

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

CIVIL REVISION PETITION No.59 of 2015

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed assailing the order, dated 03.12.2014, of the learned V Additional District Judge, Karimnagar, passed in IA.No.620 of 2014 in OS.No.45 of 2008 filed under Order VI Rule 17 of the Code of Civil Procedure, 1908, requesting for permission to amend the written statement-cum-counter claim as stated in the petition list.

2. I have heard the submissions of Sri V. Ravi Kiran Rao, learned counsel for the revision petitioner-defendant, and of Sri P.V. Narayana Rao, learned counsel for the respondent-plaintiff. I have perused the material record.

3. The parties shall hereinafter be referred to as the plaintiff and the defendant for convenience and clarity.

4. At the outset, it is to be noted that the plaintiff brought the suit against the defendant for granting a decree for cancellation of registered agreement of sale-cum-GPA bearing document no.14549 of 2005, dated 30.12.2005, executed by the plaintiff in favour of the defendant by declaring the same as null, void and not binding on the plaintiff due to non payment of the amount covered by the cheque and failure to abide by the terms and conditions of the same; and, for perpetual injunction restraining the defendant from interfering with the plaintiff's peaceful possession and enjoyment over the agreement schedule/plaint schedule property and for other reliefs. The defendant is resisting the suit. In the pending suit, the defendant filed the afore-stated IA for permission to amend the written statement-cum-counter claim as stated in the petition list. That petition was resisted by the plaintiff by filing a counter. On merits and by the orders impugned in the revision, the trial Court dismissed the petition of the defendant. Therefore, the defendant is before this Court.

5. The case of the defendant in support of the afore-stated request, in brief, is as follows: - 'The plaintiff filed the suit for cancellation of the suit agreement of sale-cum-GPA, dated 30.12.2005. This defendant filed written statement-cum-counter claim, *inter alia*, contending that the plaintiff played fraud on the defendant and induced him to enter into the said agreement of sale-cum-GPA in respect of the suit schedule property and that the defendant entered into the said sale agreement-cum-GPA on account of good faith by believing the representation made by the plaintiff that he got the suit property by virtue of the purchase made by his father under a simple sale deed from Koduru Buchaiah and that his father was and is in possession of the property by virtue of the said simple sale deed and as the plaintiff showed to the defendant the order of the RDO, Karimnagar, whereby certain mutation entries were cancelled. The plaintiff made the defendant to believe that he was and is in continuous possession of the plaint schedule property by adverse possession. Hence, this defendant entered into the transaction under the sale-cum-GPA. Later this defendant came to know that the plaintiff has no marketable title to the suit property. While so, the plaintiff filed the suit for cancellation of the sale agreement-cum-GPA on the ground that this defendant has not complied with the terms and conditions of the same and as the cheque given by this defendant towards sale consideration had bounced. On filing of the written statement-cum-counter claim by this defendant, the plaintiff also entertained a doubt about his marketable title in respect of the suit schedule property. While the suit is pending, the plaintiff obtained a registered relinquishment deed from the sons of Koduru Buchaiah in order to clear the cloud cast upon the marketable title of the plaintiff over the suit schedule property. Thus, the plaintiff has got confirmed his title by virtue of the relinquishment deed obtained from the sons of Koduru Buchaiah. Since this defendant is under the impression that the plaintiff has no marketable title and his claim is only based on adverse possession, this defendant did not seek specific performance in his

