

**In the Court of the Principal District and Sessions Judge,
Virudhunagar District at Srivilliputtur**

Present:-Thiru.K.Jeyakumar, B.L., L.L.M.,

Principal District and Sessions Judge,

Friday, the 4th day of July 2025.

I.A.No.02/2024

in

O.S.No.101/2023

Smt.Sweatha

...Petitioner/Plaintiff

/Vs./

Hariharan

...Respondent/Defendant

This petition coming before me for final hearing on 10.06.2025 in the presence of Thiru.S.V.Nagarajan, Advocate for the petitioner and Thiru.A.Suwatheeswaran, Advocate for the respondent and upon hearing the arguments of both side and perusing the case records, this Court delivered the following,

ORDER

This petition has been filed by the petitioner/plaintiff under Order 8 Rule 6 (C) and sec 151 of CPC prays to pass an order that the counter claim lodged by the respondent may be excluded and allow this petition.

Petition averments in brief:-

2) The petitioner herein and the plaintiff in the main suit. The plaintiff filed the main suit for the partition and other reliefs and in which the respondent as the 2nd defendant filed the written statement along with counter claim and for which the petitioner already filed a detailed reply statement. The suit properties are all the self-acquired properties of one Bhoopathirajaram the father of petitioner and the respondent. While so, the aforesaid Bhoopathirajaram died on 28.03.2021 without making any arrangements towards the suit properties. So after his demise, the petitioner (as the plaintiff) and the petitioner's mother (the 1st defendant) and the petitioner's brother (the respondent herein) succeeded to his properties and started enjoying the same as the joint family members. Since the respondent herein became indifferent and started acting against the co-parceners' interest (i.e. petitioner & petitioner's mother). The petitioner had to file the present suit for partition.

3) It is hereby submitted that before filing the present suit for partition she had issued Advocate notice on 30.11.2022 to the defendants 1 & 2 in the main suit narrating the entire facts. The respondent herein received the said legal notice on 02.12.2022 and issued a reply on 11.12.2022 stating that he will issue a detailed reply. In the meanwhile, the petitioner filed the present suit on 27.03.2023 and until that date no detailed reply was issued by the respondent herein. After presenting the plaint, the petitioner's Advocate received the detailed reply dated 28.03.2023 from the respondent for the said reply notice, the petitioner through her Advocate issued a detailed rejoinder on 24.04.2023 to the respondent's Advocate and the same was received on 25.04.2023. But regarding the details of the rejoinder, the respondent purposefully failed to state in his written statement along with counter claim.

4) It is further submitted that counter claim properties are not related with suit properties. The items 1 to 9 of the counter claim properties are the self-acquired properties of the 1st defendant in the main suit i.e, the petitioner's mother. Generally, the counter claim can be lodged only against the suit properties and not against different properties which are all not mentioned in the plaint. The respondent is alleging that in connection with the items 1 to 9 of the counter claim properties, the 1st defendant is only a name-lender and the petitioner's father purchased the same in the name of the petitioner's mother as Binami. Regarding the items 10 & 11 of counter claim properties the respondent claim is only imaginary and not supported with any material evidence. Counter claim is also to be treated as plaint. But in the counter claim the respondent had failed to state the causes of action and not filed any single document to prove his stand. In this circumstance that the counter claim raised by the respondent ought not to be disposed of by way of counter claim. But only as an independent suit and so the present counter claim lodged by the respondent is not maintainable both in law & in facts. By abusing the process of law, the respondent herein had lodged the counter claim, which is fully devoid of merits. Therefore, the petitioner prays that the counter claim lodged by the respondent may be excluded.

Counter averments in brief:-

5) The respondent has filed a detailed counter denying all the allegations in the petition. The petitioner has shown only the property in the name of the petitioner's father as the suit property in the original case, and has deliberately skipped the movable and

immovable properties acquired in the name of the 1st defendant in the original suit ie., their mother. Hence, the properties in the name of the 1st defendant have been shown as claim properties in the counterclaim and it can be proven through witness and documentary evidence. It is not correct to say that the counterclaim need to exclude because the cause of action was not stated in the counterclaim and the documents were not produced about the counter claim properties. If a separate case is filed based on the counter claim properties, different oral evidence will be recorded through separate evidentiary hearings and hereby unnecessary confusion will be arisen. Therefore, this petition is liable to be dismissed.

6) No evidence adduced and documents produced on both sides.

7) Heard both sides.

8) The point for consideration in this petition is whether the petition is allowed or not?

Point:-

9) The petitioner/plaintiff has been filed this petition under Order 8 Rule 6 (C) & Sec.151 of CPC for exclude the counter claim lodged by the 2nd Defendant.

10) According to the petitioner, that the suit properties are self-acquired properties of one Bhoopathirajaram who is the father of the petitioner and the respondent. The aforesaid Bhoopathirajaram died on 28.03.2021 without making any arrangements towards the suit properties. Hence, the suit was filed by the petitioner for partition. In the said suit, the 2nd defendant filed written statement along with counter claim. The counter claim can be lodged only against the suit properties and not against different properties. Even the 2nd Defendant also claimed for the different properties in the counter claim. Therefore, the petitioner prays that the counter claim lodged by the 2nd defendant may be excluded.

