

Over District Council Courts) Order, 2014 directed against order dated 06.05.2022, passed by the Learned Presiding Officer of the Sub-ordinate District Council Court, Shillong in Title Suit No. 2/4 of 2017.

2. The facts and brief are that, the respondent as plaintiff had instituted a suit being T.S. No. 2/4 of 2017 against the petitioner/defendant and others before the District Council Court, Shillong for a declaration and permanent injunction in respect of a suit property situated at Jaiaw Pdeng, Shillong. The petitioner/defendant No. 1, then filed a written statement cum counter claim in the said suit, for judgment and decree in respect of the same suit property situated at Jaiaw Pdeng, Shillong, and also in respect of a shop/stall bearing No. 118 C (old stall No. 67 C) situated at Iewduh, Shillong. The Title Suit, then came to be disposed of vide order dated 06.05.2022, pursuant to a Settlement Deed dated 29.04.2022, arrived at between the parties, but only in respect of the suit property situated at Jaiaw Pdeng, Shillong.

3. The grievance of the petitioner is that, the Lower Court while passing the order dated 06.05.2022, had acted illegally and without jurisdiction, in holding that the counter claim in respect of the shop/stall at Iewduh, Shillong, is not part of T.S. No. 2/4 of 2017, and that, the petitioner was at liberty to institute a separate or fresh suit,

with regard to the claim over the shop/stall. Hence, the instant Revision Application.

4. Mr. V.G.K. Kynta, learned Senior counsel assisted by Ms. M. Kynta, learned counsel for the petitioner submits that the learned Lower Court, while passing the impugned order dated 06.05.2022, had travelled beyond the mandate of law, by holding that the counter claim in respect of shops/stall at Iewduh, Shillong is not part of T.S. No. 2/4 of 2017. The learned Senior counsel submits that, the counter claim in the Title Suit, is an off shoot of a registered Gift Deed dated 10.09.1980, which formed part of the cause of action of T.S. No. 2/4 of 2017. He contends that, the impugned order has the effect of terminating the suit of the petitioner filed in the form of a counter claim without considering the fact that, though the suit filed by the respondents may be disposed of, as not pressed or by settlement as to their claim, the counter claim of the petitioner, should have been treated as a counter suit.

5. Learned Senior counsel submits that, the learned Lower Court ignored the mandate of Order 8 Rule 6-A (4) of the CPC, in holding that, the petitioner was at liberty to institute a fresh suit, as the subject matter that is, the shop/stall at Iewduh, Shillong is not in issue in T.S. No. 2/4 of 2017, nor in Title Suit No. 1/4 of 2019, a suit that had also

been instituted by the petitioner subsequently on the same cause and tried together with T.S. No. 2/4 of 2017. In this context, learned Senior counsel has placed reliance on the following decisions;

- i) ***Satyender & Ors. Vs. Saroj & Ors. (2022) SCC OnLine SC 1026***
- ii) ***Jag Mohan Chawla & Anr. Vs. Dera Radha Swami Satsang & Ors. (1996) 4 SCC 699.***

6. Mr. S. Marpan, learned counsel for the respondent submits that the respondent as plaintiff had filed Title Suit No. 2/4 of 2017, against the petitioner and thereafter, the petitioner had also instituted Title Suit No. 1/4 of 2019, against the respondent and both the suits, were specifically only in respect of the property situated at Jaiaw Pdeng, Shillong. He further submits that the written statements of both the petitioner and the respondents in their respective suits, do not disclose any cause of action, with regard to the stall at Iewduh, and that the issues framed by the Court were specifically only in respect of the property at Jaiaw Pdeng, Shillong.

