

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 3408 of 2016

ORDER:

1) Assailing the order dated 26.04.2016 passed in I.A.No.407 of 2014 in O.S.No.63 of 2013 on the file of the Principal Junior Civil Judge, Puttur, wherein and whereunder an application filed under Order VIII Rule 6A and Section 151 of C.P.C. was rejected, the present Civil Revision Petition is filed under Article 227 of the Constitution of India.

2) The facts in issue are as under:

3) The respondent/plaintiff filed O.S.No.63 of 2013 seeking permanent injunction against the petitioner and another, their men, agents, servants, relatives etc. from interfering with his peaceful possession and enjoyment over the land admeasuring Ac.0.62 cents in Sy.No.69/3A situated at Kayam Village, Vadamalapet Mandal, Tirupati Rural, Chittoor District. The said suit came to be filed on 02.04.2013. While things stood thus, defendant No.1 filed his counter-claim on 06.06.2013 alleging that he is in possession of the land and he has acquired the same by way of registered gift settlement deed dated 22.09.1980. After filing of the suit, the respondent/plaintiff and his men started encroaching upon the said land. Thereafter written statement came to be filed on 10.06.2013 reiterating the contents of the counter claim, though the alleged attempt to trespass on

14.05.2013 is not specifically mentioned. However in para No.12 of the said written statement it has been stated that taking advantage of the pendency of the suit, the plaintiff and his family members are trying to encroach upon the suit property and are also trying to dispossess him from the suit property.

4) A counter came to be filed to the counter-claim by the plaintiff disputing the averments made therein.

5) After hearing both sides, the trial Court rejected the request of counter-claim on the ground that defendant No.1 is claiming possession as well as right and title over the suit schedule property and that he has to take steps to prove his right if he is having right over the plaint schedule property by filing a separate suit but not by way of counter-claim. Aggrieved by the same, the present Civil Revision Petition is filed.

6) The issue as to whether the circumstances under which a counter-claim can be entertained came up for consideration before the Apex Court on morethan one occasion.

7) In *Bollepanda P.Poonacha and another v. K.M.Madapa*<sup>1</sup> the Apex Court held that the right to file counter-claim is an additional right. It may be filed in respect of any right or claim, the cause of action therefor, however, must accrue either before or after the filing of the suit but before the defendant has raised his defence. The Apex Court further held that the Court, must,

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<sup>1</sup> (2009) 2 ALT 17 (SC)

however, exercise the discretionary jurisdiction in a judicious manner.

8) In *Jag Mohan Chawla and another v. Dera Radha swami Satsang and others*<sup>2</sup> the Apex Court observed as under:

“The counter-claim could be treated as a cross suit and it could be decided in the same suit without relegating the parties to a fresh suit. It is true that in money suits, decree must be conformable to Order 20, Rule 18, CPC but the object of the amendments introduced by Rules 6A to 6G are conferment of a statutory right to the defendant to set up a counter-claim independent of the claim on the basis of which the plaintiff laid the suit, on his own cause of action. In sub-rule (1) of Rule 6A, the language is so couched with words of wide width as to enable the parties to bring his own independent cause of action in respect of any claim that would be the subject matter of an independent suit. Thereby, it is no longer confined to money claim or to cause of action of the same nature as original action of the plaintiff. It need not relate to or be connected with the original cause of action or matter pleaded by the plaintiff. The words "any right or claim in respect of a cause of action accruing with the defendant" would show that the cause of action from which the counter-claim arises need not necessarily arise from or have any nexus with the cause of action of the plaintiff that occasioned to lay the suit. The only limitation is that the cause of action should arise before the time fixed for filing the written statement expires. The defendant may set up a cause of action which has accrued to him even after the institution of the suit. The counter-claim expressly is treated as a cross suit with all the indicia of pleadings as a plaint including the duty to aver his cause of action and also payment of the requisite court fee

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<sup>2</sup> AIR 1996 (SC) 2222

thereon. Instead of relegating the defendant to an independent suit, to avert multiplicity of the proceeding and needless protection, the legislature intended to try both the suit and the counter-claim in the same suit as suit and cross suit and have them disposed of in the same trial. In other words, a defendant can claim any right by way of a counter-claim in the same suit as suit and cross suit and have them disposed of in the same trial. In other words, a defendant can claim any right by way of a counter-claim in respect of any cause of action that has accrued to him even though it is independent of the cause of action averred by the plaintiff and have the same cause of action adjudicated without relegating the defendant to file a separate suit. Acceptance of the contention of the appellant tends to defeat the purpose of amendment. Opportunity also has been provided under Rule 6-C to seek deletion of the counter-claim. It is seen that the trial Court had not found it necessary to delete the counter-claim. The High Court directed to examine the identity of the property. Even otherwise, it being an independent cause of action, though the identity of the property may be different, there arises no illegality warranting dismissal of counter-claim. Nonetheless, in the same suit, both the claim in the suit and the counter-claim could be tried and decided and disposed of in the same suit.”

9) In view of the two judgments referred to above, it is clear that the petitioner herein is entitled to make a counter-claim before filing his defence. Admittedly, in the instant case, counter-claim is made prior to filing of the written statement.

10) Learned counsel for the respondent submits that the contents of the counter-claim and the contents of the written statement are at variance. I am afraid the said argument cannot be accepted. It is to be noted that the contents in counter-claim

and written statement was with regard to land admeasuring Ac.0.62 cents out of Ac.1.24 cents in Sy.No.69/3 of Kayam Village. Defendant No.1 claimed to be in possession by virtue of registered gift deed dated 22.09.1980 while he was a minor and represented by his mother. Insofar as the plaintiff is concerned, he claims to be having right over the property by virtue of registered gift deed executed on 12.09.2008. The averments in the counter-claim also clearly show that recognizing possession, defendant No.1 was said to have been issued pattadar pass book and title deed to the extent referred to in the said survey number. His name was also said to have been mutated in the relevant revenue records. His case is that basing on the said document he was being granted loan by Sri Venkateswara Grameena Bank, Kammapalli Branch and also by the Bank of India, Kayampet Branch. It is also his case that after filing of the suit, the plaintiff and his men came to the property on 14.05.2013 and tried to dispossess him but the timely intervention of elders, the plaintiff and his family members left the place with a warning. Therefore, he seeks only an injunction against the plaintiff in the counter-claim, but strangely the learned trial Judge erroneously observed that the petitioner is claiming possession, right and title over the property which in my view appears to be incorrect.

11) The next ground which has been urged by the learned counsel for the respondent is that no proper court fee has been paid as required, hence he cannot take the plea as sought for in the counter claim. The same is countenanced by the learned



counsel for the petitioner stating that he has paid the court fee of Rs.411/- on 01.06.2013 and a challan to that effect is also filed before the Court.

12) Having regard to the above, the order under challenge is *set-aside* and the Civil Revision Petition is allowed. The trial Court is directed to hear both O.S.No.63 of 2013 and the counter-claim together and pass orders in accordance with law. There shall be no order as to costs.

13) Miscellaneous Petitions, if any, pending in this Civil Revision Petition, shall stand closed.

01.12.2016  
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JUSTICE C. PRAVEEN KUMAR