



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.03.2017

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRP(PD) (MD)No.1409 of 2014

and

CMP(MD)No.894 of 2017

Faridha Begum

... Petitioner/Respondent/
Plaintiff

vs.

U.M.K.Batcha

... Respondent/Petitioner/
Defendant

Petition filed Section 115 of the Civil Procedure Code, against the order dated 19.06.2014 made in I.A.No.46/2013 in O.S.No.283/2010 on the file of the Principal Subordinate Court, Madurai.

For Petitioner : Mr.K.Chellapandian, Senior Counsel for
Mr.G.Shankar Ganesh
For Respondent : Ms.P.Yasmin Begum

Reserved on : 06.03.2017

Judgment delivered on : 08.03.2017

ORDER

This revision is filed by the plaintiff aggrieved by the order passed by the Trial Court allowing I.A.No.46/2013 in O.S.No.283/2010 on the file of the Principal Subordinate Court, Madurai, filed by the defendant to receive additional written statement along with counter claim. Since the application was allowed in spite of the objection, the present revision petition is filed on the ground that the suit was filed in the year 2010 and the defendant filed his written statement on 05.10.2010. After framing issues, the matter was taken up for trial and proof affidavit of the plaintiff was also filed. Thereafter, after a lapse of three years, the present application has been filed to permit the defendant to file additional written statement and also to make a counter claim. This is per se against Order 8 Rule 6-A of the Civil Procedure Code. Therefore, the Trial Court order is erroneous, against law and liable to be set aside.



2.Per contra, the counsel for the respondent/defendant submitted that the factum of letting out the wakf property to third parties and the rent being appropriated by the plaintiff came to the knowledge of the defendant only in the year 2013. Therefore, immediately application seeking permission to file additional written statement along with counter claim was filed and the Trial Court has rightly allowed the same to avoid multiplicity of proceedings. There is no error in the order of the Trial Court, hence, the revision petition is devoid of merit.

3.In support of the submission, learned counsel for the petitioner referred to Order 8 Rule 6-A and also the judgment of the Hon'ble Supreme Court in **Bollepanda P.Poonacha and another vs. K.M.Madapa**, reported in **2008 (13) SCC 179**. It is relevant to extract below paragraphs 15, 18 and 19 of the said judgment:-

'15.A belated counter claim must be discouraged by this Court. See Ramesh Chand Vs. Anil Panjwani [(2003) 7 SCC 350]. We are, however, not unmindful of the decisions of this Court where a defendant has been allowed to amend his written statement so as to enable him to elaborate his defence or to take additional pleas in support of his case. The Court in such matters has a wide discretion. It must, however, subserve the ultimate cause of justice. It may be true that further litigation should be endeavoured to be avoided. It may also be true that joinder of several causes of action in a suit is permissible. The Court, must, however, exercise the discretionary jurisdiction in a judicious manner. While considering that subservance of justice is the ultimate goal, the statutory limitation shall not be overstepped. Grant of relief will depend upon the factual background involved in each case. The Court, while undoubtedly would take into consideration the questions of serious injustice or irreparable loss, but nevertheless should bear in mind that a provision for amendment of pleadings are not available as a matter of right under all circumstances. One cause of action, cannot be allowed to be substituted by another. Ordinarily, effect of an admission made in earlier pleadings shall not be permitted to be taken away. See State of A.P & Ors. Vs. M/s. Pioneer Builders, A.P. [(2006) 9 SCALE 520] and Steel Authority of India Ltd. Vs. Union of India & Ors. [2006 (9) SCALE 597] and Himmat Singh and Ors. Vs. I.C.I. India Ltd. and Ors., [2008 (2) SCALE 152].

