

(2012) 10 MAD CK 0103

In the Madras High Court

Case No : C.R.P. (PD) (MD) No. 1713 of 2012 and M.P. (MD) No. 1 of 2012

Murugan (Died) Premalatha, Muthusamy, Subbiah and
Gurusamy

APPELLANT

Vs

Karuppiah and Jaishankar

RESPONDENT

Date of Decision : 03-10-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, Order 8 Rule 9, 151

Citation : (2012) 8 MLJ 29

Hon'ble Judges : S. Palanivelu, J

Bench : Single Bench

Advocate : M. Thirunavukkarasu, for the Appellant;

Final Decision : Allowed

Judgement

Honourable Mr. Justice S. Palanivelu

1. The petitioners are the defendants 3 to 6 in O.S. No. 35 of 2004 on the file of the Additional District Munsif Court, Srivilliputtur. It is a suit for declaration that the third item in the plaint, i.e. pathway, belongs to both parties and also for permanent injunction restraining the defendants from putting up any construction in the said property. The petitioners filed an application in I.A. No. 1713 of 2011 under Order 8, Rule 9 and u/s 151 C.P.C., to receive additional written statement on their side. In the affidavit, it is stated that during pendency of the suit, the plaintiffs ignoring the protests made by the petitioners put up construction on the pathway with measurements east-west by 28 feet and north-south 4 feet with a height of 2 feet. They also put up a bath room therein for which they are not entitled to it. The petitioners filed additional written statement to the effect that the plaintiffs should remove the superstructures on the pathway mentioned in the plaint.

2. It was contested by the plaintiffs and it was contended by the plaintiffs that it was false to state that the plaintiffs have constructed bath room therein.

3. After considering the arguments of both sides, the learned District Munsif has dismissed the application by observing that the petitioners are not entitled to put forth counter-claim after the trial had commenced. This order is under challenge.

4. The learned counsel for the petitioners, Mr. Thirunavukkarau, contended that, inasmuch as, the respondents have made encroachments and put up construction in the pathway, the Court has to direct them to remove the structures. In support of his contention, he placed reliance upon a decision of the Supreme Court of India in *Jag Mohan Chawla and another Vs. Dera Radha Swami Satsang and others*,] in which it has been held as follows:-

In a suit for injunction, counter-claim for injunction in respect of the same or a different property is maintainable. A defendant can claim any right by way of a counter-claim in respect of any cause of action that has accrued to him even though it is independent of the cause of action averred by the plaintiff and have the same cause of action adjudicated without relegating the defendant to file a separate suit. In sub-rule (1) of Rule 6A, the language is so couched with words of wide width as to enable the parties to bring his own independent cause of action in respect of any claim that would be the subject matter of an independent suit. Thereby, it is no longer confined to money claim that would be the subject matter of an independent suit. Thereby, it is no longer confined to money claim or to cause of action on the same nature as original action of the plaintiff. It need not relate to or be connected with the original cause of action or matter pleaded by the plaintiff. The words "any right or claim in respect of a cause of action accruing with the defendant" would show that the cause of action from which the counter-claim arises need not necessarily arise from or have any nexus with the cause of action of the plaintiff.

The learned counsel also relied on the decision of mine in *Abdul Hafiz vs. Sardar and others* [2009 (2) T.N.C.J. 398(Mad)(MB)], wherein I have referred to an earlier decision of this Court 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 receipt of additional written statement containing counter-claim. Operative portion of the judgment is as follows:-

6. The Hon''ble Supreme Court in the decision reported in *Ramesh Chand Ardawatiya v. Anil Panjwani*, 2003 (3) MLJ 26 (SC), 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.

The Hon''ble Supreme Court observed that the counter-claim has to be entertained for avoiding multiplicity of proceedings and also to save court's time. Under Order 8, Rule 9 of CPC, there is no provision to the effect that no additional pleadings, subsequent to the proceedings, shall be entertained. I have also observed that there is no time limit for making counter-claim in the additional written statement.

5. In view of the above said views expressed by the Hon''ble Supreme Court, I am of the view that there is no legal embargo for this Court to entertain the additional written statement with counter-claim and no prejudice would be caused to the other side. In such view of this matter, the order of the Trial Court is liable to be set aside and accordingly, set aside. In fine, the Civil Revision Petition is allowed. Consequently, connected Miscellaneous Petition is closed. No costs.