

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 264 of 2016

1. Tokeshwari Bai D/o Late Kejuram Mahar, W/o Shri Anil Kumar Aamde, aged about 32 years, R/o Village Aamdi, Tehsil & District Gariyaband (Chhattisgarh)
2. Jamuna Bai Mahar, D/o Late Kejuram Mahar, aged about 50 years, R/o Village Aamdi, Tehsil & District Gariyaband (Chhattisgarh), Through the Power of Attorney Holder, Tokeshwari Bai urf Pawan Aamde, aged about 32 years, D/o Late Kejuram Mahar, W/o Shri Anil Kumar Aamde, R/o Village Aamdi, Tehsil & District Gariyaband (Chhattisgarh)
3. Kiran Bai Mahar, D/o Late Kejuram Mahar, aged about 35 years, R/o Village Aamdi, Tehsil & District Gariyaband (Chhattisgarh), Through the Power of Attorney Holder, Tokeshwari Bai urf Pawan Aamde, aged about 32 years, D/o Late Kejuram Mahar, W/o Shri Anil Kumar Aamde, R/o Village Aamdi, Tehsil & District Gariyaband (Chhattisgarh)

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Versus

1. Smt. Parvati Choudhary D/o Late Kejuram Mahar, aged about 58 years, W/o Late Daulat Ram Choudhary, R/o Near Madhu Pillay School, Pandritarai, Tehsil & District Raipur (Chhattisgarh)
2. Smt. Yantri Padwar, D/o Late Kejuram Mahar, W/o Shri Gulab Padwar, aged about 51 years, R/o Village Gandai, District Rajnandgaon (Chhattisgarh)
3. (a) Itwari Choudhary, S/o Late Makhan Choudhary, aged about 55 years, Legal Heir of Late Shanti Choudhary, D/o Late Kejuram Mahar, R/o Village Sagona Majgaon Road, Kawardha District Kabirdham (Chhattisgarh)
3. (b) Sandeep Choudhary, S/o Shri Itwari Choudhary, aged about 33 years, Legal Heir of Late Shanti Choudhary, D/o Late Kejuram Mahar, R/o Village Sagona Majgaon Road, Kawardha District Kabirdham (Chhattisgarh)
3. (c) Satish Choudhary, S/o Shri Itwari Choudhary, aged about 36 years, Legal Heir of Late Shanti Choudhary, D/o Late Kejuram Mahar, R/o Village Sagona Majgaon Road, Kawardha District Kabirdham (Chhattisgarh)
4. Kishun Lal Mahar, S/o Late Kejuram Mahar, aged about 65 years, R/o Village Aamdi, Tehsil & District Gariyaband (Chhattisgarh)
5. Prahlad Kumar Mahar, S/o Late Kejuram Mahar, aged about 50 years, R/o Village Aamdi, Tehsil & District Gariyaband (Chhattisgarh)
6. Sudhir Kumar Mahar urf Sadhu Mahar, S/o Late Kejuram Mahar, aged about 38 years, R/o Village Aamdi, Tehsil & District Gariyaband (Chhattisgarh)
7. Smt. Ishwari Bai, D/o Late Kejuram Mahar, W/o Shri Subhash Choudhary, aged about 45 years, R/o Village Kareli Badi, Tehsil Magarlod, District Dhamtari (Chhattisgarh)

8. Smt. Umesh Choudhary, D/o Late Kejuram Mahar, W/o Shri Dharendra Choudhary, aged about 48 years, R/o Near Vindhayachal Mandir, Navapara Road, Tehsil Abhanpur, District Raipur (Chhattisgarh)
9. State of Chhattisgarh, through Collector, District Gariyaband (Chhattisgarh)

---- Respondents

For Petitioners – Shri Raza Ali, Advocate.
For Respondent No.9 – Shri S.C.Khakhariya, Deputy Advocate General.
For Respondents 1 to 8 – None, not noticed.