7. The learned counsel submits that no application was ever filed by the petitioner before the Trial Court, following the framing of issues to seek framing of additional issues, with regard to the stall at Iewduh, and that the both the suits proceeded only with regard to the property at

Jaiaw Pdeng, Shillong. The settlement arrived at between the petitioner and the respondent based on the Deed of Settlement dated 29.04.2022, he asserts was only in respect of the property at Jaiaw Pdeng, Shillong, and the counter claim of the petitioner was set off only in respect of the said property. It is also contended by the learned counsel that, it was on the request of the petitioner through her counsel that liberty was granted to institute a fresh suit, if desired.

8. It has been contended that, both the suits which were disposed of as per the Deed of Settlement, were in no manner connected with the stall at Iewduh, for which a counter claim has been put up. It is also submitted that, the petitioner by agreeing to setting off the counter claim, in respect of the property at Jaiaw Pdeng, and by agreeing that the settlement arrived at was only to the Jaiaw Pdeng property implies that, the petitioner did not consider the stall at Iewduh to be part of the suit, which has been disposed of, and as such, had prayed for liberty to institute a fresh suit. It is also been submitted that, in the event the counter claim filed by the petitioner in the Title Suit No. 2/4 of 2017, is treated as a plaint, as per Order 8 Rule 6-A (4), the same is liable to be rejected under Order 7 Rule 11(a), as the same does not disclose any cause of action.

9. The learned counsel placing reliance on *Satyender & Ors. Vs. Saroj & Ors. (supra)*, has submitted that as the respondent had not sought a decree or any relief in respect of the stall at Iewduh, in both the suits, the petitioner is barred from raising any counter claim against the same. He further submits that, the judgment cited by the petitioner namely *Jag Mohan Chawla & Anr. Vs. Dera Radha Swami Satsang & Ors. (supra)*, will have no application, as it speaks only of a statutory right given to the defendant to set up a counter or an independent claim on his own cause of action, and there being no cause of action made out in the written statements and counter claim, this ruling is of no assistance to the petitioner. He therefore submits that, there being no irregularity in the impugned order, no grounds have been made out for any interference by this Court, in exercise of powers under Article 227 of the Constitution of India.

10. Heard learned counsels for the parties. The question for determination in the instant Civil Revision Application as noted from the submissions and records, is whether the counter claim put up by the petitioner/defendant under Order 8 Rule 6(A) of the CPC, on an independent cause of action for a stall at Iewduh, can be allowed, when the subject matter of both the suits related only to a certain property at Jaiaw Pdeng, which was resolved by way of a Deed of Settlement.

11. A counter claim is normally by operation of Order 8 Rule 6-A (4), to be treated as a plaint and governed by the rules applicable to plaints. The counter claim as noted above, was with regard to a different suit property that is, the stall at Iewduh, which did not form part of the adjudicatory proceedings, nor was any issue framed by the Trial Court. From the records and submissions, it is noted that neither the petitioner moved any application for framing of issues, with regard to the said property, nor was any application filed by the respondent under Order 8 Rule 6-C for exclusion of the counter claim and for it to be tried as an independent suit.

12. At this stage, it would be expedient to examine the legal authorities, which had been cited by the counsels for the parties. Firstly, in *Satyender & Ors. Vs. Saroj & Ors. (supra)*, the Supreme Court at Paras – 18, 19 and 20 had held as follows.

“18. The other finding of Second Appellate Court regarding the counter claim of the defendants on Killa Nos. 6//18 and 23 is, however, correct and is based on right interpretation of Order VIII, Rule 6A of CPC. From the pleadings of the plaintiffs, it is clear that they had never raised any claim on Killa No. 6//18 or Killa No.23. The defendants in their written statement while denying the rights of the plaintiffs on the land of which

particulars had been given by the plaintiffs, quite ingeniously inserted the two Killa Nos.6//18 and 23, setting a counter-claim on these plots. The Trial Court and the First Appellate Court while dismissing the plaintiffs' suit had allowed this claim for without assigning any reasons. In fact, this counter claim which was raised by the defendant is barred under Order VIII, Rule 6A of the CPC. Order VIII, Rule 6A reads as 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.

