



WEB COPY

CRP No. 1935 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01-04-2026

CORAM

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CRP No. 1935 of 2025

AND

CMP NO. 11037 OF 2025

Mehabooba Beevi
W/o.A.Peer Mohamed, No.3 Venkatachala
Naicken Street, Pudupet, Chennai - 600 002,
Also at No.3A, Muggapair Road,
Muggapair, Chennai - 600 050.

..Petitioner(s)

Vs

1. S.Ranjitmal
S/o.Surajmal Jain, No.2 Muggapair Road, Padi,
Chennai - 600 050.
2. Rukmani Ammal
W/o.Poonurangam Pillai, No. Muggapair Road,
Padi, Chennai - 600 050.

..Respondent(s)

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, to direct the District Munsif, Ambattur, to number the counter claim filed by the petitioner in IA.SR.2657/2023 in OS.No.119/2008 and allow the CRP.

For Petitioner(s):

Mr.S.Kingston Jerold

For Respondent(s):

Mr.T.Saikrishnan For R1
R2 - Deceased



ORDER

The civil revision petition has been preferred by the first defendant to direct the District Munsif, Ambattur to number the counter claim filed by the petitioner in I.A. Sr. No.2657 of 2023 in O.S. No.119 of 2008.

2. The first defendant filed counter claim before the trial court which was not taken on file and therefore, he sought for direction to number the counter claim.

3. The learned counsel for the first respondent / plaintiff submits that the suit is of the year 2008, the revision petitioner / first defendant already filed the written statement, issues were framed, trial was commenced and PW1 was examined. Thereafter, the first defendant has come forward with this counter claim which cannot be entertained. Therefore, the Court below has rightly refused to admit the said counter claim.

4. *Per contra* the learned counsel for the revision petitioner submits that after the receipt of the commissioner report, the first defendant/ revision petitioner came to know that the plaintiff / 1st respondent has encroached nearly about 81 sq.ft. Therefore, necessity arose for him to file by way of counter claim that he want to declare his right over the said 81 sq.ft., which is under the encroachment of the plaintiff.



5. The learned counsel for the 1st respondent / plaintiff in reply submits that if at all any encroachment was made by the plaintiff, at the time of disposal of the suit the court can pass suitable order based on the commissioner report, for that the first defendant cannot compel the court to entertain his counter claim, since the case is filed by the plaintiff. Admittedly, it is not the case of the first defendant that the plaintiff has encroached any of her portion. But on seeing the commissioner report she come forward with counter claim. If issues are framed, entertaining the counter claim is not mandatory one. To that effect he relied on the decision of **Ashok Kumar Kalra Vs Wing CDR. Surendra Agnihotri and Others** reported in **(2020) 2 SCC 394**, in which para 18 as extracted hereunder :

*“18. As discussed by us in the preceding paragraphs, the whole purpose of the procedural law is to ensure that the legal process is made more effective in the process of delivering substantial justice. Particularly, the purpose of introducing Rule 6A in **Order VIII of the CPC** is to avoid multiplicity of proceedings by driving the parties to file separate suit and see that the dispute between the parties is decided finally. If the provision is interpreted in such a way, to allow delayed filing of the counterclaim, the provision itself becomes redundant and the purpose for which the amendment is made will be defeated and ultimately it leads to flagrant miscarriage of justice. At the same time, there cannot be a rigid and hypertechnical approach that the provision stipulates that the counterclaim has to be filed*



along with the written statement and beyond that, the Court has no power. The Courts, taking into consideration the reasons stated in support of the counter-claim, should adopt a balanced approach keeping in mind the object behind the amendment and to sub-serve the ends of justice. There cannot be any hard and fast rule to say that in a particular time the counter-claim has to be filed, by curtailing the discretion conferred on the Courts. The trial court has to exercise the discretion judiciously and come to a definite conclusion that by allowing the counter-claim, no prejudice is caused to the opposite party, process is not unduly delayed and the same is in the best interest of justice and as per the objects sought to be achieved through the amendment. But however, we are of the considered opinion that the defendant cannot be permitted to file counter-claim after the issues are framed and after the suit has proceeded substantially. It would defeat the cause of justice and be detrimental to the principle of speedy justice as enshrined in the objects and reasons for the particular amendment to [the CPC](#).”

Through the said prepositions and considering the facts of the case if it necessary the trial court can entertain the counter claim. But as per the commissioner report, the first defendant claim that the plaintiff has encroached 81 sq. ft., and if at all that is proved after the completion of the trial, the trial judge is entitled to pass order with regard to the said encroachment. Therefore, the counter claim is not necessary to decide the issues between the parties. Therefore, direction sought by the revision petitioner can be entertained.



6. Accordingly, this Civil Revision Petition is dismissed. Liberty is granted to the revision petitioner / first defendant to take all defence before the trial court. Both the parties are directed to cooperate with the trial. The trial judge is directed to dispose of the case within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

01-04-2026

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

MTL

To

1. The District Munsif, Ambattur.



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T.V.THAMILSELVI J.

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