Hon'ble Shri Justice Chandra Bhushan Bajpai
Order on Board

18/04/2016

1. Heard.
2. Issue notice.
3. Shri S.C.Khakhariya, Deputy Advocate General for the State accepts notice on behalf of respondent No.9.
4. Respondents 1 to 8 not noticed.
5. It is submitted on behalf of the petitioners that since the question of law is involved, the matter could be disposed of finally at the motion stage itself even without noticing to respondents 1 to 8.
6. On due consideration, this Court agrees with the submission made in this behalf and as the question of law only is involved, the instant WP(227) heard finally at the motion stage itself.
7. Facts in brief necessary for adjudication of the instant WP(227) are that a civil suit for declaration, partition, separate possession and permanent injunction had been filed by the plaintiffs/present respondents 1 to 3 against the petitioners /defendants 4 to 6 and also against other respondents 4 to 9. The present petitioners/defendants 4 to 6 had filed their written statement jointly. Thereafter, the present petitioners /defendants 4, 5 and 6 had filed an application under Order 6 Rule 17 read with Order 8 Rule 6A of the Code of

Civil Procedure, 1908 (in brevity 'the Code') for making amendment in the written statement and also incorporation of counter claim and with this converting the written statement to a counter claim/written statement. The Court below after hearing the matter bi parte dismissed the said application and held that the petitioners/defendants 4 to 6 had filed the application for amendment incorporating the counter claim and the said counter claim is not within the pecuniary jurisdiction of the said Court thereby rejected the said application. Against the said order dated 01-02-2016, the present petitioners preferred the instant WP(227) and submitted that the reason assigned by the Court below is illegal as the pecuniary jurisdiction praying in the said amendment/counter claim application does not debar the trial Court as per provisions of C.G. Civil Courts Act, 1958 (in short 'the Act, 1958') Section 6, sub-section 1(c). Hence, it is prayed that as the order passed by the Court below is ab-initio illegal, the same may be quashed and the said application may be allowed.

8. Heard learned counsel for the petitioners, respondent No.9/State and also perused the impugned order and the documents annexed.

9. On behalf of the petitioners, it is argued that as the learned trial Court though having the pecuniary jurisdiction for hearing the matter above Rs.50,000/- till infinite and the prayer of the petitioners/defendants 4 to 6 was for fixing the jurisdiction of cross-suit for Rs.10,000/- and the defendants 4 to 6/petitioners proposed to affix the Court fee Rs.1000/- in their cross-suit; and as the suit filed on behalf of the plaintiffs was valued Rs.6,30,630/- and the plaintiffs had paid Court fee of Rs.5,010/-; there is no any legal bar for hearing the cross-suit below the jurisdiction of Rs.50,000/-, as per provisions of law, the Court below may hear suit or original proceeding without restriction as regards

value, hence, the order is ab-initio bad in the eyes of law and as such the same may be quashed.

10. Provisions of Section 6, sub-section 1(a), (b) and (c) of the Act, 1958 and also the provisions of Section 15 of the Act, 1958 are relevant in the matter which are as under:-

- 6. Original Jurisdiction of Civil Courts.** – (1) Subject to the provisions of any law for the time being in force, –
- (a) the Court of the Civil Judge Class II shall have jurisdiction to hear and determine any suit or original proceeding of a value not exceeding Rs.25,000;
 - (b) the Court of the Civil Judge Class I shall have jurisdiction to hear and determine any suit or original proceeding of a value not exceeding Rs.50,000/-;
 - (c) the Court of the District Judge shall have jurisdiction to hear and determine any suit or original proceeding without restriction as regards value.

xxxxxx xxxxxx
xxxxxx xxxxxx

15. Power to distribute business. – (1) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (V of 1908), or the law relating to Courts of Small Causes, for the time being in force in any area, or in any other provisions contained in this Act, the District Judge may, by order in writing, direct that any civil business cognizable by his Court or by other Civil Courts established under Section 5, in his civil district, shall be distributed amongst himself and Additional Judges, if any, of his Court, as also amongst other Courts under his control and amongst Additional Judges of such other Courts '*inter se*' in such manner as he deems fit :

Provided that, except insofar as it may affect the exclusive jurisdiction of a Court of Small Causes, or of a Court invested with the jurisdiction of a Court of Small Causes, a direction given under this section shall not empower any Court to exercise powers or deal with business beyond the limits of its pecuniary and notified territorial jurisdiction.

