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CRP(PD).No.173 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :18.02.2025

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

CRP.(PD).No.173 of 2025

1.Velu
2.Indrani
3.Subramaniam
4.Ramachandran
5.Arulpandian
6.Aruna

... Petitioners

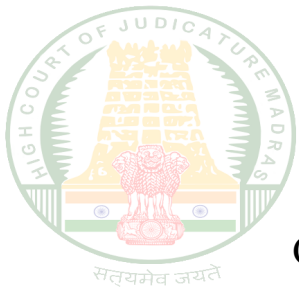
Vs.

1.Palanivelu
2.Periyanayagam
3.Selvaraju
4.Chandru

... Respondents

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India to against the Unnumbered OS.No. of 2024 in OS.No.2/2019 in Sub Court, Omalur dated 21.11.2022.

For Petitioner : M/s.G.Surya Narayanan

**ORDER**

Challenging the docket order dated 21.11.2022 passed by the learned Sub Judge, Omalur in and by which the learned Judge had returned the counter claim filed by the petitioners/defendants without numbering the same, the petitioners/defendants are before this Court.

2. Though the revision requires to be disposed of on a preliminary issue, it would be apposite to extract briefly the facts of the case. The parties are referred to in the same ranking as before the Trial Court

3. Suit O.S.No.2/2019 has been filed by the respondents in the above Civil Revision Petition on the file of the District Munsif, Omalur seeking for a permanent injunction against the defendants, the revision petitioners herein restraining them from disturbing the plaintiffs' peaceful possession and enjoyment of the suit property.

4. The plaintiffs in the aforesaid suit would contend that the 1st plaintiff had purchased the property from the defendants on 23.10.2015 under a registered document after paying the entire sale



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consideration. The sale deed was executed pursuant to an agreement of sale dated 30.12.2013 which was also a registered one. On the basis of this purchase, the 1st plaintiff had sold an extent of 490^{1/2} sq.f.t house site together with the house on 07.09.2016 to the plaintiffs 2, 3 and 4. The defendants despite receiving the entire sale consideration has been demanding further sale consideration and have threatened to dispossess the plaintiffs and therefore, the plaintiffs have come forward with the suit in question.

5. The 1st defendant had filed a written statement which was adopted by defendants 2 to 6, denying the various allegations contained in the plaint. The defendants' contention is that they had borrowed a sum of Rs.80,000/- from one Veeramuthu Raja, for which as a security, an agreement of sale deed dated 10.02.2011 was executed. The defendants had been remitting the periodic interest and a sum of Rs.1,00,000/- was due towards the principal and interest. The defendants had returned the sum of Rs.80,000/- to the said Veeramuthu. However, for the balance of Rs.20,000/- they had approached the 1st plaintiff and requested him to pay the balance amount. Accordingly, the 1st plaintiff had paid the balance amount and



as security for the said loan had obtained an agreement of sale in his favour and also obtained the original title deed of the property.

6. When the 1st and 2nd defendants approached the 1st plaintiff, requesting him to receive the loan amount and cancel the agreement of sale, the 1st plaintiff took them to the Sub-Registrar's Office and made them sign documents. Since they were not well-educated, they were unaware about the actual contents of the documents and trusting the same to be a cancellation deed had signed the same. However, it appears that what was obtained was a sale deed.

7. The defendants have also subsequently filed an additional written statement with a counter claim. The counter claim has been filed for the following reliefs:-

(i) to direct the plaintiffs to vacate and hand over the vacant possession of the suit property to the 2nd defendant;

(ii) to declare the sale agreement dated 30.12.2013 as null and void and consequently to declare the sale deed dated 23.10.2015



executed on the basis of the agreement of sale dated 30.12.2013 as null and void;

(iii) to declare the sale deed dated 07.09.2016 executed by the 1st plaintiff in favour of plaintiffs 2 to 4 as null and void;

(iv) to grant an order of permanent injunction restraining the plaintiffs from alienating the suit property to third parties.

8. This counter claim filed by the defendants has been returned as it exceeds the pecuniary jurisdiction of the District Munsif, Omalur. When the counter claim was properly represented before the Sub Court, Omalur, once again the same has been returned on 21.11.2024 stating as follows:-

"This Petition mentioned case in O.S.No.2/2019 is transferred from DMC, Omalur as per Jurisdiction, the plaint is already returned.

