

CR No.3597 of 2014 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CR No.3597 of 2014 (O&M)
Date of decision:23.02.2015**

Amit Kumar and another

...Petitioners

Versus

Arjan Singh

...Respondent

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Rajinder Sharma, Advocate,
for the petitioners.

Mr. Manish Bansal, Advocate,
for the respondent.

Rakesh Kumar Jain, J.

The petitioners are aggrieved against the order dated 31.01.2014, dismissing their application filed under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 (here-in-after referred to as the "CPC") for seeking permission to file the counter-claim.

In short, the plaintiff-respondent filed a suit for permanent injunction alleging that he has purchased the property measuring 312 square yards in Khasra No.575/5 min vide registered sale deed dated 19.05.1980. The said property/plot is allegedly having two side gates, one from the main road and other from the side/gali falling in Khasra No.3507/575. Khasra No.3507/575 is shown in the revenue record as Rasta and the plaintiff has been enjoying the said passage without any hindrance and objection. It is

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further alleged that the defendants have started raising objection and creating obstructions in the use of the disputed Gali by the plaintiff and is threatening that defendant no.1 has purchased the land falling under Gali in Khasra No.3507/575 from Gopal Krishan though they have no right to sell the land of the common passage. It is further alleged that the plaintiff has requested the defendants not to create any hindrance or make any construction over the land of the common passage but they are very adamant and influential persons and not paying any heed to the genuine requests of the plaintiff. Hence, the suit was filed seeking permanent injunction to restrain the defendants from creating any hindrance in the use of common passage and blocking it by way of raising any construction.

The defendants filed the written statement denying the averments made in the plaint. Lateron, the defendant filed an application under Order 8 Rule 6A of the CPC, setting up a counter-claim, alleging that cause of action has accrued to them on 06.10.2011 after filing of the written statement when the plaintiff forcibly and unlawfully break down the wall from the eastern side of his house and fixed a door therein for forcibly using the private passage belonging to the defendants. The application was filed on 07.10.2011 in which the prayer was made for permanent injunction and mandatory injunction directing the plaintiff to close down the door.

The plaintiff filed an application under Order 7 Rule 11 read with Order 8 Rule 6-A & 6-B of the CPC for rejection of the counter claim.

On the other hand, the defendants filed an application under Order 6 Rule 17 of the CPC for amendment of the written statement to

entertain the counter-claim which has been dismissed by the learned trial Court by the impugned order.

Counsel for the petitioners has argued that their application has been dismissed for entertaining the counter-claim only on the ground that it has been filed at a belated stage i.e. after filing of the written statement but it is submitted that cause of action has arisen to the petitioners to file the counter claim on 06.10.2011, i.e. after filing of the written statement on 28.02.2011, when the plaintiff opened the door in his eastern wall for having an access in the Gali which is allegedly owned by the defendants and is not a rasta share-aam. Instead of filing a separate suit, a counter-claim was set up because by that time, even the issues were not framed and the suit was at the initial stage.

On the other hand, counsel for the respondent has supported the impugned order by arguing that the counter-claim cannot be allowed to be filed after filing of the written statement.

After hearing learned counsel for the parties, I am of the considered opinion that the Court below has committed an error in dismissing the application of the petitioners.

It has been held in the case of **Madan Lal v. S.L.Maloo and others**, 2012(3) Law Herald (P&H) 2119 that the counter-claim can be filed even after filing of the written statement provided that such counter-claim is within the period of limitation.

In the case of **Shanti Rani Das Dewanjee v. Dinesh Chandra Day (dead) by LRs.**, 1998(1) PLR 286, the Apex Court has also held that

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the right to file a counter-claim is referable to the date of accrual of cause of action and if the cause of action had arisen before or after filing of the suit and such cause of action continued upto the date of filing of written statement or extended date of filing the written statement, such counter-claim can be filed even after filing of the written statement.

In the present case, it is averred by the petitioners that the cause of action had accrued to them on 06.10.2011 when the plaintiff forcibly and unlawfully break open the wall towards eastern side of his house and fixed the door therein for using it as a passage in the private gali which is allegedly belonging to the defendants. The defendants had filed the application to seek permanent injunction to restrain the plaintiff from encroaching upon the gali and mandatory injunction to close the said door. In the given facts and circumstances, the counter-claim has been set up which is otherwise not barred by limitation.

In view thereof, the present revision petition is hereby allowed and the impugned order passed by the Court below is set aside.

February 23, 2015
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(Rakesh Kumar Jain)
Judge

Note: Whether this judgment should be reported in the Digest? Yes / No