

IN THE COURT OF PRINCIPAL DISTRICT MUNSIF, CHIDAMBARAM.

Present: Selvi.S.Padmavathi, M.L.,
Principal District Munsif,
Chidambaram.

Saturday, the 7th day of March 2026
IA.15/2026 in OS.49/2010

Karunagaran

..... Petitioner/ 2nd Defendant

/Vs/

Bharathi Aided Elementary School
represented by its Secretary Sivakumar

....Respondent/Plaintiff

This petition is coming on 27.2.2026 for final hearing before me in the presence of Tmt.G.Vijayalakshmi, Advocate for Petitioner/ 2nd Defendant and Thiru.N.Rajendran, Advocate for Respondent/Plaintiff and on perusal of the records and upon hearing both sides, this court delivers the following.

ORDER

The Petition is filed Petitioner/ 2nd Defendant under Section 151 of CPC, 1908 to receive the Counter claim.

2. The Brief averments of the Petitioner/D2 are as follows:-

Suit filed for Permanent Injunction. It is stated that, Written statement filed in the suit to be treated as the part and parcel of the Petition. D3 of Os 49/2010 Ravichandran, filed OS.135/2010 for declaration against this Petitioner/School and others in which this Petitioner filed counter claim and contested and later OS.135/2010 was dismissed for default and the counter claim filed by Petitioner

had been pending. It is Ordered to conduct Joint trial for OS.49/2010 and OS.135/2010. As OS.135/2010 was dismissed for default, OS.49/2010 and Counter claim in OS.135/2010 can't be tried Jointly due to question as to maintainability of counter claim alone and so that counter claim was not pressed. Hence, to file counter claim in this suit OS.49/2010, it is filed along with this petition to receive it.

3. The brief averments of the Counter filed by Respondent/Plaintiff are as follows:

The petition is false, frivolous, vexatious and liable to be dismissed. The Respondent denied the averments in petition except expressly admitting facts.

It is contested that, it is not mentioned in Counter claim as to on what right he filed it, seeking what relief and there is no fact or explanation and so Petition is liable to be dismissed.

It is stated that, this petitioner by his brother Ravichandran filed OS.135/2010 seeking Declaration relief. IA.4/2016 was allowed dt.05.01.2016 to conduct joint trial. Petitioner's brother Ravichandran made OS.135/2010 to be dismissed for default and at that time OS.49/2010 was at the stage of Evidence. In spite of, insisting to restore OS.135/2010 to conduct Joint trial with OS.49/2010, Petitioner's brother Ravichandran D2 didn't come forward to do and OS.135/2010 was dismissed for default after filing of PW's Chief proof affidavit in OS.49/2010. After 201 days, Ravichandran filed Petition to condone delay which was allowed. OS.49/2010 has been filed seeking Permanent Injunction whereas OS.135/2010

was filed seeking Declaration and so Ravichandran has to commence trial in OS.135/2010, but as he didn't have good case wantonly made OS.135/2010 to be dismissed for default.

It is further stated that, PW1 was examined and Ex.A1 to Ex.A12 marked in OS.49/2010 and at that time OS.135/2010 needs to be restored but which was not and IA.297/2017 was filed to treat PW1's evidence to be considered as DW1 evidence in OS.135/2010 which IA got closed for which petition filed to restore IA.297/2017 and petitioner with view that as case will be lost if Brother Ravichandran conducts case, filed Counter-claim in OS.135/2010, for which reply statement was filed . IA.130/2025 was allowed for conducting Preliminary Inquiry and the petitioner though stated to prefer CRP against IA.130/2025 sought time , didnt prefer it but dragged on the proceedings as the Petitioner and his brother didn't have good case and the Petition filed now is not maintainable.

It is further stated that, Counter claim filed by Petitioner in OS.135/2010 was not pressed without liberty to file and there is no leave obtained to file new counter claim or new suit and so this Petition is not maintainable. There is no good case for Petitioner to receive Counter claim and the averments in the Petition are false and counter claim should be filed within 30 days from serving of summon but the Petition is filed after 15 years which is not maintainable and affected by Limitation. OS.135/2010 filed by Ravichandran is separate suit and OS.49/2010 is separate suit filed by respondent. Counter claim filed could not be treated continuously as right and petition is liable to be dismissed.

4. Point for consideration:- Whether the petition is fit to be allowed as prayed for by the petitioner?

5. No witnesses were examined and no documents marked on either side.

6. Point for discussion:-

Original Suit filed for Permanent Injunction is pending at the stage of Trial and this Petition u/s 151CPC has been filed to receive Counter claim and Counter claim filed for Declaring claimant/Petitioner, brother and mother to be members of suit Educational agency of School and to manage its properties.

Heard both sides. Records perused. Both side learned counsels argued their replica of Petition and Counter.

6.1) It is stated that, Written statement filed in the suit to be treated as the part and parcel of the Petition. D3 of Os 49/2010 filed OS.135/2010 for Declaration against the Petitioner and others in which Petitioner filed counter claim and contested and later OS.135/2010 was dismissed for default. It is Ordered to conduct Joint trial for OS.49/2010 and OS.135/2010 and as OS.135/2010 was dismissed for default, OS.49/2010 and Counter claim in OS.135/2010 can't be tried Jointly, where question as to maintainability of counter claim alone arises, and so that counter claim was not pressed there and in this suit for OS.49/2010, counter claim was filed along with this petition to receive it.

6.2) For which ,it is contested that, there is no explanation or fact explaining on what right petitioner filed Counter claim, seeking what relief .It is stated that,

brother of petitioner G.Ravichandran filed OS.135/2010 seeking Declaratory relief and IA.4/2016 was allowed dt.05.01.2016 to conduct joint trial but Ravichandran made OS.135/2010 to be dismissed for default wantonly when OS.49/2010 was at the stage of evidence. Petitioner's brother didn't come forward to restore OS.135/2010 to conduct Joint trial with OS.49/2010 and as Petitioner and his brother didn't have good case, they are dragging on the proceedings and the Petition filed now is not maintainable.

It is further contested that, counter claim filed by Petitioner in OS.135/2010 was not pressed without liberty to file counter claim here and there is no leave obtained to file new counter claim or new suit and so this Petition is not maintainable. Counter claim should be filed within 30 days of serving of summon, but the Petition is filed only after 15 years which is affected by period of Limitation.

6.3) On perusal of the material records of the cases , this court knew Petitioner karunakaran and D3 Ravichandran in OS 49/2010 are brothers. OS.135/2010 was dismissed for default on 15.3.2023 and its Counter claim was not pressed on 27.11.2025 without preliminary enquiry being heard after allowing it in IA 181/2025.

Petitioner prayed to receive Counter-claim in this Suit OS49/2010 stating reason viz in joint trial, Counter Claim filed in OS 135/2010 was not pressed. Respondent/ Bharathi aided Elementary school contested Counter -claim filed by Petitioner as highly belated after 15 years and so not at all maintainable and also

stated brothers are wantonly dragging on proceedings.

Plaintiff Counsel cited In Re Ashok kumar Kalra Vs. Wing CDR. Surendras Agnihotri and ors. 2018 SC in support of the receiving Counter-claim whereas Respondent Counsel cited In Re Mahesh Govindji Trivedi Vs. Bakul Maganlal Vyas, 2022 SC, in which it is held that,

*Rule 95 is in pari material with Order VIII Rule 6 -A of the Code of civil procedure, 1908 (CPC) Both say that a counter claim proceeds like a cross suit. Both Rule 95 and Order VIII Rule 6-A specify an outer limit beyond which no counter claim can be filed. A counter claim is designed to avoid multiplicity of proceedings that time limit of filing a counter claim is not explicitly provided but majority considered opinion has been that the defendant cannot be permitted to file counter claim after the issues are framed and the suit has proceeded substantially. The court has to take into consideration the outer limit for filing the counter claim, which is pegged till the issues are framed. The court in such cases have the discretion to entertain filing of the counter claim, after taking into consideration and evaluation inclusive factors provided below which are only illustrative though not exhaustive. It is clear that a counter claim can be filed on two conditions viz its cause of action complies with Order 8 rule 6-A(1) and second, **it is filed within the period specified under the Limitation Act.** To ensure speedy disposal of suits, discretion should only be exercised till the framing of issues for trial. Allowing counter claim beyond this stage would only prolong the trial, but also prejudice the rights that may get vested with the plaintiff over the course of time which 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 CPC.*

On considering the rival submissions and on perusal of case records, this court is of view that, as rightly objected by Respondent, firstly, the petition is highly belated and secondly, reason stated viz Joint trial case Counter claim not pressed, regarding which this Court observes, this Suit is of Permanent Injunction but OS 135/2010 is for Declaration and reason for not restoring it is unknown since this petitioner and Plaintiff in OS 135/2010 are closely related viz brothers. The petitioner's brother didn't restore OS 135/2010 after insist upon by other side which implies wantonly made OS 135/2010 to be dismissed for default and also petitioner came with this petition at this juncture to receive Counter claim after 15

years is not so convincing and satisfactory to the Court. Also, in view of the things held by Hon'ble Apex Court stated above viz there is an outer limit beyond which no counter claim can be filed and majority considered opinion viz Counter claim should not be entertained after the issues are framed and the suit has proceeded substantially. Importantly, counter claim can be filed on two conditions viz its cause of action complies with Order 8 rule 6-A(1) and second, **it is filed within the period specified under the Limitation Act.** So, for the case in hand, this Court is of opinion that Allowing counter claim would only prolong the trial and also prejudice the rights vested with the plaintiff.

Considering the entire facts and circumstances of this case and above all reasons discussed supra, this court declines to allow the Petition in the interest of Justice.

7. In the result, the petition is dismissed. No Cost.

Dictated to the typist, typed by her in computer, corrected and pronounced by me in the open court, this 7th day of March, 2026.

(Sd/-S.Padmavathi)
Principal District Munsif,
Chidambaram.

List of exhibits on the side of petitioner: NIL

List of exhibits on the side of Respondent: NIL

List of witnesses on the side of Petitioner: NIL

List of witnesses on the side of Respondent: NIL

(Sd/-S.Padmavathi)
Principal District Munsif,
Chidambaram.

Fair/draft order
IA.No.15/2026
in
O.S.No.49/2010
Date: 07.03.2026

