



C.R.P(MD).No.2339 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 02.07.2024

CORAM

THE HONOURABLE MR JUSTICE D.BHARATHA CHAKRAVARTHY

**C.R.P(MD)No.2339 of 2022
and C.M.P(MD). No.11305 of 2022**

1.Chinnasamy(died)
2.C.Selvaraj
3.G.Mariyammal ... Petitioners
(P2 & P3 are impleaded vide order dated 02.07.2024
in C.M.P(MD).NO.5810 of 2024 in C.R.P(MD).No.2339 of 2022)

-Vs-

1.Anthonysamy
2.Jayarani
3.Reginamary
4.Rooban ... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 29.08.2022 passed in I.A.No.281 of 2019 in O.S.No.127 of 2017 on the file of the learned Subordinate Court, Sivakasi.

For Petitioners : Mr.M.P.Senthil
For Respondents: No appearance



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ORDER

The civil revision petition arises out of the order of the learned Subordinate Judge, Sivakasi, dated 29.08.2022 in I.A.No.281 of 2019 in O.S.No.127 of 2017. In the said interlocutory application the petitioner has prayed to receive the reply filed by him in respect of the written statement/counter-claim filed by the first defendant. In the said written statement, the first defendant has specifically pleaded that the plaintiff's case should be allowed and the present petitioner/co-defendant's counter-claim should be dismissed. He has given reasons why the counter-claim of the co-defendant should be dismissed.

2. Therefore, the petitioner has filed the present application for leave to file a reply to the averments made in the said written statement and filed the application. The application is now rejected by the trial Court on the ground that when the petitioner is only a co-defendant, he cannot file a reply statement to the written statement filed by the other defendant.



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3. Heard *Mr.M.P.Senthil*, learned counsel for the petitioner. Even though notice has been served upon the respondents, they have not chosen to appear before this Court.

4. The learned counsel for the petitioner would submit that it is not a case where the co-defendant seeks time to file a reply statement to the written statement filed by another defendant, but the first respondent had specifically prayed that the co-defendant's counter should be dismissed and has made pleadings regarding the same.

5. It is the trite proposition that in a suit for partition, every plaintiff is a defendant and every defendant is a plaintiff. In this case, the first defendant is sailing with the plaintiff. In his written statement, he has submitted that the suit as prayed for by the plaintiff be decreed and the counter-claim as prayed for by the petitioner/second defendant be dismissed. Thus, the counter-claim of the petitioner is to be treated like a



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plaint and the written statement of the first defendant is to be treated as a written statement to the same. In that view of the matter, the principle that is relied upon by the trial Court as if it is the written statement of a co-defendant is incorrect. It can be seen that the first defendant and the second defendant are virtually opposing each other and thus the petitioner has to be given leave to refute the averments/allegations by filing a reply.

6. In view thereof, this Civil Revision Petition is allowed and the order of the learned Subordinate Judge, Sivakasi, dated 29.08.2022 in I.A.No.281 of 2019 in O.S.No.127 of 2017 is set aside and consequently, the said application shall stand allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

02.07.2024

Index: Yes / No
Internet: Yes/ No
Rmk



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1. The Subordinate Court, Sivakasi.
2. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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D.BHARATHA CHAKRAVARTHY, J.

Rmk

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