- (2) Any judicial act in any suit, appeal or proceeding, instituted in a Court of competent jurisdiction, shall not be invalid only by reason of the fact that such institution was not in accordance with the order of distribution of business referred to in sub-section (1).
- (3) Whenever, it appears to any Court, as is referred to in sub-section (2) that institution of any suit, appeal or proceeding, pending before it, was not in conformity with the order of distribution of business made under sub-section (1), it shall submit the record of such suit, appeal or proceeding, as the case may be, to the District Judge for appropriate orders, and the District Judge in relation thereto may pass orders either transferring the concerned record to proper Court as per order of distribution of business or otherwise to any other Court of competent jurisdiction.
- (4) In distribution of civil business under sub-section (1), the District Judge shall be guided by such principles as the High Court may, by rules, prescribe.

11. Also Order VIII Rule 6A of the Code would be relevant in the matter, which reads as under:-

ORDER VIII

WRITTEN STATEMENT, SET-OFF AND COUNTER-CLAIM

xxxxxx xxxxxx
xxxxxx xxxxxx

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.

12. From perusal of the copy of the plaint filed, it appears that the plaintiffs had valued the valuation of the suit as Rs.6,30,630/- and paid the Court fee of Rs.5,010/-. From perusal of the provisions of Section 6(1)(c) of the Act, 1958, it appears that as the trial Court is taking up the matter under the distribution memo, authority under Section 15 of the Act, 1958, prepared by the District Judge for hearing the matter in that Civil District. As per the distribution memo the Court below was authorized to hear the matter for the above pecuniary jurisdiction. Thereafter, the present petitioners/defendants 4 to 6 had filed their written statement and thereafter they had filed the said application under Order 6 Rule 17 read with Order 8 Rule 6A of the Code praying that the written statement be amended as prayed and also the same may be converted as counter claim/written statement under the relevant provisions of Order 8 of the Code after allowing the prayer for amendment. The present petitioners/defendants 4 to 6 valued their counter claim for Rs.10,000/- and they proposed to affix the Court fee on the proposed valuation on the counter claim. As per provisions of Section 6(1)(c) of the Act, 1958, the Court of District Judge (having jurisdiction as per distribution memo prevailing at the time of hearing) shall have jurisdiction to hear and determine any suit or original proceeding without restriction as regards value. With this, there is no bar to the Court below to hear any suit/cross-suit valued Rs. 10,000/-, the reason is the suit already valued as per pecuniary jurisdiction of the Court below who was hearing the matter and as per case of the petitioners/defendants 4 to 6 they valued their counter claim for worth Rs.10,000/-, the above suit and counter claim are required to be heard jointly; if valuation of the counter claim is below Rs.50,000/-, even then as per above provisions of Section 6 sub-section 1(c) of the Act, 1958, the Court below is not debarred to hear a counter claim which is part and parcel of that suit below the pecuniary jurisdiction of Rs.50,000/-.

13. In the considered view of this Court, and as per settled law, the impugned order passed by the Court below is bad in law where the Court below appreciated that the counter claim does not falls under the pecuniary jurisdiction of the Court below. In the considered view of this Court, as the counter claim filed in the said hearing of the civil suit, part and parcel of that hearing, cannot be separated but for the other circumstances and as the Court below is not barred to hear a counter claim in such a manner where the pecuniary jurisdiction is within Rs.50,000/-. As the civil suit was of the pecuniary jurisdiction for the hearing of the Court below, the counter claim also in these circumstances, be heard allowing the said application. In the considered view of this Court, impugned order passed by the Court below dated 01-02-2016 is bad in law, requires interference. Hence, the impugned order dated 01-02-2016 is hereby quashed and the application filed on behalf of the petitioners/defendants 4 to 6 under Order 6 Rule 17 read with Order 8 Rule 6A of the Code is hereby allowed. The Court below is directed to allow the petitioners to incorporate the proposed amendments in the written statement already filed and also allow the petitioners/defendants 4, 5 and 6 to convert the said written statement to a written statement/counter claim along with liberty to affix the Court fee as per amendment sought.

14. The petition allowed.

15. No order as to cost.

16. The petitioners may file copy of this order to the Court below for compliance.

17. Registrar (Judicial) is also directed to transmit copy of the order to the Court below for compliance through usual mode and fax mode immediately.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE