

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ C.R.P. 21/2010 and CMs No.2199-2200/2010

Decided on 04.02.2010

IN THE MATTER OF :

SUKHPREET SINGH Petitioner
Through : Mr. Sudhir Nandrajog, Sr. Adv. with
Mr. Abinash K. Mishra, Adv.

versus

KAMALJEET KAUR Respondent
Through : None.

CORAM

*** HON'BLE MS.JUSTICE HIMA KOHLI**

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| 1. Whether Reporters of Local papers may be allowed to see the Judgment? | Yes |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

HIMA KOHLI, J. (Oral)

The present petition is directed against the order dated 19.11.2009 passed by the learned Civil Judge on an application filed by the petitioner (defendant in the court below) under Order 8 Rule 6-A read with Order 7 Rules 10, 10A & 11 CPC seeking rejection/dismissal/return of the plaint filed by the respondent (plaintiff in the court below). By the impugned order, the learned trial court dismissed the aforesaid application of the petitioner/defendant and held that the suit filed by

the respondent/plaintiff against the petitioner/defendant, for declaring the gift deed dated 29.8.2002 in respect of first floor along with complete roof rights of the premises bearing No.3/327, Nirankari Colony, Delhi as null and void, was maintainable.

2. The trial court examined the submissions made on behalf of the petitioner and held that filing of a counter claim along with the written statement is not obligatory and it is the discretion of the defendant whether to file a counter claim or institute a separate suit. It was further observed that the respondent was well within her right to have sought a relief of declaration by instituting an independent suit and that the provision of Order 2 Rule 2 CPC had no application because it was the first suit of the said nature filed by the plaintiff in respect of the suit property.

3. Counsel for the petitioner submits that the trial court erred in passing the aforesaid order for the reason that the provisions of Order 8 Rules 6-A and 9 CPC give a right to a defendant in a suit to file a counter claim in addition to his right of pleading a set-off against the claim of the plaintiff. He states that in the present case, the petitioner (plaintiff in the court below) had instituted a suit in May, 2008, for eviction of the respondent herein (defendant in the said suit) from the same premises, as also for possession thereof, apart from seeking a decree of mandatory and perpetual injunction and declaration against the respondent. He states that in view of the fact that the aforesaid

suit was instituted by the petitioner prior in time to the suit instituted by the respondent on 13.08.2008, the respondent had an opportunity not only to file a written statement in the said suit, but also to file a counter claim against the claim of the petitioner and having failed to do so, the present suit instituted by her later in time, is hit by the provisions of Order 7 Rule 11(d) CPC, which mandates that the plaint be rejected when the suit appears from the statement in the plaint to be barred by any law.

4. In support of the aforesaid submission, counsel for the petitioner relies on a judgment dated 15.09.2008, passed by a Single Judge of this Court, in **CS(OS) 758/2006** entitled Renu Chhabra vs. MCD. He particularly refers to para 11 of the aforesaid judgment to urge that before instituting the present suit, leave had to be sought by the respondent from the trial court under Order 2 Rule 2 CPC, which she failed to obtain. Reliance is also placed on the case, Jag Mohan Chawla & Anr. vs. Dera Radha Swami Satsang & Ors., reported as **(1999) 4 SCC 699** to highlight the object of the amendment introduced by Rules 6-A to 6-G of Order 8 of the CPC.

5. Order 8 of the CPC deals with the written statement, set-off and counter claim. An amendment to the said provision was carried out by the legislature, vide Amendment Act 104 of 1976, whereby Rules 6-A to 6-G were inserted w.e.f. 1.2.1977. Rule 6-A, with which we are concerned, deals with a counter claim by a defendant. The

said provision states:

"6-A. Counter-claim by defendant-(1) A defendant in a suit may, in addition to his right 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."

6. As reference to Rule 9 of Order 8 CPC has also been made by the counsel for the petitioner, the same is reproduced herein below:

"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."

7. It is apparent from a perusal of Order 8 Rule 6-A CPC that the object of inserting the aforesaid provision was to confer a right on a defendant not only to plead a set-off, but also to file a counter claim against the claim of the plaintiff, independent thereto, in respect of his own cause of action. The intention of the legislature was to avoid multiplicity of litigation and enable both, the suit and the counter claim

in the same suit, to be treated as a suit and disposed of in the same proceeding instead of relegating a defendant to institute a separate suit.

8. Order 8 Rule 9 CPC mandates that the defendant shall not be entitled to present any pleading subsequent to the written statement other than by way of defence to set-off or counter claim except by leave of the Court and subject to terms as the Court may impose. At the same time, in its discretion, the court is entitled to call a party to file a written statement or an additional written statement within a stipulated time.

