

(2011) 03 MAD CK 0372

In the Madras High Court

Case No : C.R.P. (PD) No. 196 of 2011 and M.P. No. 1 of 2011

S. Tajudeen

APPELLANT

Vs

S.V. Sambandan, S. Velmurugan and Mumtaj Bivi

RESPONDENT

Date of Decision : 02-03-2011

Acts Referred:

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

Citation : (2011) 03 MAD CK 0372

Hon'ble Judges : K. Venkataraman, J

Bench : Single Bench

Advocate : N. Kannan, for the Appellant; K.A. Ravindran, for R.1 and R.2, for the Respondent

Judgement

K. Venkataraman, J.—The present civil revision petition is directed against the order of the learned Principal District Munsif, Cuddalore, dated 30.9.2010 made in I.A. No. 302 of 2010 in O.S. No. 63 of 2008.

2. The second Defendant in the aforesaid suit is the Petitioner herein, the Plaintiffs are Respondents 1 and 2 and the first Defendant is the third Respondent.

3. Respondents 1 and 2 have filed the above referred suit against the Petitioner as well as the third Respondent for declaration of their title over the "B" schedule property and for consequential injunction restraining them from interfering with their peaceful possession and enjoyment over the suit property. In the said suit, the Petitioner as well as the third Respondent filed an application in I.A. No. 302 of 2010 for receipt of the counter-claim under Order VIII Rule 6A CPC. The said application was dismissed by the Court below only on the ground that it was filed at the belated stage and the present civil revision petition is directed against the said order.

4. Learned Counsel appearing for the Petitioner contended that Order VIII Rule 6A CPC does not envisage that the counterclaim shall be filed within a particular

period and the Court has got ample power to entertain the counter-claim at any stage. He has also relied on the decision reported in *S. Thirugnanasambandam Vs. Kaliyaperumal Chettiar*, the said proposition.

5. On the other hand, learned Counsel appearing for Respondents 1 and 2 contended that Order VIII Rule 6A C.P.C. contemplates that the counter claim has to be filed before the Defendant in a suit has delivered his defence. Since the counter-claim was filed later, at a belated stage, rightly the Court below dismissed the application, which does not require any interference in this civil revision petition.

6. I have considered the said submissions made by the learned Counsel appearing for the Petitioner as well as learned Counsel appearing for Respondents 1 and 2.

7. Before advertng to the said contentions raised by the learned Counsels on both side, it would be more appropriate to extract Order VIII Rule 6A CPC and the same is extracted here under:

6A. 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.

(2) Such counter-claim shall have the same effect as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and on the counter-claim.

(3) The Plaintiff shall be at liberty to file a written statement in answer to the counter-claim of the Defendant within such period as may be fixed by the Court.

(4) The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints.

The said provision clearly envisages that a counter-claim could be made by a Defendant in a suit before he has delivered his defence or before the time limit for delivering his defence has expired. However, learned Counsel appearing for the Petitioner contended that the language employed in the said provision envisages that a claim in respect of cause of action accrued to a Defendant against the Plaintiff after filing of the suit shall be claimed before the Defendant delivered his defence, but, however, the cause of action accrued to a Defendant against the Plaintiff before filing of the suit can be claimed at any time. He

further contended that in such circumstances, no time limit has been prescribed under the said provision. The counter-claim cannot be made for a cause of action accrued to a Defendant before the suit could be filed by the Plaintiff. Thus, according to the learned Counsel appearing for the Petitioner, the cause of action accrued to the Defendant against the Plaintiff before filing of the suit by the Plaintiff could be claimed at any time after filing of the suit.

8. But, I am not unable to accept the said contention of the learned Counsel appearing for the Petitioner. The language employed in Order VIII Rule 6A CPC speaks of a counter-claim against the claim of the Plaintiff in respect of a cause of action accrued to the Defendant against the Plaintiff either before or after filing of the suit. That means, whether the cause of action accrued to the Defendant before filing of the suit by the Plaintiff or after filing of the suit, in both circumstances, the same shall be claimed by the Defendant before he has delivered his defence. If the intention of the legislature is that a counter-claim can be made by the Defendant at any time in respect of a cause of action accrued to the Defendant before filing of the suit by the Plaintiff, it would have been made very clear in the said provision. But, however, the provision contemplates both the cause of action accrued to a Defendant against the Plaintiff either before or after filing of the suit. Hence, I am of the considered view that in both cases, a counter-claim shall be made by the Defendant before he could deliver his defence.

9. Learned Counsel appearing for the Petitioner has also drawn my attention to Order VIII Rule 9 CPC. It would be useful to extract the said provision before dealing with the contention raised on the said provision, by the learned Counsel appearing for the Petitioner and the same is extracted here under:

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.

By placing emphasis on the said provision, learned Counsel appearing for the Petitioner contended that no pleadings subsequent to the written statement of the Defendant could be made except with the leave of the Court within the time prescribed there under other than by way of defence to set-off or counter-claim, which means that defence pertaining to set-off or counter-claim can be made at any time.

10. I am unable to accept the said contention of the learned Counsel appearing for the Petitioner. The said provision, in my view, speaks of filing of additional written statement with the leave of the Court within the time prescribed there under, other than the defence to set-off or counter-claim, which means that the defence to set-off or counter-claim cannot be made after the time prescribed

under Rule 6A.

11. In the connection, learned Counsel appearing for the Petitioner relied on the decision reported in S. Thirugnanasambandam Vs. Kaliyaperumal Chettiar, , wherein this Court has held that counter-claim of a Defendant can be entertained at any stage of the suit to avoid multiplicity of judicial proceedings. In the said decision, the judgment reported in 2003 (3) M.L.J.26- Ramesh Chand Ardawatiya v. Anil Panjwani was relied on. However, the Hon''ble Apex Court, in the decision reported in 2008 (2) L.W. 974 - Bollepanda P. Poonacha and Anr. v. K.M. Kadapa, has clearly held that a right to file a counter-claim is an additional right, but, it will accrue to the Defendant either before or after filing of the suit, but, before the Defendant has raised his defence. In the said judgment, the judgment reported in 2003 (3) M.L.J.26 was also considered. Since the said judgment was also considered by the Hon''ble Apex Court, the latter judgment shall prevail.

12. Considering the above facts and circumstances, I am of the considered view that the Court below is well-justified in dismissing the claim of the Petitioner and I do not see any illegality or infirmity in the said order passed by the Court below.

13. In fine, the order of the learned Principal District Munsif, Cuddalore dated 30.9.2010 made in I.A. No. 302 of 2010 in O.S. No. 63 of 2008 is confirmed and the civil revision petition stands dismissed. However, there is no order as to costs. Consequently, connected miscellaneous petition is closed.