

IN THE COURT OF THE DISTRICT MUNSIF, METTUR

PRESENT: Thiru.R.Manivarman, B.A.,B.L.,L.L.M.,

District Munsif, Mettur.

Monday, this the 11th day of November 2024

I.A.No.10/2023

in

O.S.No.49/2010

K.R.Mani

....Petitioner/2nd Defendant

/Versus/

1. Sengodan

2. Ramasamy (died)

3. Ramayee

.... Respondents/Plaintiffs

This petition came up before me on 05.11.2024 for final hearing in the presence of Thiru.L.Ganapathy Subramanian, Advocate for Petitioner and Thiru.A.M.C.Periasamy, Advocate for R1, R3 (R2 died). On perusal of records and upon hearing oral and written arguments of both sides and having stood for consideration till this day, this Court delivered the following:-

ORDER

This counter claim is filed under Order 8 Rule 6A r/w 151 of C.P.C by the 2nd Defendant in O.S.No.49/2010 as against the reliefs claimed by the Plaintiffs in suit.

1. The brief contents of the petition as follows:

i) The petitioner herein is the 2nd Defendant in suit. This counter claim is filed for 0.28 cents of land situated in S.F.No.277/5A and 0.90 cents of land situated in S.F.No.277/5C in Aalamarathupatty village and which are a portion of suit property. The counter claim property is an ancestral property of petitioner and until now he has been in possession and enjoyment of the same. Besides this suit there was yet another bare injunction suit in O.S.No.176/2011 was held between the parties herein. Wherein the petitioner had filed an amendment application in I.A.No.839/2017 to amend the plaint by adding the relief of declaration was dismissed by this court.

ii) Against said dismissal, the petitioner herein had preferred the CRP.No.2527/2018, in which the Hon'ble High Court of Madras has directed the petitioner to workout his remedy in the pending suit by adducing further evidence if any and granted liberty to independently decide the question of title or factum of possession. Meanwhile said O.S.No.176/2011 was decided against the petitioner, and against which he has filed an 1st appeal. Hence, the petitioner has come up with this counter claim as against the claim of respondents in original suit.

2. The Brief contents of the Counter filed by the R1 and adopted by the R3 as follows:

The respondents contented that the petition is false, frivolous, vexatious and unsustainable either in law or on fact. This counter claim has been filed by the petitioner after lapse of 12 years. After the framing of issues and after examining the plaintiff side witnesses and when the case is posted for defendant side evidence, at this stage the counter claim filed by the petitioner is not maintainable. Nowhere in the order of CRP.No.2527/2018 in O.S.No.176/2011, the Hon'ble High Court of Madras has specifically granted any liberty to the petitioner to file a counter claim in this suit. Further, based on the aforesaid order the petitioner cannot get any exemption from the limitation. Hence prayed to dismiss the petition in lime line.

3. Points for consideration.

- (i) Whether the counter claim filed by the Petitioner after commencement of trial is maintainable?
- (ii) Whether this court is having pecuniary jurisdiction to entertain the counter claim filed by the Petitioner?
- (iii) Whether this counter claim can be entertained ?

4. Answer to the Point No.1:

- (i) It is the case of petitioner/ 2nd Defendant that he has been in possession and

enjoyment of 0.28 cents in S.F.No.277/5A and 0.90 cents in S.F.No.277/5C in Aalamarathupatty village. The aforementioned properties forms part of suit properties and also claimed to be an ancestral properties of petitioner. Petitioner stated that apart from this suit there was yet another bare injunction suit in O.S.No.176/2011 was held between the parties and wherein the petitioner had filed an amendment application in I.A.No.839/2017 to amend the plaint by adding the relief of declaration and the same was dismissed by this court. Against said dismissal, the petitioner had preferred the CRP.No.2527/2018, in which the Hon'ble High Court of Madras has granted liberty to the petitioner to independently decide the question of title or factum of possession in the pending suit. Thus the petitioner has come up with this counter claim as against the claim of respondents/plaintiffs in original suit.

