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C.R.P.(MD)No.2826 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved : 27/03/2024

Date of Pronounced : 05/06/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGO VAN**

C.R.P (MD) No.2826 of 2023

and

CMP (MD) No.14733 of 2023

Karuppiyah @ Kali : Petitioner/Petitioner/
4th Defendant

Vs.

1.Kaleeswari : 1st Respondent/
1st Respondent/Plaintiff

2.The District Collector,
Office of the Collectorte,
Sivagangai.

3.The Revenue Divisional officer,
Revenue Divisional Office,
Sivagangai.

4.The Thasildar,
Taluk Office,
Ilayangudi,
Sivagangai District. : Respondents 2 to 4/
Respondents 2 to 5/
Defendants 1 to 3

PRAYER:-Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 06/07/2023 made in IA No.3 of 2023 in OS No.39 of 2020 on the file of the District Munsif-cum-Judicial Magistrate Court, Ilayangudi.



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For Petitioner : Mr.D.Senthil
For 1st Respondent : Mr.S.Srinivasa Raghavan
For R2 to R4 : Mr.A.Sivanu Pandian
Government Advocate (Civil)

O R D E R

This civil revision petition has been filed seeking to set aside the fair and decreetal order, dated 06/07/2023 passed in IA No.3 of 2023 in OS No.39 of 2020 by the District Munsif-cum-Judicial Magistrate, Ilayangudi.

2.The facts in brief:-

Suit in OS No.39 of 2020 is filed by the 1st respondent herein seeking the relief of declaration, permanent injunction and for costs. The defendants entered appearance, filed the written statement. Pending further process, a petition was taken out by the 4th defendant herein in IA No.3 of 2023 seeking permission of this court to file the additional written statement along with counter claim under Order 8 Rule 9 and 151 CPC. That was dismissed by the trial court.

3.Against which, this civil revision petition is preferred.



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4.Heard both sides.

5.For better appreciation of the facts, let me briefly extract the relevant portion of the plaint regarding the present issue.

The property comprised in Survey No.111/27 measuring about 1.25 Acres was assigned by the Government of Tamil Nadu in favour of the plaintiff in HSD No.471/2007 dated 24/102007. On that date itself, the plaintiff took the possession and constructed a compound wall, put up asbestos sheet and he is in continuous possession.

6.In the written statement filed by the defendants, it is specifically denied that the plaintiff is not in possession of the property and put up a compound wall and asbestos sheet.

7.The 4th defendant also claimed rival title over the property and stated that he is in possession. That statement was filed on 18/07/2022. The present petition was filed much after the filing the written statement.

8.Now the learned counsel appearing for the petitioner would submit that only pending the suit, the



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plaintiff constructed the compound wall and put up the asbestos sheet. So from the date of the construction, petition is filed by him seeking counter claim within time.

9.Per contra, the learned counsel appearing for the plaintiff namely the 1st respondent herein by pointing out to the specific pleadings in the plaint would submit that the availability of the compound wall and the asbestos sheet was brought to the notice of the defendants even at the time of filing the plaint. Even though that was denied by him specifically in the written statement, but failed to file any counter claim along with the written statement. The belated filing of the counter claim is not permissible under law. He would further submit that only separate suit can be filed by the defendants seeking recovery of possession. In the event of filing such a suit, then the suit may be tried along with that, for which there can be no bar.

10.For which, the learned counsel appearing for the petitioner would submit that when the construction is done pending suit, he can file a counter claim within a time limit.



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11. Reading of the trial court order also does indicate that in-spite of the specific plea in the plaint over the construction, the petitioner did not file a counter claim in time. So the belated counter claim cannot be permitted.

12. In the light of the above said factual position, I am of the considered view that no ground is made out by the petitioner to interfere into the order passed by the trial court.

13. In the result, the civil revision petition fails and the same is **dismissed**. No costs. Consequently, connected Miscellaneous Petition is closed.

05/06/2024

Index: Yes/No
Internet: Yes/No
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To,

1. The District Munsif-cum-Judicial Magistrate,
Ilayangudi.

2. The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

er

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