

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

CR No. 6024 of 2013 (O&M)

Date of decision : 09.7.2015

Som Pal

.. Petitioner

versus

Kashmiri Lal and others

.. Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Parminder Singh, Advocate, for the petitioner.
Mr. Pankaj Sharma, Advocate, for respondent nos. 1, 4 to 6.
Mr. Anand Singh, Advocate, for respondent no. 3.

Rajesh Bindal, J.

One of the defendants is before this Court impugning the order dated 28.9.2013 (Annexure P-6), passed by the learned Court below vide which the counter-claim filed by defendant no. 3, namely, Ompal son of Madan Lal in the suit filed by Kashmiri Lal son of Om Parkash, was held to be maintainable.

Learned counsel for the petitioner submitted that the suit was filed by Kashmiri Lal seeking declaration to the effect that Will dated 20.9.2003 executed by Smt. Sona Devi is forged and fabricated and so the probate obtained on the basis thereof. The same is not binding on the plaintiff- Kashmiri Lal and defendant nos. 4 to 6, namely Sham Lal, Pawan Kumar and Ram Dhan sons of Om Parkash. Sona Devi was grand mother of the petitioner, whereas she was maternal grand-mother of the plaintiff and defendant nos. 4 to 6. Probate had been issued in favour of the petitioner on the basis of Will. The claim in the suit filed by Kashmiri Lal was on the basis of two collusive decrees dated 27.9.1991 and 10.2.1992 passed in favour of plaintiff therein and defendant nos. 4 to 6.

In the suit filed by Kashmiri Lal, defendant no. 3 Ompal while filing written statement, filed counter-claim praying that the alleged Will dated 20.9.2003 and probate issued on the basis thereof be declared illegal, null and void. There was no relief claimed against the plaintiff in the suit

namely Kashmiri Lal. It was further submitted that Ompal and Naresh both sons of Madan Lal even filed a separate suit against the petitioner Som Pal and Balak Ram son of Bichha Ram claiming the same relief as was prayed for in the counter-claim, inter-alia on the plea that they are in possession of the property as *Dholidar*.

Learned counsel for the petitioner further submitted that the counter-claim filed by a co-defendant supporting the case of the plaintiff, seeking a relief against the co-defendant only, is not maintainable. In support of the plea, reliance was placed upon judgments of Hon'ble the Supreme Court in Ramesh Chand Ardawatiya vs Anil Panjwani 2003(2) R.C.R. (Civil) 828, Rohit Singh and others vs State of Bihar (Now State of Jharkhand) and others 2007(1) Civil Court Cases 155 and Bombay High Court in Communidade of Pirla vs Government of Goa and others 2011(1) Civil Court Cases 228.

Learned counsel for respondent nos. 1 and 4 to 6 submitted that there is nothing wrong with the impugned order. The same is legally sustainable.

Learned counsel for respondent no. 3 also argued in the same line. He further stated that the counter-claim was filed by respondent no. 3 while filing written statement, which was objected to by the plaintiff and his objections to the same were dismissed by the learned Court below and the counter-claim was admitted. Thereafter, the parties were given chance to lead evidence. The case is still pending.

Heard learned counsel for the parties and perused the paper book.

In the case in hand, Kashmiri Lal filed a suit challenging the Will dated 20.9.2003, executed by Smt. Sona Devi in favour of Sompal (defendant no. 1) and also the probate issued on the basis thereof in his favour. It was prayed that the Will or the probate is not binding on the rights of the plaintiff and defendant nos. 4 to 6 in the suit, namely, Kashmiri Lal and Sham Lal, Pawan Kumar and Ram Dhan sons of Om Parkash. Challenge to the Will in the suit was made relying upon two consent decrees allegedly executed by Smt. Sona Devi in favour of the plaintiff and defendant nos.4 to 6. It was submitted that she had transferred her land by

way of decree dated 27.9.1991 passed in Civil Suit No. 448/1991 by the Sub-Judge 1st Class, Karnal and decree dated 10.2.1992 passed in Civil Suit No. 473/1991 passed by Senior Sub-Judge, Kaithal in favour of plaintiff and defendant nos. 4 to 6, namely, Kashmiri Lal and Sham Lal, Pawan Kumar and Ram Dhan sons of Om Parkash. In the suit Sompal son of Mange Ram and Balak Ram son of Bichha Ram have been impleaded as the defendants. Ompal while filing written statement filed his counter-claim claiming the following reliefs:-

“It is, therefore, prayed that the suit of the plaintiff as well as counter-claim may kindly be decreed and the alleged will dated 20.9.2003 and Probation (sic probate) on the basis of forged Will may kindly be declared illegal, null and void and against the Law and not binding upon the rights of the answering defendant.”

The aforesaid relief claimed in the counter-claim was in line with the relief claimed by the plaintiff in the suit. Defendant no. 3 had not claimed any relief against the plaintiff, rather he wanted to support the case of the plaintiff.

The issue required to be considered in the present petition is as to whether a counter-claim, praying for relief solely against a co-defendant, is maintainable or not?

Order VIII Rule 6A CPC, which is extracted below, provides that a defendant in a suit may, in addition to his right of pleading a set-off under Rule 6 CPC, make a counter-claim against the claim of the plaintiff. The defendant is permitted to raise the claim against the plaintiff in the suit on any cause of action accruing to him either before or after the filing of the suit. The counter-claim is a kind of cross suit and is to be treated like a plaint. Order VIII Rule 6A CPC is extracted below:-

“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.”