19. A counter claim can be set up only “against the claim of the plaintiffs”. Since there was no claim of the plaintiffs regarding Killa No. 6//8 and 23, the defendants were barred to raise any counter claim on these Killa numbers in view of Order VIII, Rule 6A of the CPC as it has nothing to do with the plaintiffs. It is true that a counter claim can be made by the defendant, even on a separate or independent cause of action (Jag Mohan Chawla v. Dera Radha Swami Satsang).

20. The Legislature permits the institution of a counter claim, in order to avoid multiplicity of litigation. But then it has certain limitations such as that the counter claim cannot exceed the pecuniary limits of the jurisdiction of the court, and that such counter claim must be instituted before the defendant has delivered his defence or before the time limit for delivering his defence has expired. More importantly, such a counter claim must be against the plaintiff! Evidently, in the present case the counter claim was not against the

plaintiffs. Moreover, as the plaintiffs had not claimed any right over the property and the Killa Nos. 6//8 and 23 are not even a part of the suit property described in the plaint by the plaintiffs. Despite the same, such a claim has been allowed against the plaintiffs. In fact, we do not find on record any reply submitted by the plaintiffs against the counter claim. To be fair, such a counter claim should have been excluded in terms of Order VIII, Rule 6C of the CPC. Suffice it to state here that the counter claim set up by the defendants has been rightly rejected by the High Court.”

A plain reading of this judgment shows that, a counter claim can be set up only against the claim of the plaintiffs, and that if there is no claim of right or interest by the plaintiffs, as in the above quoted case, to a certain plot of land, the defendants were barred to raise such counter claim, but however, it has also been held that, a counter claim can be made by the defendant, even on a separate or independent cause of action. In the other judgment, ***Jag Mohan Chawla & Anr. Vs. Dera Radha Swami Satsang & Ors. (supra)***, it has been held that, a counter claim need not relate to the original cause of action, but can be made on an independent and different cause of action, even on one which accrued to the defendant, after the institution of the suit. Para – 5 which is relevant is reproduced hereinbelow.

“5. The question, therefore is: whether in a suit for injunction, counter-claim for injunction in respect of the same or a different property is maintainable? Whether counter-claim can be made on different cause of action? It is true that preceding CPC Amendment Act, 1976, Rule 6 of Order 8 limited the remedy to set-off or counter-claim laid in a written statement only in a money suit. By CPC Amendment Act, 1976, Rules 6-A to 6-G were brought on statute. Rule 6-A(1) provides that 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 damage or not. A limitation put in entertaining the counter-claim is as provided in the proviso to sub-rule (1), namely, the counter-claim shall not exceed the pecuniary limits of the jurisdiction of the court. Sub-rule (2) amplifies that 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. The plaintiff shall be

given liberty to file a written statement to answer the counter-claim of the defendant within such period as may be fixed by the court. The counter-claim is directed to be treated, by operation of sub-rule (4) thereof, as a plaint governed by the rules of the pleadings of the plaint. Even before 1976 Act was brought on statute, this Court in Laxmidas Dahyabhai Kabarwala v. Nanabhai Chunilal Kabarwala, had come to consider the case of suit and cross-suit by way of counter-claim. Therein, suit was filed for enforcement of an agreement to the effect that partnership between the parties had been dissolved and the partners had arrived at a specific amount to be paid to the appellant in full satisfaction of the share of one of the partners in the partnership and thereby decree for settlement of accounts was sought. Therein the legal representatives of the deceased partner contended in the written statement, not only denying the settlement of accounts but also made a counter-claim in the written statement for the rendition of accounts against the appellant and paid the court fee as plaint. They also sought a prayer to treat the counter-claim as a cross-suit. The trial court dismissed the suit and the counter-claim. On appeal, the learned Single Judge accepted the counter-claim on a plaint in a cross-suit and remitted the suit for trial in accordance with law. On appeal, per majority, this Court had accepted the