Hence, this counter claim petition returned."

Challenging the same, the revision petitioners are before this Court.

9. The contention of the learned counsel for the petitioners is



that the counter claim ought to have been numbered irrespective of the suit being returned.

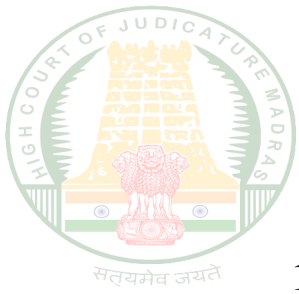
10. Heard the learned counsel for the petitioner.

11. The issue involved in this revision is two fold:-

"(i) Whether the counter claim can be maintained and treated independently like a plaint even when the suit is withdrawn?

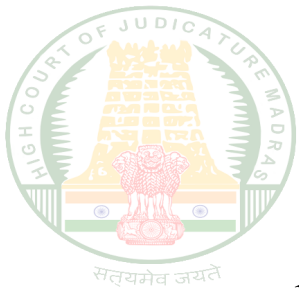
(ii) Whether the defendants who have filed a counter claim which exceeds the pecuniary jurisdiction of the Court can be permitted to continue the counter claim either before the original Court or before the Court which has the jurisdiction?"

12. As regards the first issue regarding the maintainability of the counter claim independent of the suit, this Court in a judgment reported in **1997 (1) MLJ page 529 – Vediammal and Ors. Vs. M.Kandasamy and Ors.** was considering the issue as to whether the non filing of an appeal against the counter claim would act as res judicata in the case of an appeal filed against the main suit.



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13. The learned Judge of this Court had considered what a suit means and what a counter claim means. The suit has not been defined anywhere in the Code of Civil Procedure. The learned Judge referred to the law dictionary to come to the conclusion that a suit was a process instituted in a Court of justice for recovery or protection of a right, the enforcement of the claim or redress of a wrong. The learned Judge had also discussed Order 8 Rule 6A of the Code of Civil Procedure which deals with counter claim. He had observed that as far as counter claim is concerned Rule 4 says that "The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints' - Order 8, Rule 6-C, C.P.C. enables the plaintiff in certain circumstances to seek orders of court that the counter-claim should not be tacked on with the plaint and the same may be treated as a suit. The court, on hearing such application, shall make necessary orders Order 8, Rule 6-D, C.P.C. says that in cases where defendant sets up a counter-claim, even if the plaintiff's suit is stayed, discontinued or dismissed, the counter-claim may nevertheless be proceeded with Order 8, Rule 6-E, C.P.C. is corresponding to Order 8, Rule 10, C.P.C"



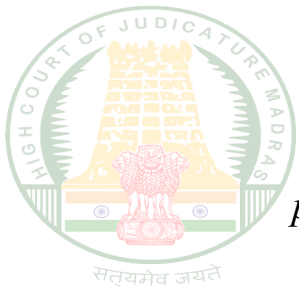
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14. The learned Judge relied on a Division Bench judgment of this Court reported in ***AIR 1971 Mad 215 – Uthandarama Pillai Vs. Arumugam Pillai*** where the learned Judges had observed as follows:-

"A. counter-claim is one based on an independent cause of action which distinguishes it from a set-off generally arises as a part of the transaction giving rise to the cause of action for the suit. The essence of counter-claim is that the defendant should have a cause of action against the plaintiff and should be in the nature of a cross-action against the plaintiff and not merely a defence to the plaintiff's claim."

15. Ultimately, the learned Judge set out the principles that emerged from the discussion in the various judgements as follows:-

"A counter-claim is really a suit, though the same is taken in the written statement. Just as a suit is filed by the plaintiff, defendant seeks a relief against the plaintiff on a cause of action which he has against the

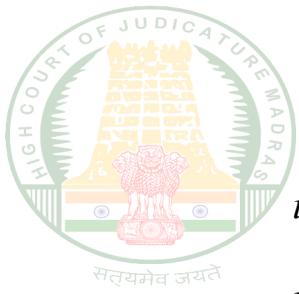


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plaintiff. It is an independent cause of action which could also be agitated in a separate suit. It is to avoid multiplicity of proceedings, defendant is given liberty to file a counter-claim and get adjudication. Issues are suggested in both the original claim as well as in the counter-claim, and both are disposed of by a common judgment (Order 8, Rule 6-A(2), C.P.C. says that there can be a final judgment in the same suit, both on the original claim and counter-claim). In common parlance, 'common judgment' means, 'decision arrived simultaneously in more than one suit tried together.' In view of the legal position under Order 8, Rule 6-A, C.P.C, a counter-claim or set-off can be made in many forms in a suit. But they need not be given separate numbers. The counter-claim is also said to be a weapon on evidence and enables the defendant to enforce the claim against the plaintiff as effectively as an independent action. As stated earlier, it is an enabling provision which gives a right to the defendant that



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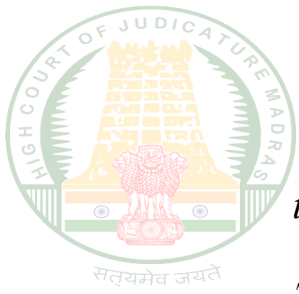
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instead of filing an independent action, he can seek that relief in a suit filed by plaintiff against him."

16. In a Judgment reported in **(1996) 4 SCC page 699 – Jag Mohan Chawla and Other Vs. Dera Radha Swami Satsang and Others**, the learned Judges of the Hon'ble Supreme Court, while answering whether a counter claim can be made on a different cause of action, had held as follows:-

"The counter-claim could be treated as a cross-suit and it could be decided in the same suit without relegating the parties to a fresh suit. It is true that in money suits, decree must be conformable to Order 20, Rule 18, CPC but the object of the amendments introduced by Rules 6-A to 6-G are conferment of a statutory right on the defendant to set up a counter-claim independent of the claim on the basis of which the plaintiff laid the suit, on his own cause of action. In sub-rule (1) of Rule 6-A, the language is so couched with words of wide width as to enable the parties to bring his own independent cause of action in respect of any claim



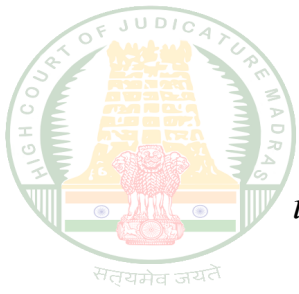
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that would be the subject-matter of an independent suit.

Thereby, it is no longer confined to money claim or to cause of action of the same nature as original action of the plaintiff. It need not relate to or be connected with the original cause of action or matter pleaded by the plaintiff. The words "any right or claim in respect of a cause of action accruing with the defendant" would show that the cause of action from which the counter-claim arises need not necessarily arise from or have any nexus with the cause of action of the plaintiff that occasioned to lay the suit. The only limitation is that the cause of action should arise before the time fixed for filing the written statement expires. The defendant may set up a cause of action which has accrued to him even after the institution of the suit. The counter-claim expressly is treated as a cross-suit with all the indicia of pleadings as a plaint including the duty to aver his cause of action and also payment of the requisite court fee thereon. Instead of relegating the defendant to an



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independent suit, to avert multiplicity of the proceeding and needless protection (sic protraction), the legislature intended to try both the suit and the counter-claim in the same suit as suit and cross-suit and have them disposed of in the same trial. In other words, a defendant can claim any right by way of a counter-claim in respect of any cause of action that has accrued to him even though it is independent of the cause of action averred by the plaintiff and have the same cause of action adjudicated without relegating the defendant to file a separate suit."

17. Therefore, in the light of the above discussions, the first issue is answered in affirmative.

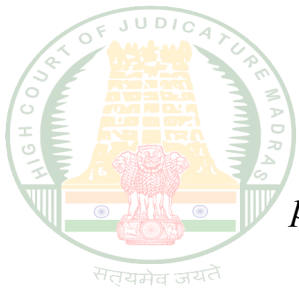
18. Now, coming to the issue as to whether the defendants who have filed a counter claim which exceeds the pecuniary jurisdiction of the Court can be permitted to continue the counter claim either before the original Court or before the Court which has the jurisdiction. Useful reference can be made to the judgment reported in **(1996) 1 SCC 770 – Gurbachan Singh Vs. Bhag Singh and Others**, the