(ii) On other hand respondents contented that the counter claim has been filed by the petitioner after lapse of 12 years. It is further contented that after the commencement of trial and more particularly when the case is posted for defendant side evidence, the counter claim filed by the petitioner at this stage is not maintainable. It is also contented that in the order of CRP.No.2527/2018 in O.S.No.176/2011, the Hon'ble High Court of Madras has not specifically granted any liberty to the petitioner to file a counter claim in this suit. Therefore, the petitioner cannot claim any exemption from the limitation to file this counter claim. Thus, prayed to dismiss the petition in lime line.

(iii) Upon careful consideration of the submissions made by the rival side and also considering the facts and circumstance of the suit, this court has decided to determine the maintainability of the counter claim at the very inception itself, without touching its merits and demerits. At this outset, it is significant to note that the main case in which this counter claim is filed has been posted for defendants' side evidence. Now the core question arises for consideration is that "After commencement of trial, that too after completion of the plaintiffs' side evidence, more particularly when the suit is

posted for adducing defendants' side evidence, Whether the defendant is entitled to file counter claim?"

(iv) Before entering into the discussion in this regard, this court thinks that it would be very useful to refer the relevant provision for better appreciation of issue. Which as follows,

“6-A. Counter claim by defendant:- (1) A defendant in a suit may, in addition to his right of pleading a set-off under Rule 6, set up, by way of counter-claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not.

Provided that such counter claim shall not exceed the pecuniary limits of the jurisdiction of the court...”

(v) On perusal of the Order 8 rule 6A of CPC makes it clear that, the defendant can file the counter claim only before or along with his written statement or before the expiry of time limit prescribed for filling the written statement. In other words, the defendant cannot file the counter claim after filing his written statement and it should have filed before filing the written statement. Therefore, this court is of view that the counter claim filed by the petitioner after commencement of trial is not maintainable. Of course, there are some divergent views and judicial pronouncements in this context, which says that even after filing the written statement counter claim can be filed. But all said views are put into streamline by our Hon'ble Apex Court in **2020 (2) SCC 394 Ashok Kumar Kalra -vs- Wing CDR Surendra Agnihotri** .

(vi) The relevant portion of the dictum of aforesaid three judges bench as follows,

“24. There are several considerations that must be borne in mind while allowing the filing of a belated counter-claim. First, the Court must consider that no injustice or irreparable loss is being caused to the defendant due to a refusal to entertain the counter-claim, or to the plaintiff by allowing the same. Of course, as the defendant

would have the option to pursue his cause of action in a separate suit, the question of prejudice to the defendant would ordinarily not arise. Second, the interest of justice must be given utmost importance and procedure should not outweigh substantive justice. Third, the specific objectives of reducing multiplicity of litigation and ensuring speedy trials underlying the provisions for counter-claims, must be accorded due consideration.

25. Having considered the previous judgments of this Court on counter-claims, the language employed in the rules related thereto, as well as the intention of the Legislature, I conclude that it is not mandatory for a counter-claim to be filed along with the written statement. **The Court, in its discretion, may allow a counter-claim to be filed after the filing of the written statement, in view of the considerations mentioned in the preceding paragraph. However, propriety requires that such discretion should ordinarily be exercised to allow the filing of a counter-claim till the framing of issues for trial.** To this extent, I concur with the conclusion reached by my learned Brothers. However, for the reasons stated above, **I am of the view that in exceptional circumstances, a counter-claim may be permitted to be filed after a written statement till the stage of commencement of recording of the evidence on behalf of the plaintiff..”**

(vii) On applying the aforesaid dictum to the facts and circumstance of case on hand, it is revealed in this case, issues have already been framed and trial was also commenced. Furthermore the plaintiffs' side evidence was completed and now the suit is posted for adducing the defendants' side evidence. Therefore, it is clear that permitting the counter claim filed by the petitioner at this belated stage would not only prolong the trial but also make cumbersome in the pending suit proceedings. Meantime the petitioner would not in any manner prejudiced due to a refusal to entertain the counter claim. Since, he can avail an efficacious remedy before appropriate by filing separate suit in accordance with law. Rather if this counter claim is entertained, then certainly it would cause prejudice and irreparable loss to the respondents.

(viii) Learned counsel for the petitioner in his argument stated that in CRP.No.2527/2018, the Hon'ble High Court of Madras has directed the petitioner to workout his remedy in the pending suit, which made him to file this counter claim.

