
(2008) 12 MAD CK 0128

In the Madras High Court

Case No : C.R.P. (PD) (MD) No. 1358 of 2004

Abdul Hafiz

APPELLANT

Vs

Sardar and Others

RESPONDENT

Date of Decision : 02-12-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Court Fees Act, 1870 — Section 30

Citation : (2008) 12 MAD CK 0128

Hon'ble Judges : S. Palanivelu, J

Bench : Single Bench

Advocate : M. Hariharan, for the Appellant; G. Ethirajulu, for Respondent 1, for the Respondent

Final Decision : Dismissed

Judgement

S. Palanivelu, J.—The petitioner is the second defendant in O.S. No. 77 of 1996 on the file of the District Munsif Court, Tiruchirappalli. The suit is for permanent injunction. The first respondent filed the suit and the other respondents are brothers of this respondent, who are also defendants in the original suit. The defendants already filed written statement and afterwards they filed an additional written statement also along with an application to receive the same and the same was also received.

2. In the original written statement, they have raised the defence that even prior to 1934 the defendants and their predecessors have been in possession and have perfected title by adverse possession in the suit property. In the subsequent additional written statement they have alleged that in or about November 1996, the plaintiff has high handedly trespassed into the suit property and put up thatched sheds with mudwalls and brick walls and that this defendant (second defendant) reserves his right to file a separate suit for recovery of possession of suit site, after the removal of unauthorised super structure put up by the plaintiff.

3. The suit was posted in the list for trial and witnesses were examined.

4. When the matter was posted for examination of the plaintiff on 18.03.2004, an application in I.A. No. 238 of 2004 was filed by the defendants praying the Court to receive an additional written statement, for the second time. Containing a counter claim to the effect that a direction be issued by the Court to the plaintiff to vacate and deliver possession of the property in the schedule found in the additional written statement and also for future profits till delivery of possession. They have also valued the counter claim at Rs. 25,000/- paying the Court fee of Rs. 1875.50 u/s 30 of the Court Fee Act. In the affidavit he has alleged that in view of the previous proceedings, the plaintiff had no right or title to the suit property and hence, the counter claim is a necessary one.

5. The petition was resisted by the plaintiff by stating that the application to receive additional written statement for second time cannot be received because it has been filed at the time of Trial to fill up the lacuna and is an after-thought affair. It is further stated that the petitioner may seek remedy in some other proceedings.

6. The learned District Munsif, Tiruchirappalli dismissed the application on 31.03.2004 by observing that while the case is in the part-heard stage, the additional written statement is sought to be received and only with the intention to drag on the proceedings, the petition has been filed and that there is every opportunity for the petitioner to take separate proceedings to establish his rights.

7. The learned Counsel for the petitioner would submit that inasmuch as the defendants have already pleaded in their additional written statement, at the first instance, that the plaintiff has trespassed into the suit property it has become inevitable for the defendants to file an additional written statement with the counter claim and the receipt of which will not prejudice the rights of the others. It is his further contention that since the relief sought for in the counter claim is in the nature of recovery of possession, he has got the right to claim the same till the expiry of twelve years and on the point of limitation also, the petition to receive the additional written statement containing the counter claim is not at all barred by time.

8. Conversely, the learned Counsel for the respondent Mr. G. Ethirajulu, would submit that in view of the amended provisions in the CPC, the additional written statement cannot be received at the later point of time in the proceedings and that it should have been filed within 30 days as per statute.

9. The learned Counsel for the petitioner would draw attention of this Court to a decision of this Court reported in S. Thirugnanasambandam Vs. Kaliyaperumal Chettiar, , wherein the learned Judge has elaborately dealt with the subject on the principles laid down by the Apex Court with regard to the receipt of an additional written statement containing counter claim. He has relied upon the decision of the Supreme Court and the operative portion of which has been extracted in para 6 as follows:

6. The Hon"ble Supreme Court in the decision reported in Ramesh Chand

Ardawatiya v. Anil Panjwani 2003 (3) MLJ 26 held that there are three modes of pleading or setting up a counter claim in a Civil Suit. Firstly, the written statement filed under Rule 1 may itself contain a counter-claim which in the light of Rule 1 read with Rule 6-A would be a counter claim against the claim of the plaintiff preferred in exercise of legal right conferred by Rule 6-A. Secondly, a counter claim may be preferred by way of amendment incorporated subject to the leave of the Court in a written statement already filed. Thirdly, a counter-claim may be filed by way of a subsequent pleading under Rule 9. In the latter two cases the counter-claim though referable to Rule 6-A cannot be brought on record as of right but shall be governed by the discretion vesting in the Court, either under Order 6, Rule 17 of the C.P.C. if sought to be introduced by way of amendment, or, subject to exercise of discretion conferred on the Court under Order 8, Rule 9 of the C.P.C. if sought to be placed on record by way of subsequent pleading.

10. It is the opinion of this Court that for the purpose of the provision enabling filing of a counter claim is to avoid multiplicity of judicial proceedings and save the Court's time and also to exclude the inconvenience to the parties and all disputes between the same parties have to be decided in the same proceedings. The case dealt with by this Court above was also in part-heard stage at the time of filing of the application to receive the additional written statement. In this juncture, it is profitable to extract Order 8, Rule 9 of CPC:

9. Subsequent pleadings.- No pleading subsequent to the written statement of a defendant other than by way of defence to set-off or counter-claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit; but the court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than thirty days for presenting the same.

11. It is the provision enabling the parties to file their written statement or the additional written statement within a fixed time frame which is 30 days. Giving reply to this provision, the learned Counsel for the petitioner would say that the suit was instituted earlier to the advent of the amended CPC and the said provision is not applicable to the present case. Whatever may be, there is no specific mention in the above said provision to the effect that no additional pleadings subsequent to the proceedings in the written statements shall be put forth. It is made clear in the said provision that without the leave of the Court, no additional pleadings subsequent to the filing of the written statement shall be received. As regards the first part of Rule 9 to Order 8, there is no time limit for making counter claim to set off. In view of this Court, the counter claim put forth in the second additional written statement can be entertained by the Court. Following the principles in the decision of the Supreme Court as well as the view of this Court in *Thirugnanasambandam* case (*supra*), this Court of the considered view that the additional written statement has to be received.

12. It has to be noted that the petition has been filed while the case was in part-

heard stage and the plaintiff was to be examined. In case if the additional written statement is received, the other side namely, the plaintiff has to be afforded an opportunity to file his written statement and additional issues have also to be framed by the Court. It is a time consuming process and hence, the other party has to be compensated adequately for the inconvenience caused and hence, the Court fixes Rs. 5,000/- as costs payable by the petitioner to the first respondent within three weeks.

13. In the result, the Civil Revision Petition is allowed on condition that the petitioner shall pay a sum of Rs. 5,000/- to the first respondent on or before 22.12.2008 in default, the Civil Revision Petition shall stand dismissed without further reference to this Court. Consequently, connected miscellaneous petitions are closed. After receipt of the additional written statement, the Court below is directed to dispose of the case preferably within three months.