counter claim at the time of filing of the written statement. By virtue of the provision of Section 43 of the Transfer of Property Act, the plaintiff got perfect title by virtue of the relinquishment deed obtained from the sons of K. Buchaiah and hence, this defendant is now entitled to seek specific performance of the suit agreement of sale-cum-GPA by seeking amendment of the written statement-cum-counter claim. At the time of filing of the suit by the plaintiff, there is no registered relinquishment deed in favour of the plaintiff and, therefore, there is defect in his title. Hence, this defendant could not make a counter claim for specific performance. But, in view of the change of the circumstances, a right is accrued to the defendant to make a counter claim for specific performance of the suit sale agreement-cum-GPA. If the amendment of the written statement-cum-counter claim as sought for is allowed and the defendant is permitted to seek the relief of specific performance, the said amendment will not alter the nature of the defence and does not cause any prejudice to the plaintiff; on the other hand it would be helpful in avoiding multiplicity of the suits. For the first time, this defendant came to know about the relinquishment deed obtained by the plaintiff when he made an admission in that regard in his cross examination. The trial Court is having jurisdiction to grant appropriate relief by permitting the amendment instead of driving the defendant to file a separate suit for specific performance. The petition for amendment could not be filed before the commencement of the trial as this defendant is unaware of the relinquishment deed obtained by the plaintiff from the sons of Koduru Buchaiah and as the plaintiff suppressed the said fact without giving the necessary information to this defendant. The sole intention of the plaintiff is to now sell the property to third parties for a higher consideration as the market value of the property has increased four folds. Hence, this defendant may be permitted to amend the written statement-cum-counter claim as stated in the petition list.'

6. The case of the plaintiff, in brief, is this: - 'The material allegations in the affidavit filed in support of the petition are false. This plaintiff filed the suit for cancellation of the agreement of sale-cum-GPA and for permanent injunction on the ground that the defendant has not complied with the terms and conditions of the same and as the cheque given by this defendant towards sale consideration had bounced. It is averred in the defendant's petition that the plaintiff during the pendency of the suit got a relinquishment deed in his favour. The defendant is no way concerned with the same. The said fact does not affect the relief claimed by the plaintiff as the suit is filed for not complying with the terms of agreement of sale-cum-GPA and as the cheque issued towards sale consideration had bounced. There is no *prima facie* case to file the petition. If the petition is allowed, complete nature of the suit will be changed and the plaintiff will suffer irreparable loss. The petition is devoid of merits and is liable to be dismissed.'

7. At the hearing, learned counsel for the defendant while reiterating the pleaded case of the defendant further submitted that since the amendment was necessitated in view of the admission made by PW1 in his cross examination and as the amendment of the written statement-cum- counter claim was sought based on a subsequent event namely obtaining of registered relinquishment deed by the plaintiff from the legal heirs of the deceased Koduru Buchaiah in the year 2010, that is, after the institution of the suit, the order of the trial Court dismissing the petition of the defendant is unsustainable and is unjustified.

8. On the other hand, learned counsel for the plaintiff supported the orders of the trial Court by *inter alia* contending that the relief of specific performance is barred by law of limitation and that the defendant is not entitled to the equitable relief of specific performance as the cheque issued towards part of the sale consideration had bounced and the defendant is not ready and willing to perform his part of the contract and violated terms and

conditions of agreement of sale-cum-GPA and as the defendant failed to seek specific performance at the inception but only sought the relief of interest and damages. He would further submit as follows: - 'The registered relinquishment deed was obtained in the year 2010; and, under Section 3 of the T.P Act there is a presumption of notice. Despite having knowledge of the relinquishment deed, the defendant kept quiet and filed the petition belatedly. Hence, the trial Court is justified in dismissing the application of the defendant. Along with the suit, the plaintiff also filed IA.No.509 of 2008 for grant of temporary injunction. In the said application, the trial Court passed an order, dated 05.12.2008, directing this plaintiff to deposit Rs.10,10,000/- before posting the said IA for orders. Accordingly this plaintiff deposited the said amount to the credit of the suit and the defendant filed IA.No.538 of 2009 and withdrew said amount by virtue of the orders, dated 26.10.2009, passed by the trial Court in the said application. Thus, the defendant withdrew the amount of Rs.10,10,000/- deposited by the plaintiff towards the advance consideration paid under the suit agreement of sale-cum-GPA. The defendant issued a cheque bearing No.873863 of Canara Bank, Karimnagar branch, in favour of the plaintiff for an amount of Rs.16,30,000/- towards part of sale consideration and the said cheque was dishonoured for the reason 'insufficient funds'. In the original written statement-cum-counter claim filed, on 25.03.2009, the defendant alleged verbatim as follows: - 'Thus plaintiff is liable to pay interest at the rate of 24%per annum on Rs.10,10,000/- from 30.12.2005 to 11.12.2008 (i.e., the date on which the plaintiff deposited the amount at the instance of this Honourable Court though the plaint was presented on 4.12.2008 i.e., Rs.7,20,720/-. That the plaintiff is liable to pay future interest if he raised any objection till the same is overruled'... 'that the afore-said facts constitute cause of action for the counter claim which are on 18.12.2005, 31.12.2005 when agreement of sale was executed on all such dates when the plaintiff failed to perform his part of obligations to clear the disputes and the title of