Scope of Order VIII Rule 6A CPC and the circumstances under which counter-claim can be filed was considered by Hon'ble the Supreme Court in Ramesh Chand Ardawatiya's case (supra) and para 28 thereof is extracted below:-

“28. Looking to the scheme of Order VIII as amended by Act No. 104 of 1976, we are of the opinion, that there are three modes of pleading or setting up a counter-claim in a civil suit. Firstly, the written statement filed under Rule 1 may itself contain a counter-claim which in the light of Rule 1 read with Rule 6-A would be a counter-claim against the claim of the plaintiff preferred in exercise of legal right conferred by Rule 6-A. Secondly, a counter-claim may be preferred by way of amendment incorporated subject to the leave of the Court in a written statement already filed. Thirdly, a counter-claim may be filed by way of a subsequent pleading under Rule 9. In the latter two cases the counter-claim though referable to Rule 6-A cannot be brought on record as of right but shall be governed by the discretion vesting in the Court, either

under Order VI Rule 17 of the CPC if sought to be introduced by way of amendment, or, subject to exercise of discretion conferred on the Court under Order VIII Rule 9 of the CPC if sought to be placed on record by way of subsequent pleading. The purpose of the provision enabling filing of a counter-claim is to avoid multiplicity of judicial proceedings and save upon the Court's time as also to exclude the inconvenience to the parties by enabling claims and counter-claims, that is, all disputes between the same parties being decided in the course of the same proceedings. If the consequence of permitting a counter-claim either by way of amendment or by way of subsequent pleading would be prolonging of the trial, complicating the otherwise smooth flow of proceedings or causing a delay in the progress of the suit by forcing a retreat on the steps already taken by the Court, the Court would be justified in exercising its discretion not in favour of permitting a belated counter-claim. The framers of the law never intended the pleading by way of counter-claim being utilized as an instrument for forcing upon a re-opening of the trial or pushing back the progress of proceeding. Generally speaking, a counter-claim not contained in the original written statement may be refused to be taken on record if the issues have already been framed and the case set down for trial, and more so when the trial has already commenced. But certainly a counter-claim is not entertainable when there is no written statement on record. There being no written statement filed in the suit, the counter-claim was obviously not set up in the written statement within the meaning of Rule 6-A. There is no question of such counter-claim being introduced by way of amendment; for there is no written statement available to include a counter claim therein. Equally there would be no question of a counter-claim

being raised by way of 'subsequent pleading' as there is no 'previous pleading' on record. In the present case, the defendant having failed to file any written statement and also having forfeited his right of filing the same the Trial Court was fully justified in not entertaining the counter-claim filed by the defendant-appellant. A refusal on the part of the Court to entertain a belated counter-claim may not prejudice the defendant because in spite of the counter-claim having been refused to be entertained he is always at liberty to file his own suit based on the cause of action for counter-claim.”

A specific issue as to whether a counter-claim filed by one of the defendants seeking relief solely against a co-defendant is maintainable or not was considered by Hon'ble the Supreme Court in Rohit Singh's case (supra) and it was opined that a counter claim has necessarily to be directed against the plaintiff in the suit though incidentally or along with it, it may also claim relief against a co-defendant. A counter-claim directed solely against co-defendants is not maintainable as the object is not to permit the defendants to convert the litigation into an inter pleader suit. The relevant para thereof is extracted below:-

“18. Normally, a counter-claim, though based on a different cause of action than the one put in suit by the plaintiff could be made. But, it appears to us that a counter- claim has necessarily to be directed against the plaintiff in the suit, though incidentally or along with it, it may also claim relief against co-defendants in the suit. But a counter-claim directed solely against the co-defendants cannot be maintained. By filing a counter-claim the litigation cannot be converted into some sort of an inter-pleader suit. Here, defendants 3 to 17 had no claim as against the plaintiff except that they were denying the right put forward by the plaintiff and the validity of the document relied on by the plaintiff and were asserting a right in themselves. They had no case even that the

plaintiff was trying to interfere with their claimed possession. Their whole case was directed against defendants 1 and 2 in the suit and they were trying to put forward a claim as against the State and were challenging the claim of the State that the land involved was a notified forest in the possession of the State. Such a counter-claim, in our view, should not have been entertained by the trial court.”

To similar effect are the judgment of this Court in Kulwant Singh vs Gurcharan Singh 2002(4) R.C.R.(Civil) 179, Delhi High Court in Gastech Recess Engineering (India) Private Limited vs M/s Saipem 2010(7) R.C.R.(Civil) 416, and Allahabad High Court in Jagram Singh and another vs VIIIth Additional District & Sessions Judge, Kanpur Dehat and others 2012(4) Civil Court Cases 216, Man Singh vs District Judge, Ghazipur and others 2013 (2) Civil Court Cases 339.

A bare perusal of the aforesaid judgments wherein it has been categorically held that counter claim has to be for relief against the plaintiff, however, incidentally the same relief can be claimed against a co-defendant. A counter-claim directing relief only against a co-defendant and especially supporting the case of the plaintiff, is not maintainable.

In the case in hand, a perusal of the relief claimed by defendant no. 3 in the counter-claim shows that the same was for claiming relief only against a co-defendant in the suit, namely Som Pal. No relief was claimed against the plaintiff, rather the case of the plaintiff was sought to be supported, hence, the counter-claim could not be entertained.

For the reasons mentioned above, the order passed by the learned Court below entertaining the counter-claim filed by defendant no. 3 is set aside and the counter-claim filed by him is held to be not maintainable.

The petition stands disposed of.

09.7.2015
vs

(Rajesh Bindal)
Judge

(Refer to Reporter)