withdrawn, certainly it would amount to defeating the rights crystallized in favour of respondent under the decree. A reading of decree passed in counter claim would indicate that respondent was directed to pay a sum of Rs.3,95,000/- to petitioner to get the sale deed in his favour. The person, who is aggrieved by the decree passed by the Court is not entitled to defeat the same by withdrawing his main suit/counter claim. In this regard, it would be appropriate to refer to the observation of the Hon'ble Apex Court in the case of ***R.Rathinavel Chettiar and Another Vs V.Sivaraman and Others*** reported in ***(1999) 4 SCC 89***. The relevant portion reads as follows:-

“22. In view of the above discussion, it comes out that where a decree passed by the trial Court is challenged in appeal, it would not be open to the plaintiff, at that stage, to withdraw the suit so as to destroy that decree. The rights which have come to be vested in the parties to the suit under the decree cannot be taken away by withdrawal of the suit at that stage unless very strong reasons are shown that the withdrawal would not affect or prejudice anybody's vested rights. The impugned judgment of the High Court in which a contrary view has been expressed cannot be sustained.”



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8. In the case on hand, the revision petitioner by withdrawing the counter claim preferred by him trying to destroy the rights crystallized in favour of the respondent under the decree which is also under challenge. Therefore, the Court below rightly refused to permit the petitioner to withdraw his counter claim. I do not find any illegality or irregularity in the order passed by the Court below requiring this Court to interfere in revision.

9. Accordingly, the Civil Revision Petition stands dismissed. Consequently, connected miscellaneous petition is closed. No costs.

10. It is made clear that the petitioner is entitled to raise all his objections against the decree in the appeal pending before the Court below.

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Index : Yes
Internet : Yes
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To

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The learned Principal District Judge, Cuddalore



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S.SOUNTHAR, J.

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