the suit land and finally on 4.12.2008 when the plaintiff filed the above suit, on 11.12.2008 when the plaintiff deposited the amount to the credit of suit. That the cause of action is continuing.' '..Hence, this defendant exercises his option to rescind the agreement of sale as it is violable at his option.' After the pleadings are complete the trial court framed four issues, on 11.06.2010. The plaintiff was examined in chief and was cross examined. When the suit is coming for the evidence of the defendant, the present IA for amendment of the written statement-cum-counter claim was filed by the defendant alleging that this plaintiff obtained registered relinquishment deed bearing document no.9886 of 2010, dated 24.11.2010, from the legal representatives of Koduru Buchaiah in his favour. Under Explanation I to Section 3 of the Transfer of Property Act, there is a presumption of notice of execution of registered document to all the persons concerned. The amendment of a plaint or a written statement or a counter claim made in the written statement cannot be permitted after the issues are framed and after commencement of the trial in view of the *proviso* of Order VI Rule 17 of the Code. This plaintiff's suit OS.No.63 of 2006 filed against Rasool bee and others was dismissed by decree and judgment, dated 25.11.2014, inspite of exhibiting the registered relinquishment deed, dated 24.11.2010, as exhibit A1 in the said suit on the file of Senior Civil Court, Karimnagar. After lapse of six years from the date of the filing of the suit, the request for amendment of the written statement-cum-counter claim cannot be entertained and permitted. When the defendant withdrew Rs.10,10,000/- deposited by the plaintiff to the credit of the suit and when the cheque for Rs.16,30,000/- issued towards part of sale consideration was dishonoured for the reason that there are no sufficient funds in the account of the defendant, the question of the defendant seeking the relief of specific performance by way of amendment of counter claim-cum-written statement does not arise for consideration that too after lapse of nine years.

The petition for amendment of the written statement-cum-counter claim is not maintainable and is liable to be dismissed.'

9. In reply, learned counsel for the defendant contended as follows: - 'The defendant did not seek specific performance at the inception as the plaintiff's title is defective and the plaintiff's claim is based on adverse possession. However, during the pendency of the suit, the plaintiff got perfect title by way of a registered relinquishment deed obtained from the legal representatives of the deceased Koduru Buchaiah and, therefore, the cause of action for the defendant to seek specific performance arose from the date of the knowledge of the said fact. Hence, the *proviso* to Order VI Rule 17 of the Code is not applicable. The defendant withdrew the amount deposited by the plaintiff as by that time the plaintiff's title is defective. This defendant is prepared to redeposit the amount withdrawn by this defendant along with interest as may be directed by this Court as the defendant is now interested in seeking specific performance as the cloud cast on the title of the property of the plaintiff is now cleared by virtue of the relinquishment deed obtained by the plaintiff in respect of the suit schedule property. The plaintiff suppressed the fact that he obtained a relinquishment deed; and, till he disclosed the said fact in the cross examination, this defendant is not aware of such relinquishment deed. Therefore, after closure of the evidence of the plaintiff and before taking steps for adduction of evidence on the side of the defendant, the present petition is filed for amendment of the written statement-cum-counter claim. The proposed amendment, if permitted, does not cause any prejudice to the plaintiff. Whether the defendant is disentitled to seek specific performance either on the ground of delay or withdrawal of the amount deposited by the plaintiff or on account of the dishonour of the cheque given towards part of sale consideration are the aspects concerning the merits of the matter and this Court need not go into the issue of this defendant's entitlement for specific performance while considering an application filed for amendment of written

statement-cum-counter claim. The trial Court failed to properly appreciate the facts and the legal position obtaining and dismissed the petition by incorrectly observing that the petition is intended to drag on the proceedings and the proposed amendment, if allowed, creates a new case and causes prejudice to the plaintiff.'