9. In the present case, as indicated above, in May 2008, the petitioner instituted a suit against the respondent and two others for seeking various reliefs including a decree of eviction and possession of the first floor of the premises bearing No.3/327, Nirankari Colony, Delhi, apart from a decree for mandatory and perpetual injunction and declaration to the effect that sale deeds dated 1.9.2006 and 20.4.2007 were void *ab initio* and liable to be cancelled. In the said suit, a written statement was filed by the respondent herein (defendant No.3 therein) contesting the claim of the petitioner. Subsequently, in August, 2008, the respondent herein filed a suit for declaration against the petitioner herein (defendant therein) seeking a declaration to the effect that the gift dated 29.8.2002 in respect of the same premises, executed in his favour, be declared as null and void. A written

statement was filed by the petitioner/defendant in the said proceedings, wherein a number of preliminary objections were taken including an objection that the suit was barred under Order 2 Rule 2 read with Order 8 Rule 6-A/9 of the CPC. Thereafter, the petitioner filed a separate application seeking rejection of the plaint on the same grounds, which has been dismissed by the impugned order.

10. Merely because the property in question is common to both the suits, (i.e., one instituted by the petitioner in May, 2008 and the other instituted by the respondent in August, 2008) can itself not be a ground to accept the contention of the learned counsel for the petitioner that failure on the part of the respondent to file a counter claim along with her written statement in the first suit, disentitled her from exercising her right to institute an independent suit against the petitioner, at a later date. Order 8 Rule 6-A CPC does not make it mandatory for a defendant in a suit to file a counter claim along with the written statement in respect of a cause of action accruing to him/her against the plaintiff, either before or after filing of the suit.

11. No doubt, the object of the amendment to the aforesaid provision was to avoid multiplicity of proceedings, however, the same does not bar the defendant from instituting an independent suit in her own right. A defendant has an option under the said provision to file a counter claim, but if he/she chooses not to file one, it cannot put an embargo on her to file a suit at a later date.

12. In the case of Jag Mohan Chawla (supra), the Supreme Court was confronted with the question as to whether in a suit for injunction, a counter-claim for injunction in respect of the same or a different property was maintainable and whether a counter-claim could be made on a different cause of action. After delving into the aims and objects of the amendment to Order 8 of CPC, by virtue of Rules 6-A to 6-G CPC, the Supreme Court observed that the language of sub-Rule (1) of Rule 6-A is couched with words of such wide width as to enable the party to bring his own independent cause of action in respect of any claim that would be subject matter of an independent suit. In other words, it was held that a counter claim need not relate to or be connected with the original cause of action or matter pleaded by the plaintiff and that a defendant may set up an independent claim subject to the condition that the cause of action should arise before the expiry of time fixed for filing the written statement. It was in the aforesaid context that the Supreme Court observed that instead of relegating the defendant to an independent suit, to avert multiplicity of the proceeding and needless protraction, the legislature intended to try both the suit and the counter-claim in the same suit as suit and cross-suit and have them disposed of in the same trial.

13. The aforesaid case does not fortify the contention of the counsel for the petitioner that the respondent having chosen not to file a counter claim with the written statement in the suit instituted by the

petitioner prior in time, was barred from instituting an independent suit at a later date, in respect of the same premises. No such embargo has been placed by the Statute on institution of such a suit. Hence the provision of Order VII Rule 11(d), CPC cannot be invoked by the petitioner in the present case, to oust the suit of the respondent.

14. The trial court was therefore justified in holding that the application filed by the petitioner herein seeking rejection of the plaint of the respondent under Order 7 Rule 11 (d) CPC, was not maintainable. Nor can the provision of Order 2 Rule 2 CPC be treated as a bar for a plaintiff to institute a suit for the first time only for the reason that the said plaintiff happens to be an objector/ defendant in an earlier suit instituted by the plaintiff/petitioner in respect of the same property. The limitation imposed under Rule 2 of Order 2 is on a plaintiff, who loses his right to sue at a later stage in respect of any claim, which he omits to sue for in a suit. The said provision has no application to a defendant in a suit who has chosen not to file a counter-claim under Rule 6-A of Order 8 CPC. The said Rule only affords an opportunity to a defendant in a suit, to set up a counter-claim which can be treated by the court as a cross-suit and adjudicated in the same trial, instead of compelling the defendant to file a separate suit. This however does not mean that a suit filed by such a defendant later in time is not maintainable and is liable to be rejected. That the petitioner can seek trial of the present suit filed by

the respondent along with his suit, is a different matter. The case of Renu Chhabra (supra) also has no bearing on the facts of the present case.

15. For the aforesaid reasons, this Court does not find any illegality, arbitrariness or perversity in the impugned order which deserves interference. While affirming the said order, the present petition is dismissed, along with the pending applications.

FEBRUARY 04, 2010
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(HIMA KOHLI)
JUDGE