

SL. No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
			WPMS No.2900 of 2023 <u>Hon'ble Sharad Kumar Sharma, J.</u> Mr. Vinodanand Barthwal, learned counsel for the petitioner. The respondents/ plaintiffs on 10.10.2017 had filed a suit, being Suit No.5 of 2017, Vijayant Singh and another Vs. Prahlad Naithani”. The suit as preferred under Section 38 of the Specific Relief Act, contending therein, that the plaintiffs/ respondents happens to be the recorded owner, as per the Khatauni entries of Khata No.64, Fasli year of 1420 to 1425, in relation to plot no.717, 720 and 722 having an area of 1.0790 hectares. He contends that he is exclusively in possession over the land having an area of 1.0790 hectares. As such, the opposite party may be restrained from forceful an unlawful interference over the property in question and thus a decree of permanent injunction was sought. The defendant /petitioner had put in appearance and he had filed a written statement. In the written statement, he has invoked the provisions contained under Order 8 Rule 6A of CPC, wherein he has prayed for a declaration of his rights as prayed for in paragraph no.33 of the written statement, which is extracted hereunder:-

			“33. कि प्रतिवादी का प्रतिदावा समय है। अतः प्रतिवादी का जवाब-दावा एवं प्रतिदावा के आधार पर वादीगण का वाद सव्यय निरस्त कर प्रतिवादी को निम्न अनुतोष प्रदान किये जाये:- (अ) कि प्रतिवादी को खिलाफ-वादीगण के ग्राम मंडी पट्टी चौरास तहसील कीर्तिनगर जिला टेहरीगढ़वाल के हाल खतौनी खाता स0 64 जिसका फसली वर्ष 1420 से 1425 तक है, के खेत नम्बरान 717, 720 व 722 के कुल कुलान वर्तमान रकबा 1. 0790 है0 भूमि पर भूमिधरी हक अधिकार घोषित किये जाने की डिक्री प्रदान की जाय। (ब) कि प्रतिवादी का प्रतिदावा खिलाफ वादीगण के सव्यय डिक्री किया जाय। (स) कि अन्य अनुतोष जिसे न्यायालय इन्साफन उचित समझे वह भी खिलाफ वादीगण के प्रतिवादी को दिलाया जाय।” Under Order 8 Rule 6A(4) of the CPC, a counter claim, as it has been filed by the defendant/petitioner in the suit, is to be treated as an independent suit in itself. Upon the exchange of the pleadings there were two issues framed:- 1) Issue no.4, was as to whether the suit of the plaintiffs was barred under Order 7 Rule 11(d) of the CPC? 2) Issue no.5 was framed, as to whether since the counter claim it was in relation to a declaration of the property in dispute, the same would be barred by the provisions contained under Section 331 of the UPZA & LR Act. Those issues have been decided against the present petitioner, hence, the writ-petition has been preferred. To answer the first question pertaining to issue no.4 about the bar being created in
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		institution of a suit, because of implications of Order 7 Rule 11(d) of the CPC would be attracted. Let us make it very clear that, in the light of the judgment of the Full Bench of the Hon'ble Allahabad High Court as reported in Ram Awalamb and others Vs. Jata Shankar and others as reported in AIR 1969 All 526 (FB). It has provided that an institution of civil suit exclusively for the grant of decree of injunction would not be barred before civil court where consideration of title is only incidental in nature and there is no direct relief for declaration is claimed by way of a civil decree. The aforesaid view taken by the Full Bench judgment of the Hon'ble Allahabad High Court has been later on affirmed by the judgment of yet another Full Bench in Ram Padarath and Others Vs. Second Addl. District Judge, Sultanpur and Others as reported in (1989) 1 AWC 290 (FB). Thus, the argument extended by the learned counsel for the petitioner about the suit being barred under Order 7 Rule 11(d) of the CPC, would not be sustainable, for the reason being, that according to the plaintiffs' own allegations, it is exclusively only an act of interference over the property in dispute, which was an agricultural land, was being sought to be restrained by the plaintiffs, as against the defendant/petitioner. Therefore, there was no occasion for the plaintiffs
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		to seek any element of decree / or declaration, because, according to the plaintiffs case itself, they were recorded in the revenue records and no element of declaration was required. Thus, decision taken on issue no.4 cannot be said to be faulted in any manner whatsoever. But rather it could be said that the petitioner himself has strengthened the suit of the plaintiffs/ respondents, by filing a written statement and seeking a relief for grant of a decree of declaration, which amount to that he admits the fact that he is not the owner of the property of which a prior decree of declaration is required. If that be the situation where he is seeking a decree of declaration, the bar of Section 331 of the UPZA & LR Act, will come into play and the counter claim, which is an independent suit under Order 8 Rule 6A(4), would not be maintainable before the civil court. Thus, the decision taken by the Court on the impugned orders, on issue no.4 and 5, under challenge, on the aforesaid two issues, does not suffer from any apparent error, which would call for interference under Article 227 of the Constitution of India. The writ-petition lacks merits and the same is, accordingly, dismissed. (Sharad Kumar Sharma, J.) 19.10.2023
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