The learned counsel for the petitioner further added that Hon'ble High Court of Madras has granted liberty to the petitioner to independently decide the question of title or factum of possession in pending suit, since the petitioner wants to declare his title, thus he has no other option, except to file this counter claim. On other hand the learned counsel for the respondents in his argument vehemently contented that nowhere in said order the Hon'ble High Court of Madras has specifically granted any liberty to the petitioner to file a counter claim in this suit and in such circumstance the petitioner is now trying to get the time barred remedy by misinterpreting said order.

(ix) On considering the aforesaid contentions of rival side, it becomes indispensable for this court to refer the relevant portion of the order, which as follows,

“Insofar as the other suit is concerned in O.S.No.49 of 2010, let I would permit both the plaintiffs and the defendants to adduce further evidence, if required. Let the parties independently question title of the factum of possession. The parties will have to workout their remedies and if at all it is found that there is inconsistency either in the reasoning or inconsistency in the judgments, the appellate forum is always available to set right that particular anomaly. **But the suits proceed in manner known to law...**”

(x) On perusal of aforesaid order, it is obvious that the Hon'ble High Court has not specifically granted any liberty to the petitioner to file a counter claim in this suit. Rather, the petitioner was directed to workout his remedy in the pending suit by adducing further evidence if any and to independently decide the question of title or factum of possession. At this juncture, it is pertinent to note that while arriving the aforesaid findings, eventually the Hon'ble High Court has clearly observed that “**But let the suits proceed in manner known to law**”, which is nothing but a clear indication to the petitioner to workout his remedy in manner known to law.

(xi) On considering the aforesaid circumstance, this court is of view that when the counter claim filed by the petitioner itself is not in accordance with law, then the petitioner cannot claim any special privilege to maintain said counter claim by taking

advantage of liberty granted in the aforesaid order of the Hon'ble High Court of Madras. From the above said discussion, this court observes that the counter claim filed by the petitioner after commencement of trial is highly belated one and not maintainable as per law. Thus the point no.1 is decided accordingly and against the petitioner.

5. Answer to the Point No.2:

(i) Apart from the aforesaid reason there is yet another reason which fundamentally debars the counter-claim is pecuniary jurisdiction of this court. On perusal of the counter-claim it is revealed that the petitioner has valued the counter-claim for Rs.2,37,180/- which is obviously exceeds the pecuniary jurisdiction of this court. It is well settled law the counter-claim shall not exceed the pecuniary limits of the jurisdiction of the court. Therefore, the counter-claim filed by the petitioner is unsustainable before this court since this court is not having pecuniary jurisdiction to entertain said counter-claim.

(ii) To substantiate the aforesaid view, this court would like to rely upon the order of Hon'ble High Court of Madras in “**C.R.P.(PD) No.981/2016 dt.28.03.2016, Mrs.K.Madhu vs. M/S.Medusind Solutions India Pvt. Ltd**” wherein Hon'ble High Court has held that,

“2. The proviso to Clause (1) makes it abundantly clear that a counter claim shall not exceed the pecuniary limits of the jurisdiction of the court. That itself shall be enough for the rejection of the counter claim. If the defendant does not come forward to restrict his counter claim upto the upper limit of the pecuniary jurisdiction of the court, instead of returning the counter claim, the court can reject the same relying on the proviso to Sub-Clause(1) of Rule 6A of Order VIII.”

(iii) On considering the aforesaid dictum it is cleared that the counter-claim valued by the petitioner is beyond the pecuniary jurisdiction of this court and thus it is not

maintainable before this court. Therefore, the point no.2 is decided accordingly and against the petitioner.

6. Answer to the Point No.3:

Since this court has observed that the counter-claim filed after commencement of trial is highly belated one and also the counter-claim exceeds the pecuniary jurisdiction of this court, thus the counter-claim cannot be entertained by this court at this stage. Hence, the counter-claim filed by the petitioner is liable to be rejected. Therefore, the point no.3 is decided accordingly and against the petitioner.

In result, the counter-claim filed by the petitioner is liable to be rejected.
No cost.

This order dictated by me to the Steno-Typist she directly typed it in the computer after corrections pronounced by me in the Open Court in the 11th day of November, 2024.

District Munsif,
Mettur.

Both Side Witness and Document: Nil

District Munsif,
Mettur.