

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

C.R.P. No.1374 OF 2016

ORDER :

This Civil Revision Petition is filed against the order dated 25.01.2016 in C.F.R.No.1758 of 2015 in O.S.No.491 of 2014, wherein the Court below allowed the counter claim of the respondents/defendants for eviction and recovery of damages in a suit filed by the petitioners for grant of injunction against the respondents/landlords.

2. Brief facts necessary for disposal of this Revision Petition are that the revision petitioners alleging to be the tenants of the respondents/defendants, filed suit OS No.491 of 2014 for grant of injunction against the respondents/defendants. The respondents/defendants filed written statement making counter claim for eviction and damages and same was allowed by the Court below and transferred the suit to Principal Senior Civil Judge's Court since it exceeded the pecuniary jurisdiction of the Court. Aggrieved by the same, this revision petition is filed.

3. Heard Sri J.U.M.V.Prasad, learned counsel for the petitioners/plaintiffs and Sri K.Rathangapani Reddy, learned counsel for the respondents/defendants.

4. Learned counsel for the revision petitioners submits that when the counter claim exceeds pecuniary jurisdiction of the Court, the same cannot be entertained as per proviso to Order 8 Rule 6-A of CPC. In support of his contention, he relied on the judgment reported

in **Mohd. Mujtaba v. Mohd. Ahmed Pasha and others**^[1].

5. Order VIII Rule 6-A CPC reads as follows:

“(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-claims shall not exceed the pecuniary limits of the jurisdiction of the Court.

(2)...

(3)

(4).”

6. In **Mohd. Mujtaba v. Mohd. Ahmed Pasha and others (supra)**, this Court observed as follows:

“12. Learned counsel for the plaintiff submitted that as per the proceedings of the Collector dated 01.03.1997 the value of the site was Rs.4,98,000/- of which a building was constructed by the plaintiff. But as on the date of counter claim the plaintiff’s counsel submits that the value of the property is more than Rs.30 lakhs as per the certificate issued by the Registrar of Assurances. Therefore, he submitted that the counter claim is beyond the pecuniary jurisdiction of the Court in which the suit proceedings are pending cannot be entertained. I find sufficient force in the contentions raised by the plaintiff regarding the maintainability of the counter claim on both the grounds. Though, normally a counter claim on different cause of action can also be maintained. But in the facts and present circumstances of the case, the counter claim cannot be maintained. Therefore, it is liable to be excluded from the written statement of the first defendant in O.S.No.1038 of 2007.

13. In the result, the revision petition is allowed. Order of the lower Court dated 07.03.2008 in I.A.No.222 of 2007 is set aside. I.A.No.222 of 2007 is allowed by directing the trial Court to exclude the counter claim not only on the ground that there is no title to any of the parties as on the date of filing of the suit and also on the ground that the value of the property is more than pecuniary jurisdiction of the Junior Civil Judge, Hyderabad. No order as to costs.”

7. From a plain reading of proviso to Order VIII Rule 6-A of CPC and also the ratio laid down in the above citation, it is very clear that when once the counter claim exceeds pecuniary jurisdiction of the Court, it cannot entertain counter claim. In the instant case also, admittedly, counter claim made by the respondents/defendants exceeded the pecuniary jurisdiction of the Court, as such, the Court below exceeded its jurisdiction in allowing the counter claim of the respondents/defendants and transferring the suit to the Senior Civil

Judge's Court.

In view of above, this Civil Revision Petition is allowed. The order of the Court below in C.F.R.No.1758 of 2015 in O.S.No.491 of 2014 dated 25.01.2016 is set aside. However, the respondents/defendants are at liberty to institute fresh suit in respect of the cause of action, which is the subject matter of the counter claim made by them. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending, shall stand dismissed.

22.04.2016.
kvs

A.RAJASHEKER REDDY, J

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

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[\[1\]](#) 2009 (2) ALT 209