

**IN THE COURT OF THE DISTRICT MUNSIF CUM JUDICIAL
MAGISTRATE, KADALADI.**

**Present: Thiru.S.SADHU SIVASUBRAMANIAN, B.A., B.L.
District Munsif cum Judicial Magistrate,
Kadaladi.**

Friday, the 05th day of December 2025

I.A.No.04/2025

in

O.S.No.42/2019

V.V.S.A.Sivagnanapandian

...Petitioner/3rd defendant

/Vs/

1. Rajathi

2. Rukkumani

3. Karthiyaini Nachiyar

4. Aranmanaipandian

... Respondent/plaintiff and
1, 2 Defendant

When this interim petition came up for final hearing before me on 03.12.2025, Mr. K. Rameshkannan, learned counsel appearing for the petitioner/3rd defendant, and Mr.S.Periasamy, learned counsel appearing for the 3, 4 respondent/1, 2 plaintiff, and Mr.S.Chandrasekar, learned counsel appearing for the 1, 2 respondent/3, 4 plaintiff, were present. After examining the documents filed and having kept the matter under consideration of this Court until today, this Court now delivers the following order:

ORDER

A petition has been filed by the petitioner/defendant under Order 8 Rule 4 read with Section 151 seeking an order to accept the counterclaim filed in the main suit.

2) Summary of the petition filed by the petitioner/defendant:

It is stated that the plaintiffs have filed the suit for declaration, permanent

injunction and recovery of possession by stating false particulars that the suit property belongs to the plaintiffs. It is further stated that the suit property originally belonged to the petitioner, that patta was issued in the petitioner's name accordingly, and that the petitioner has been in enjoyment of the said property. With an evil intention to usurp the property belonging to the petitioner, the plaintiffs and the 1st and 2nd defendants have created several fraudulent documents; by colluding together, the plaintiffs and the 1st and 2nd defendants have, despite clearly knowing that patta stood in the name of the petitioner, stated false particulars and attempted to obtain a judgment from this Court. On coming to know of this fact, a petition was filed to implead the petitioner in the above suit; and thereafter, the petitioner has been impleaded as a party in the suit and has been contesting the case according to law. Since the petitioner is a party to the suit, the plaintiffs and the 1st and 2nd defendants, with a fraudulent intention, have been stating that they will compromise the case outside Court and withdraw the suit; and if they do so, the petitioner's rights will be adversely affected. Therefore, this petition has been filed seeking acceptance of the counterclaim. (The petitioner relied upon the decisions of the Hon'ble Madras High Court in A. Mohamed Sulaiman vs. A. Ameena Beevi (Deceased), C.R.P.(PD) No.21 of 2011 and Ashari Lal Srivastava vs. Salauddin & Ors., Writ Petition No.19572 of 2010 of the Hon'ble Allahabad High Court.)

3) Summary of the counter filed by the 3rd and 4th respondents / 1st and 2nd defendants and the same was adopted by the 1, 2 respondent/1, 2 plaintiff's:

The allegations mentioned in the petition are denied. In the main suit, the cross-examination of P.W.1 on the side of the plaintiffs has been adjourned; at this stage, with an evil intention of delaying the trial of the main suit, the petitioner has filed this petition. The petitioner filed the written statement in the main suit on 10.12.2024, but at the time of filing the written statement, no counterclaim was sought. After lapse of time, the present counterclaim petition has been filed. It is further stated that the petitioner has only paid Rs.113/- as court fee according to the

valuation made in the suit, without valuing the suit property properly and paying appropriate court fees. According to the present Government guideline value, the suit property measuring 0.40.5 ares (43593.8 sq.ft.) at the rate of Rs.150 per sq.ft., must be valued at Rs.65,39,070/- and court fee of Rs.1,96,172.10 must be paid. Since the petitioner did not file a counterclaim when filing the written statement earlier, and as the present petition is filed belatedly, the petition must be dismissed. (The respondents relied on T.M. Durairaj vs. S. Arulprakash, C.R.P.(PD) No.91/2011 & M.P.No.1/2011.)

4) The point that arises for determination in this interlocutory petition is whether the relief sought by the petitioner is liable to be granted.?

In this petition, no witnesses were examined on either side. Documents were not marked.

5) Both sides heard. Documents perused. No witnesses were examined on either side in this petition.

The plaintiffs have filed the present suit stating that the suit property belongs to them, seeking permanent injunction restraining the defendants from interfering with their peaceful possession and enjoyment, and also seeking recovery of possession.

On the side of the petitioner/3rd defendant, it has been argued that the suit property originally belongs to the petitioner; that the plaintiffs and 1, 2 defendants have created fraudulent documents; that by colluding together, they have filed the suit with an evil intention to usurp the petitioner's property; and that if the plaintiffs and the 1st and 2nd defendants compromise the suit and withdraw it, the petitioner's rights will be affected.

The 3rd and 4th respondents/1st and 2nd defendants argued that the petitioner has filed this petition only to delay the trial of the suit; that the petitioner did not file a counterclaim at the time of filing the written statement; and that the petition is belated. It was also argued that appropriate court fee has not been paid according to

the present guideline value.

The main suit was originally numbered in 2003, and in 2014, the plaintiffs filed an application to amend the reliefs as they had not earlier sought declaration. The trial Court allowed the amendment. Against that, the 1st defendant filed revision before the Hon'ble Madras High Court in C.R.P.NPD (MD) No.248/2015, and the revision was allowed. Thereafter, the plaintiffs preferred Civil Appeal No.861 of 2017 before the Hon'ble Supreme Court, which allowed the appeal and permitted withdrawal of the earlier plaint and refile with additional relief of declaration.

Based on that, the plaintiffs filed the present suit for declaration and injunction against defendants 1 and 2. Later, a petition was filed to implead the 3rd defendant/petitioner, and it was allowed on 17.11.2023. Thereafter, the 3rd defendant filed the written statement on 19.09.2024, and the plaintiffs filed reply statement. Again, on 24.10.2024, an additional written statement was filed.

In the counterclaim filed by the petitioner, the petitioner has sought declaration, injunction, and recovery of possession. However, in the said counterclaim, the petitioner has not stated clearly when and where the cause of action arose, who is in present enjoyment of the suit property, or against which defendants the prayer for injunction is sought. At the time of filing the written statement and the additional written statement, the petitioner did not seek counterclaim. Only belatedly, to delay the proceedings, this petition appears to have been filed by the petitioner/3rd defendant.

At present, P.W.1 (2nd plaintiff) has been examined and exhibits Ex.P1 to Ex.P32 have been marked, and cross-examination of PW1 is pending. At this stage only, the petitioner filed this application. Therefore, this Court concludes that the Hon'ble High Court precedents relied upon by the petitioner do not apply to the facts of this case.

Further, as argued by the counter-respondents, court fee according to the present guideline value has not been paid. For 0.40.5 ares, the court fee payable is Rs.1,96,172.10, but only Rs.113 was paid. If proper court fee is paid, this Court

would have no pecuniary jurisdiction. It is also a legal principle that a counterclaim cannot be filed against co-defendants.

The Hon'ble Madras High Court in Southern Ancillaries Private Limited vs. Southern Alloy Foundaries Private Limited, AIR 2003 MAD 416 (418):

“The defendant can make a counterclaim even after filing the written statement but that should be before the commencement of recording of evidence.”

But in the present case, P.W.1 has already been examined and documents have been marked. The Hon'ble Madurai Bench of Madras High Court in W.P.(MD) No.12891 of 2021 and W.P.(MD) No.9967 and 15078 of 2021, dated 08.04.2024, directions were issued for speedy disposal. The petitioner/3rd defendant has filed this petition only to delay the trial.

Since no merits are found in the petition and considering the interest of justice, this Court holds that the relief sought is not liable to be granted.

Finally,

This petition is dismissed. No cost.

This order was directly dictated by me to the Steno-typist, typed on the computer by him, verified by me, and pronounced by me on 05.12.2025.

**District Munsif cum
Judicial Magistrate,
Kadaladi.**

Petitioner side witness, Documents: Nil

Respondent side witness, Documents: Nil

**District Munsif cum
Judicial Magistrate,
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Date: 05.12.2025
IA order