respondents' plea in the written statement to be a counter-claim for settlement of their claim and defence in written statement as a cross-suit. The counter-claim could be treated as a cross-suit and it could be decided in the same suit without relegating the parties to a fresh suit. It is true that in money suits, decree must be conformable to Order 20, Rule 18, CPC but the object of the amendments introduced by Rules 6-A to 6-G are conferment of a statutory right on the defendant to set up a counter-claim independent of the claim on the basis of which the plaintiff laid the suit, on his own cause of action. In sub-rule (1) of Rule 6-A, 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 or to cause of action of 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 that occasioned to lay the suit. The only limitation is that the cause of action should arise before the time fixed

for filing the written statement expires. The defendant may set up a cause of action which has accrued to him even after the institution of the suit. The counter-claim expressly is treated as a cross-suit with all the indicia of pleadings as a plaint including the duty to aver his cause of action and also payment of the requisite court fee thereon. Instead of relegating the defendant to an independent suit, to avert multiplicity of the proceeding and needless protection (sic 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. In other words, 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. Acceptance of the contention of the appellant tends to defeat the purpose of amendment. Opportunity also has been provided under Rule 6-C to seek deletion of the counter-claim. It is seen that the trial court had not found it necessary to delete the counter-claim. The High Court directed to examine the identity of the property. Even otherwise, it being an independent cause of action, though the identity of the property may be different, there arises no illegality warranting dismissal of counter-claim.

Nonetheless, in the same suit, both the claim in the suit and the counter-claim could be tried and decided and disposed of in the same suit. In Mahendra Kumar v. State of M.P. where a Bench of two Judges of this Court was to consider the controversy, held that since the cause of action for the counter-claim had arisen before filing of the written statement, the counter-claim was maintainable. The question therein was of limitation with which we are not concerned in this case. Thus considered we find that there is no merit in the appeal.”

[Emphasis supplied]

13. What emerges from the judgments cited above is that, the object of the amendments by Rules 6-A to 6-G, is the conferment of a statutory right on the defendant to set up a counter claim, independent of the claim on the basis of which the plaintiff had filed the suit, but on his own cause of action. In the instant case, the counter claim in satisfaction of the requirements as elucidated in the judgments would be said to have been met, if the counter claim related to a property that the plaintiff had interest or claim thereon, and if the same though not subject matter of the suit was on an independent cause of action. It is not in dispute that, both the suit properties were subject matter of a Gift Deed dated 10.09.1980, and though suits by the respective parties, had

been instituted only with regard to the Jaiaw Pdeng property, the plaintiffs also possessed considerable interest in the stall at Iewduh, and cannot be held that they have no interest, whatsoever to make the counter claim not maintainable.

14. The next point relates to the examination as to the cause of action of the counter claim by the petitioner. A detailed perusal of the counter claim filed by the petitioner before the Trial Court, however, does not disclose any cause of action for the counter claim, notwithstanding the fact that, the same could have been raised, even if it was independent of the claim made by the respondents as plaintiff in the suit. In this view of the matter, though there is no finding by the learned Trial Court, and though no application under Rule 6-C had been filed by the respondents, the counter claim is hit by Order 7 Rule 11(a), which mandates that, a plaint be rejected, where it does not disclose a cause of action.

15. In this view of the matter, though Order 8 Rule 6-A, was with objective to prevent the multiplicity of suits, the counter claim of the petitioner being incompetent, the same is disallowed and the petitioner as per the order of the Trial Court, is at liberty to institute a

fresh/separate suit, in respect of the shop/stall at Iewduh, Shillong bearing Stall No. 118-C (Old Stall No. 67 Section C).

16. As such, for the foregoing reasons, this Civil Revision Application accordingly stands dismissed.

17. No order as to costs.

18. Lower Court Case records to be sent back immediately.

Judge

Meghalaya
13.07.2023
"D.Thabab-PS"