11) The Respondent has objected to allow this application by way of filing counter and he has denied the entire allegations levelled by the petitioner. The petitioner has shown only the properties in the name of the petitioner and respondent's father as the suit properties. And has deliberately skipped the movable and immovable properties acquired in the name of the 1st defendant in the original suit ie., petitioner and respondent's mother. So, the properties in the name of the 1st defendant have been shown as claim properties in the counter claim, hence, this petition liable to be dismissed.

12) On perusal of records, the plaintiff had filed the suit for partition against the 1st and 2nd defendants. The 1st Defendant is the mother of the plaintiff and 2nd defendant. The 2nd defendant i.e., respondent herein had filed written statement along with counter claim in the said suit. Now, the petitioner has been filed this petition for exclude the 2nd defendant's counter claim.

In the petitioner's side argument, the petitioner stated that she has to exclude the 2nd defendant's counter claim under the following reasons i.e.,

1. The counter claim properties are not related with suit properties.
2. The items 1 to 9 of the counter claim properties are the self-acquired properties of the 1st defendant in the main suit i.e, the petitioner and respondent's mother. Regarding the items 10 &11 of counter claim properties the respondent claim is only imaginary and not supported with any material evidence .
3. The counter claim can be lodged only against the suit properties and not against different properties.
4. The counter claim can be only made against the plaintiff alone not against co-defendant.

13) In support of argument, learned counsel has placed her reliance in the case of 'Karuppayammal And Another vs S.Ramaalingam Pillai And Others on 6 August, 1999] Paragraph No. 9 to 11 of said judgment are relevant.

9. The contention of Mr. V.Raghavachari, learned counsel for the appellants, is that a counter claim can be maintained only as against the plaintiffs and not as against the defendant. I am inclined to sustain his objection for the following reasons:-
- (i) A mere reading of the provision and the words as underlined above reveal that the counter claim is visualised only as against the plaintiff. The said expression has been used twice thus leaving no room for any doubt.
 - (ii) In the event of the plaintiffs choosing to withdraw the suit it would lead to anomalous situation regarding the maintainability of the counter decree against the co-defendants.
 - (iii) The defendants against whom the decree is to be passed are put to serious hardship for several reasons. Firstly, the framing of the suit is not in his hands. Secondly, neither Rule 6-A, nor any of the rules dealing with the procedure entitles the defendant to file any pleadings or objection in answer to the counter claim. Thirdly, the entitlement of the defendants to resist the counter claim of another co-defendant cannot be mixed up with his pleadings as against the plaintiff. His defence as against the co-defendant seeking counter claim could be of totally a different cause of action, completely unconcerned, with the plaintiff's cause of action. It would spell injustice to the defendants and the liberty which is given to the plaintiff to seek for an order to exclude the counter claim on the ground that the counter claim should be pursued in an independent suit (Rule 6-C) is not available to

the defendant who is faced with the counter claim.

10. The above are reasons why the legislature had very emphatically used the expression "against the plaintiff twice under Rule 6-A, C.P.C. The courts below have therefore, completely ignored that they have no jurisdiction to grant the decree as they have done.

11. Mr. Arivudainambai, learned counsel for the respondents would however, contend that the object of the provision being to avoid multiplicity proceedings, the provision has to be interpreted so as to include counter claim as between co-defendants also. As stated earlier, the provision is clear and unambiguous and visualise counter claims only as against the plaintiff. Learned Counsel has also sought to rely upon the judgment of the Supreme Court in Jag Mohan Chawla v. Dera Radha Swami Satsang, . In that case, the Supreme Court has pointed out that prior to C.P.C. Amendment Act of 1976, the cross claim or set-off was contemplated only in respect of money decrees and that after the amendment and the insertion of Rule 6-A to 6-G, C.P.C., the cross claim was maintainable in respect of any right or claim and not restricted to money decree alone. The Supreme Court has also further held that the counter claim need not relate to the original cause of action alone, but can be of an independent or different cause of action. The said ruling does not deal with the competence of a defendant seeking counter claim as against another co-defendant, Hence the said ruling is not relevant to consider the issue under this appeal.

14) Under these above facts and circumstances, the 2nd defendant has filed his counter claim stated that there is no bar to file counter claim in family properties which were wantonly omitted in the plaint. Whereas perusing his pleadings, the counter claim properties and the suit properties are different to one another. Further, this court is view that the above said counter claim was filed against the plaintiff as well as 1st defendant. The aforesaid Judgment of the Hon'ble High Court has held that the counter claim is only maintained against the plaintiff not against the co-defendant. Considering the above reasons, the counter claim grounds could not to be entertained and the counter claim is negatived. Even though, the 2nd defendant is permitted to file separate suit is willing for the same cause of action as prayed in the counter claim. Hence this Court is inclined to allow this application.

In the result, this petition is allowed and that the counter claim lodged by the respondent/2nd defendant is hereby excluded. It is permitted to the respondent/2nd defendant can be filed a separate suit for the same cause of action as prayed in the counter claim.

Directly dictated to the Steno-Typist and typed by her, then corrected and pronounced by me in open Court on this the 04th day of July 2025.

Principal District and Sessions Judge,
Virudhunagar District at
Srivilliputtur.

List of witnesses and documents on both side:- NIL.

Principal District and Sessions Judge,
Virudhunagar District at
Srivilliputtur.

***Principal District Court
Srivilliputtur
I.A.2/2024
in
O.S.No.101/2023
Fair / Draft - ORDER
04/07/2025***