18.This Court in Laxmidas Dayabhai Kabrawala Vs. Nanabhai Chunilal Kabrawala and Others [AIR 1964 SC 11] held;

"11. The question has therefore to be considered on principle as to whether there is anything in law - statutory or otherwise - which



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precludes a court from treating a counter-claim as a plaint in a cross suit. We are unable to see any. No doubt, the Civil Procedure Code prescribes the contents of a plaint and it might very well be that a counter-claim which is to be treated as a cross-suit might not conform to all these requirements but this by itself is not sufficient to deny to the Court the power and the jurisdiction to read and construe the pleadings in a reasonable manner. If, for instance, what is really a plaint in a cross-suit is made part of a Written Statement either by being made an annexure to it or as part and parcel thereof, though described as a counter-claim, there could be no legal objection to the Court treating the same as a plaint and granting such relief to the defendant as would have been open if the pleading had taken the form of a plaint. Mr. Desai had to concede that in such a case the Court was not prevented from separating the Written Statement proper from what was described as a counter-claim and treating the latter as a cross-suit. If so much is conceded it would then become merely a matter of degree as to whether the counter-claim contains all the necessary requisites sufficient to be treated as a plaint making a claim for the relief sought and if it did it would seem proper to hold that it would be open to a Court to covert or treat the counter-claim as a plaint in a cross suit. To hold otherwise would be to erect what in substance is a mere defect in the form of pleading into an instrument for denying what justice manifestly demands. We need only add that it was not suggested that there was anything in O. VIII. R. 6 or in any other provision of the Code which laid an embargo on a Court adopting such a course."

19.Parliament, however, has placed an embargo while giving effect to the decision of this Court in inserting Order VIII Rule 6A of the Code of Civil Procedure. While there exists a statutory bar, the court's jurisdiction cannot be exercised.''

4.Per contra, the counsel for the respondent submitted the following judgments:-

(i)**Vijay Prakash Jarath vs. Tej Prakash Jarath(Civil Appeal Nos.2308-2309 of 2016 dated 01.03.2016)**. The relevant portion of

<https://hcservices.ecourts.gov.in/hcservices/> the judgment reads as follows:-



"..... In the present case, the respondent-plaintiff's evidence was still being recorded by the trial court, when the counter-claim was filed. It has also not been shown to us, that any prejudice would be caused to the respondent-plaintiff before the trial court, if the counter-claim was to be adjudicated upon, along with the main suit. We are of the view, that no serious injustice or irreparable loss (as expressed in paragraph 15 of Bollepanda P.Pooncha's case), would be suffered by the respondent-plaintiff in this case."

(ii) **Muthusamy vs. Thangaraj, reported in 2005 (5) CTC 785.** It is relevant to extract below paragraph 8 of the judgment:-

"8.True, as seen from the additional written statement, some new pleas have also been taken. Whether this new plea will prevent the plaintiff from succeeding in the case is a matter to be decided at the time of trial, not at the time of receiving the statement. Therefore, the additional written statement, wherein an attempt is made to explain the original statement, giving further particulars, cannot be labelled as entirely a new one, disowning the original case. In this context, we have to see the relevant provisions, namely Order 8, Rule 9, C.P.C. Order 8, Rule 9, C.P.C. reads:

"No pleading subsequent to the written statement of a defendant other than by way of defence to set-off or counter-claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit; but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than thirty days for presenting the same."

It does not say that no application for receiving the additional statement shall be allowed, after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial, as provided under Order 6, Rule 17, C.P.C. proviso. The legislators when amended the C.P.C. thought it fit not to allow the party to have amendment, as a matter of right, that too in a case where they had an opportunity to raise the same, at the time of filing the pleadings. But, when they come to Order 8, C.P.C., no such restriction has been imposed, thereby giving discretion to the Court concerned to allow the subsequent pleadings, for which it is not necessary whether that defence was available on the date of filing of the original written statement or not. Under Order 8, Rule 9, C.P.C., power is given to the Court to call for the written statement or additional



written statement from any party, fixing time, not exceeding 30 days, thereby showing the provisions of Order 8, Rule 9, C.P.C. is liberal in its application, giving wide discretion to the Court, probably to give a chance to the parties, to agitate their right even raising subsequent pleas, for which, the Court should not be rigid. The Courts should exercise their discretion liberally, when it will not affect the right of the party.''

5. From the above judgments cited and the law governing the point, it is crystal clear that under Order 8 Rule 6-A CPC, belated counter claim or written statement after framing of issues is generally prohibited, unless such counter claim or written statement will avoid multiplicity of proceedings. Therefore, it is essential to find out whether in the facts and circumstances of the case in hand, permitting additional written statement will avoid any multiplicity of proceedings or will cause mis-carriage of justice, if the plea of additional written statement is not entertained.

