

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.2606 OF 2016

ORDER :

This Revision is filed challenging the order dt.29.03.2016 in I.A.No.1412 of 2014 in O.S.No.140 of 2008 of the Senior Civil Judge, Bhimavaram.

2. Petitioners herein are the defendants in the above suit. The 1st respondent filed the said suit against the petitioners and others for declaration of her title to the plaint schedule property, for permanent injunction restraining the petitioners from interfering with her alleged peaceful possession and enjoyment of the plaint schedule property and also for a mandatory injunction against respondents 2 and 3 to mutate her name as owner of the plaint schedule property in the revenue records.

3. Petitioners herein filed written statement denying the possession of the 1st respondent.

4. Thereafter, issues were framed, trial commenced and the matter is posted for cross-examination of PW1.

5. At that stage, petitioners filed I.A.No.1412 of 2014 seeking to raise a counter claim invoking Order 6 Rule 17 CPC.

6. In the affidavit filed in support of this application, petitioners stated that they had issued a registered legal

notice on 28.04.2008 to the 1st respondent for her eviction and for delivery of vacant possession, and to avoid multiplicity of proceedings, they have decided to amend the written statement and include a counter claim.

7. Counter affidavit is filed by the 1st respondent opposing this claim. It is contended that the trial of the suit was already commenced and the matter is posted for cross-examination of PW1; that several adjournments had been taken by the petitioners for cross-examination of PW1; and that under the amended Civil Procedure Code, petitioners have no right to seek amendment of the pleadings in the written statement without any valid reason. He also contended that the alleged amendment totally changes the nature of the suit and introduces a new case, and that the right of the petitioners to claim title over the plaint schedule property is now barred by time.

8. By order dt.29.03.2016, the Court below dismissed the said application on the ground that it is filed six years after the suit is instituted and it would delay the disposal of the suit. It observed that the petitioners have ample opportunity to cross-examine the witnesses, if at all they have any right over the subject property and allowing the amendment would change the nature of the suit.

9. Challenging the same, this Revision is filed.

10. Counsel for the petitioners contends that the order passed by the Court below is unsustainable and contrary to law. According to him, since the petitioners have already issued legal notice way back in 2008 to the 1st respondent to vacate the plaint schedule property and to deliver vacant possession to the petitioner, no prejudice would be caused to the 1st respondent and multiplicity of proceedings would also be avoided, if the amendment is allowed and the petitioners are permitted to amend the written statement by making a counter claim.

11. Order 8 Rule 6A of the CPC reads as follows.

“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.”

12. A reading of Sub-Section (1) of Order VIII Rule 6A CPC indicates that the defendant is entitled to make a counter claim either before or after filing of the suit but before the defendant had delivered his defence or before the time limited for deliverance of his defence expired.

13. In the present case, the written statement is already filed by the petitioners way back in the year 2008 and thus they have already delivered their defence in the suit. Once this happens, their right to file a counter claim is barred under Sub-Section (1) of Order VIII Rule 6A CPC. Therefore, I am of the opinion that the order passed by the Court below refusing to permit the petitioners to raise counter claim cannot be interfered in exercise of the power vested in this Court under Article 227 of the Constitution of India.

14. Accordingly, this Civil Revision Petition is dismissed. There shall be no order as to costs.

15. Consequently, miscellaneous petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

17th June, 2016
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