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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.03.2025

CORAM

THE HON'BLE MR. JUSTICE R.VIJAYAKUMAR

C.R.P.(NPD)(MD)No.917 of 2025

and

C.M.P(MD)No.4899 of 2025

1.P.Manickammal

2.P.Palanisamy

...Petitioners/Defendants

Vs.

N.Prabavathy

...Respondent/Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to number the Counter Claim in O.S.No.56 of 2024 on the file of the Sub Court, Palani, and allow the above Civil Revision Petition.

For Petitioners : Mr.N.Mohan

* * * * *

ORDER

The defendants in O.S.No.56 of 2024, on the file of the Sub Court, Palani, have filed the present revision petition challenging the return order passed by the trial Court returning the written statement filed by the defendants on the ground that the counter claim raised, incorporated in the written statement exceeds the pecuniary jurisdiction.



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2.A perusal of the records reveal that the respondent herein as plaintiff has filed the above said suit for the relief of declaration of title and permanent injunction. The defendants have filed their written statement along with a counter claim where the relief sought for, is to a tune of Rs.20,00,000/-. The trial Court has refused to accept the written statement along with counter claim and it has returned the same. Challenging the same, the present revision petition has been filed.

3.According to the learned Counsel appearing for the revision petitioners, the trial Court ought to have accepted counter claim and thereafter, transferred the same to the Court having competent pecuniary jurisdiction.

4.I have considered the submissions made on either side and perused the materials available on record.

5.As per the first proviso to order 8, Rule 6-A of .CP.C., the Court cannot entertain the counter claim when it exceeds its pecuniary jurisdiction. As per the Order 8, Rule 6A(4), a counter claim should be treated as a plaint and governed by the rules applicable to the plaint. Therefore, it is clear that when the counter



claim is presented, it is akin to a plaint and if the Court does not have pecuniary jurisdiction, it cannot entertain the same.

6.It is the contention of the learned Counsel appearing for the revision petitioners that after entertaining the counter claim, Court should have transferred the same to the Court having competent jurisdiction. Such a practice has been deprecated by the Hon'ble Supreme Court in a judgment reported in **1996 (1) SC 770**, Paragraph No.3, is extracted as follows:-

3.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



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words, by laying the counter-claim, 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. Thus considered, we hold that in a suit for injunction, the counter-claim for possession also could be entertained, by operation of Order 8, Rule 6(A) (1) of the CPC.

7. In view of the judgment of the Hon'ble Supreme Court, the defendants can either limit their counter claim upto the extent of the pecuniary jurisdiction of the Sub Court or if he wants to stick on to the prayer sought for in the counter claim, it is open to them to delete the counter claim from the written statement and present an independent suit before the competent Court.

8. With the above said observations, this Civil Revision Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is also closed.

9. The Registry is directed to return the original impugned order after getting due acknowledgment from the learned Counsel appearing for the revision petitioners.

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Internet: Yes/No
Index: Yes/No
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To

The learned Sub Judge, Palani.

Copy to:-

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



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R.VIJAYAKUMAR, J.

RJR

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