6. The subject matter of the suit relates to private wakf property wherein, the property was originally owned by one Jb. B.S. Usman. He dedicated the property for performing charities and he appointed his daughter Rasheetha Begum to be the Muthawalli after his life time, through the settlement deed dated 01.07.1979. However, in the said settlement deed, he reserved the right of changing the Muthawalli during his life time and he has exercised that right subsequently and made his son U.M.K. Basha as the successive Muthawalli for the abovesaid private wakf. The said wakf settlement rectification deed was registered on 26.04.1982. Accordingly, U.M.K. Basha became the Muthawalli and he was functioning as Muthawalli till he settled the property in favour of his daughter Faridha Begum and appointed her as Muthawalli of the wakf vide wakf settlement deed dated 14.05.2008. In this deed, U.M.K. Basha has made it very clear that, the settlement deed appointing Faridha Begum is irrevocable and it shall come into force immediately and also permitted his daughter Faridha Begum to appoint any power agent in order to administer the wakf property. Accordingly, Faridha Begum has appointed her husband S. Ghouse Sardhar Hussain as her power agent through a registered general power of attorney to look after the management of the wakf properties. Thereafter, due to some mis-understanding between the family members, U.M.K. Basha has executed a cancellation deed dated 07.04.2010 recording cancellation of appointing his daughter as Muthawalli to the wakf property.

7. The dispute now before the Court, is whether such a cancellation is legally permissible when the earlier private wakf settlement deed dated 14.05.2008 is an irrevocable settlement



deed. Under these circumstances, the defendant U.M.K.Basha has already filed written statement in the suit filed by Faridha Begum. On filing of the written statement defending the action of cancellation of the settlement deed, issues were framed and the trial has also commenced. In the written statement, the defendant has categorically stated that the property is let out to various tenants and he issued notice to all the tenants demanding rent and he is collecting the rent after initiating rent control proceedings against them. While so, a vague reference about the tenants and permission to make counter claim belatedly in respect of the rent is hopelessly barred by plea of estoppel. In any event, it is an admitted fact that the rent control proceedings has already been initiated against the tenants by the defendant in which, the plaintiff is one of the respondents. Having resorted to an alternate redressal procedure, the defendant cannot make a multiple claim in the suit that too belatedly by way of counter claim even without any specific plea regarding the quantum of counter claim. Such a vague plea made belatedly beyond the prescribed period of limitation cannot be entertained for the sake of asking. There must be semblance of real and genuine claim or redressal indicating that if such request is declined on the ground of limitation or laches, it will lead to mis-carriage of justice. In this case, there is no such indication. There is no genuine explanation why such a counter claim was not made at the first instance. Further, in the earlier written statement, it is the specific plea of the defendant that he is collecting the rent and he has initiated proceedings against the tenants for recovery of possession. That being the case, a totally contra plea cannot be put forth belatedly after the commencement of trial. This conduct only indicates that it is an attempt to delay the proceedings and not a bona fide claim over the wakf property which has been given to the petitioner through an irrevocable private wakf settlement.

8. Order 8 Rule 6-A and 9 CPC read together indicates that it is not the prerogative of the defendant to file statements in piecemeal at any point of time. It is the bounden duty of the defendant to place on record that the subsequent pleading is warranted due to certain events occurred pending suit. In this case, no such events been placed before this Court. The pendency of the rent control proceedings, rent paid by the tenants are all known to the defendant even at the time of filing the written statement in the year 2010. The plea of counter claim by way of additional written statement belatedly after commencement of trial is restricted under CPC.

9. Therefore, this Court finds that the Trial Court has erred in allowing I.A.No.46/2013 in O.S.No.283/2010 for permitting the defendant to file additional written statement and counter claim which in fact will open multiple doors of litigation both before



the rent control proceedings as well as in the civil suit pending.

For the said reasons, the Civil Revision Petition is allowed and I.A.No.46/2013 in O.S.No.283/2010 is dismissed. No costs. Consequently, CMP(MD)No.894 of 2017 is closed.

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Assistant Registrar

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Sub Assistant Registrar

To

The Principal Subordinate Court,
Madurai.

+2cc to Mr.P.Yasmin Begum, Advocate SR.No.13240

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08.03.2017