10. I have given earnest consideration to the facts and submissions. At the outset it is to be noted that both the parties entered into an agreement of sale-cum-GPA, dated 30.12.2005. The plaintiff who executed the said document filed the suit for cancellation of the same on the ground that the defendant has not complied with the terms and conditions of the same and as the cheque given by the defendant towards sale consideration had bounced. The defendant having chosen not to claim specific performance filed a written statement-cum-counter claim seeking the following reliefs:

- 'a) Direct the plaintiff to pay Rs.7,20,000/- towards interest from the date of agreement of sale i.e.,30-12-2005 to 11-12-2008 with future interest @24%p.a. from the date of counter claim i.e.,25-03-2009 till realisation.
- b) Direct the plaintiff to pay Rs.3,00,000/- towards compensation for breach of agreement of sale with future interest @24%from the date of counter claim i.e.,25-03-2009 till realisation.
- c) Award costs of suit;
- d) Grant such other relief or reliefs as are deemed fit.'

The defendant did not seek specific performance as, according to the defendant, the plaintiff has no marketable title and the title of the plaintiff is based on adverse possession. The trial Court framed the issues and the evidence on the side of the plaintiff was closed. At that stage, the defendant filed the subject application for amendment of the written statement-cum-counter claim to enable the defendant to claim specific performance of the suit agreement of sale-cum-GPA on the ground that during the pendency of the suit, that is, in the year 2010, the plaintiff obtained a registered relinquishment deed from the legal representatives of the deceased Koduru

Buchaiah and perfected his title and, therefore, the defendant is entitled to seek specific performance as the defect in title of the plaintiff is cured and the plaintiff is in a position to convey marketable title to the defendant who is the agreement holder. Now the only short question is - whether the application seeking amendment of the written statement-cum-counter claim to enable the defendant to seek specific performance can be allowed at the stage when the suit which is filed for cancellation of the agreement of sale-cum-GPA is at the stage of adduction of evidence on the side of the defendant who is the agreement holder. It is undisputed that when the plaintiff filed an application for temporary injunction, the trial Court directed the plaintiff to deposit Rs.10,10,000/- and the plaintiff deposited the same and the defendant had withdrawn the same by filing an application for granting a cheque. The plaintiff, *inter alia*, contends that the defendant's cheque for Rs.16,30,000/- issued towards sale consideration bounced for want of sufficient funds in the account of the defendant and, therefore, the defendant is not entitled to seek specific performance. Further, the decision in H.G.Krishna reddy v. M.M. Thimmaiah and another¹ was relied upon in support of the proposition that acceptance of refund of amount paid under the agreement of sale would amount to waiver of right to enforce the contract and that even if the amount is accepted without prejudice to the rights also, the right to seek specific performance of the contract is not preserved and that once the refund of the amount is accepted, the right to enforce the contract stands waived and hence, the defendant who is not entitled to seek the relief of specific performance cannot be permitted to amend his pleadings. However, this Court at the stage of considering the request of the defendant to permit him to amend the written statement-cum-counter claim shall not go into the merits of the main matter and need not decide the merit of the issue as to whether the defendant would be entitled to or not to the relief of specific performance or whether or not the defendant would be entitled to the equitable relief of

¹ AIR 1983 Madras 169

specific performance as it is settled by a decision of the Supreme Court as follows: “While considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment.” (See: paragraph 19 in *Rajesh Kumar Aggarwal v. K.K.Modi* [(2006) 4 SCC 385]). Therefore, this Court is not going into the merits of the issue as to whether the defendant would be entitled to the relief of specific performance in the event his application seeking amendment stands allowed. Be that as it may.

11. One of the contentions of the plaintiff is that in view of the *proviso* to Order VI Rule 17 of the Code, the defendant cannot be permitted to amend the written statement-cum-counter claim as the trial has commenced and that the defendant could not plead and establish that inspite of due diligence he could not have raised the matter before the commencement of the trial. In view of the said contention, it is necessary to refer to the *proviso* to Order VI Rule 17 of the Code and the decisions relied upon.

“Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of trial.”

However, in the case on hand, the case of the defendant is that the necessity to seek amendment has arisen after the plaintiff obtained the relinquishment deed in the year 2010 and disclosed the said fact in his cross examination and hence, the defendant could not seek the amendment before the commencement of the trial.

11.1 Be that as it may, it is necessary to refer to the following decisions relied upon by the learned counsel for both the parties.

In *Rajesh Kumar Aggarwal and others v. K.K. Modi and others*² the Supreme Court at paragraph 18 held as follows:

As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the Court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. On the contrary, the learned Judges of the High Court without deciding whether such an amendment is necessary has expressed certain opinion and entered into a discussion on merits of the amendment. In cases like this, the Court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard rights of both parties and to sub-serve the ends of justice. It is settled by catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court.

In *Sajjan Kumar v. Ram Kishan*³, the Supreme Court held as follows:

“Having heard the learned Counsel for the parties, we are satisfied that the appeal deserves to be allowed as the trial Court, while rejecting the prayer for amendment has failed to exercise the jurisdiction vested in it by law and by the failure to so exercise it, has occasioned a possible failure of justice. Such an error committed by the trial Court was liable to be corrected by the High Court in exercise of its supervisory jurisdiction, even if Section 115 CPC would not have been strictly applicable. It is true that the Plaintiff-Appellant ought to have been diligent in promptly seeking the amendment in the plaint at an early stage of the suit, more so when the error on the part of the plaintiff was pointed out by the defendant in the written statement itself. Still, we are of the opinion that the proposed amendment was necessary for the purpose of bringing to the fore the real question in controversy between the parties and the refusal to permit the amendment would create needless complications at the stage of the execution in the event of the plaintiff-appellant succeeding in the suit.”

In *Usha Devi v. Rijwan Ahamd*⁴, a contention was advanced that the trial of the suit would commence with the settlement of the issues; and, in support of the said contention that the framing of issues marked the

² (2006)4 SCC 385

³ (2005) 13 SCC 89

⁴ (2008) 3 Supreme Court Cases 717

commencement of trial of the suit reliance was placed on the decision in *Ajendraprasadji N.Pandey v. Swami Keshavprakeshdasji* [(2006) 12 SCC1]. However, while meeting the said contention, the attention of the Supreme Court was invited to the decision of the Supreme Court in *Baldev Singh v. Manohar Singh* [(2006)6 SCC 498] wherein it was held as follows:

“Before we part with this order, we may also notice that proviso to Order 6 Rule 17 CPC provides that amendment of pleadings shall not be allowed when the trial of the suit has already commenced. For this reason, we have examined the records and found that, in fact, the trial has not yet commenced. It appears from the records that the parties have yet to file their documentary evidence in the suit. From the record, it also appears that the suit was not on the verge of conclusion as found by the High Court and the trial court. That apart, commencement of trial as used in proviso to Order 6 Rule 17 in the Code of Civil Procedure must be understood in the limited sense as meaning the final hearing of the suit, examination of witnesses, filing of documents and addressing of arguments. As noted hereinbefore, parties are yet to file their documents, we do not find any reason to reject the application for amendment of the written statement in view of proviso to Order 6 Rule 17 CPC which confers wide power and unfettered discretion to the court to allow an amendment of the written statement at any stage of the proceedings.”

*Jayanti Prasad Nautiyal v. Kamla Nand Bahuguna and another*⁵ is relied upon in support of the proposition that on the ground of delay an application for amendment of the written statement to incorporate a counter claim cannot be dismissed. In this decision, it is also held that it is permissible under law to amend the written statement subsequently for incorporating a counter claim therein.