Hon'ble Supreme Court had observed as follows:-

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"It is true that Rule 6-A(a) was introduced by the Amendment Act of 1976. Preceding the amendment, it was settled law that except in a money claim, counter-claim or set-off cannot be set up in other suits. The Law Commission of India had recommended, to avoid multiplicity of the - proceedings, right to the defendants to raise the plea of set-off in addition to a counter-claim in Rule 6 in the same suit irrespective of the fact whether the cause of action for counter-claim or set-off had accrued to the defendant either before or after the filing of the suit. The limitation was that the counter-claim or set-off must be pleaded by way of defence in the written statement before the defendant filed his written statement or before the time-limit for delivering the written statement has expired, whether such counter-claim is in the nature of a claim for damages or not. Further limitation was that the counter-claim should not exceed the pecuniary limits of the jurisdiction of the court. In other words, by laying the counter-claim,



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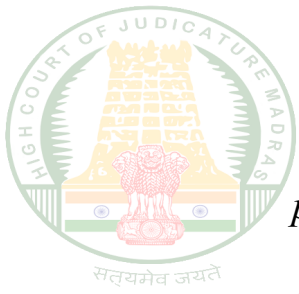
pecuniary jurisdiction of the court cannot be divested and the power to try the suit already entertained cannot be taken away by accepting the counter-claim beyond its pecuniary jurisdiction."

19. In the judgment reported in **1997 SCC OnLine P & H 1000 - Navdeep Theater (P) Ltd., Vs. Union of India**, the learned Judges had observed as follows:-

"If a counter-claim is made in excess of the pecuniary jurisdiction, the same is to be directed to be returned for presentation to the proper Court as has been held in V.A. Palayan v. Chandra Mohan, 1982 (1) MLJ 160."

20. In the judgment reported in **2016 SCC OnLine Mad 13150 - Mrs.K.Madhu and Others Vs. M/s. Medusind Solutions Pvt. Ltd**, the learned Judge had observed as follows:-

" When a claim either in the form of a plaint or in the form of a counter claim is made and the Court in which such claim is made does not have the



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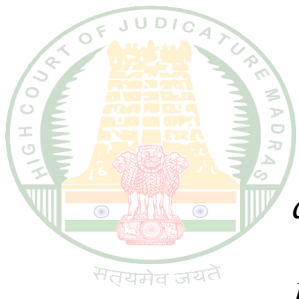
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pecuniary jurisdiction to try the suit instituted based on such plaint or counter claim, then it shall be proper for the Court to return the plaint or the counter claim, which shall be treated as a separate plaint so far as the counter claim is concerned, for presentation in the proper Court. The learned trial Judge has done the same thing in passing the impugned order of return."

21. This position is also reiterated in a more recent judgement of the Hon'ble Supreme Court reported in **(2022) 17 SCC 154 – *Satyender and others Vs. Saroj and others***. The learned Judges relied upon the judgement of ***Jag Mohan Chawla*** cited supra and held as follows:-

"The legislature permits the institution of a counterclaim, in order to avoid multiplicity of litigation. But then it has certain limitations such as that the counterclaim cannot exceed the pecuniary limits of the jurisdiction of the court, and that such counterclaim must be instituted before the defendant has delivered his



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defence or before the time-limit for delivering his defence has expired. More importantly, such a counterclaim must be against the plaintiff."

22. Therefore, a counter claim can be independently entertained by the Court when the suit is instituted provided that the counter claim falls within the pecuniary jurisdiction of the Court. If it exceeds the pecuniary jurisdiction of the original Court, the counter claim has to be returned for presenting the same before the Court having jurisdiction. Therefore, the 2nd issue is answered as follows:- If the counter claim falls with the jurisdiction of the Court where the suit is instituted it can be continued there however if the counter claim exceeds the pecuniary jurisdiction, the same has to be returned for presentation before the Court having the pecuniary jurisdiction.

23. In the light of the above discussions, the Civil Revision Petition stands allowed and since the pecuniary jurisdiction exceeds the pecuniary jurisdiction of the Court, the petitioners shall therefore take a return of the counter claim and present the counter claim that has been returned before the appropriate jurisdictional Court. The



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Jurisdictional Court shall consider the counter claim as a suit and number it. No costs.

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Index : Yes/No

Speaking Order: Yes/No

To

1.The Sub Court, Omalur

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