In the decision in *VIDYABAI V/s. PADMALATHA*⁶ the Hon'ble Supreme Court observed that the proviso to Order VI Rule 17 of the Code is couched in a mandatory form and, therefore, the court's jurisdiction to allow an application for amendment is taken away there under unless the conditions precedent therefor are satisfied, and that before allowing amendment, the Court must

⁵ AIR 2009 Uttarakhand 26

⁶ (2009) 2 Supreme Court Cases 409

come to a conclusion that in spite of due diligence the parties could not have raised the matter before the commencement of the trial and that it is the primary duty of the Court to decide as to whether such an amendment is necessary to decide the real dispute between the parties and only if such a condition is fulfilled, the amendment is to be allowed. Thus, the proviso appended to Order VI Rule 17 of the Code was held to restrict the power of the Court and that it placed an embargo on exercise of its jurisdiction and that unless the jurisdictional fact as envisaged therein is found to exist, the court would have no jurisdiction at all to allow the amendment.

In *Andhra Bank v. ABN Amro Bank N V and others*⁷ it was held that it is well settled that delay is no ground for refusal of prayer for amendment and that it is permissible in law to permit to amend the written statement and allow an additional ground of defence to be taken.

12. I have gone through all the above decisions which are cited.

13. It is to be next examined as to whether the amendment of the written statement-cum-counter claim to enable the defendant to incorporate the claim for relief of specific performance can be permitted under facts and in law. Though the cause of action to seek specific performance of the suit agreement of sale cum GPA was available to the defendant, he did not seek the said relief either by filing an independent suit or by making a counter claim for specific performance in the written statement-cum-counter claim already filed. Nonetheless, the defendant submits that as by that time there is a defect in the title of the plaintiff the defendant has not chosen to seek specific performance. Thus, the defendant's case is that he is seeking specific performance on a subsequent cause of action and that the said cause of action for seeking specific performance arose after the filing of the written statement-cum-counter claim and on the plaintiff obtaining a relinquishment

⁷ (2007) 6 SCC 167

deed in respect of the suit schedule property in the year 2010 and disclosing the said fact in his cross examination. Thus, the counter claim for the relief of specific performance, which the defendant now wants to introduce by way of amendment to the pleading, is based on a subsequent cause of action. In the light of this undisputed fact, the relevant legal position needs to be examined. The relevant provision of Order VIII Rule 6 of the code reads as under:

Order VIII Rule 6-A:

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.

13.1 In *Gurram Allabaksh and ors. V. Shaik Habeebullabasha and ors*⁸, a learned Single Judge of this Court while disagreeing with the earlier view of another learned Single Judge expressed in the decision in *Sugesan and Company (P) Ltd., Madras v. KMT Ltd.*, [2004(3) ALD 57] held as follows: 'With great respect to the learned Judge who rendered the said judgment, it is noticed that the proposition runs contrary to Rule 6-A enacted by the Parliament. It is not as if a Defendant in a suit is without any relief, if a cause of action has arisen to him, vis-à-vis the plaintiff, at a stage subsequent to the filing of the written statement. He can file an independent suit, and the

⁸ 2011 (3) ALT 9

facility of filing counter-claim cannot be permitted to be used to shatter the entire progress that has taken place in the suit, on the basis of the written statement and the issues framed therein.’ While rendering the decision, the learned Single Judge of this Court referred to the decision of the supreme Court in Jagmohan Chawla v. Dera Radha Swami Satsang [1996 (4) ALD 57] wherein it was held as follows:

".....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 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 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.....’

13.2 In Ananta Gas Suppliers and others v. Union Bank of India [MANU/ AP/ 1065/ 2006 = 2007(3) ALT 327], a learned Single Judge of this Court also took the view that a counter claim is not maintainable if the cause of action for the counter claim accrues after filing of the written statement.

13.3 In the case on hand, admittedly and even according to the case of the defendant, the cause of action for the counter claim in regard to the relief of specific performance accrued in the year 2010, that is, after the filing of the written statement-cum-counter claim and after the plaintiff obtained the relinquishment deed and disclosed the said fact in the cross examination during the trial of the suit. Therefore, the proposed amendment for seeking the relief

of specific performance for which the cause of action admittedly arose after the filing of the written statement-cum-counter claim cannot be entertained by the Court on the sole ground that essential ingredients of Order VIII Rule 6 of the Code are not satisfied.

14. On the above analysis, this Court finds that the order of the trial Court is justified and is sustainable under facts and in law.

15. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision, shall stand closed.

27.10.2017
Vjl



M. Seetharama Murthi, J