

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 5518 of 2016

ORDER:

- 1) The present Civil Revision Petition is directed against an order dated 21.10.2016 passed in I.A.No.321 of 2015 in O.S.No.197 of 2010 on the file of the Additional Senior Civil Judge, Madanapalle, wherein an application filed by the petitioners herein under Sections 151 and 94 (e) of C.P.C. seeking permission to file counter-claim, was rejected.
- 2) In order to appreciate the claim of the petitioners, it would be useful to refer to the facts in issue.
- 3) The third respondent herein filed the above suit seeking a direction from the Court, for handing over of the property to the rightful owners. The averments in the plaint would show that the building, in which the social welfare hostel, run by the plaintiff, is situated, originally belonged to Madanapalle Hand Spinners & Weavers Co-operative society. The said society leased out the building to Karya Vidyalaya, for which one T.N.Raghunatha Reddy was the President and Secretary. Lease deed was said to have been registered on 13.10.1958 for a period of 50 years. The same got expired in the year 2003. It is said that, T.N.Raghunatha Reddy as the Secretary-cum-President sublet the premises to Government, for running a social welfare hostel. The rent which was initially fixed at Rs.4,919/-, but later on raised to Rs.8,549/-.

While things stood thus, Raghunadha Reddy filed O.S.No.85 of 1989 for recover of arrears of rent. The said suit was decreed, directing the Government to pay a sum of Rs.1,36,073/- for a period of 21 months. He also filed O.S.No.174 of 2005 for recovery of arrears of rent for different periods. While so, a dispute arose with regard to title of the said property. At that point of time the said Raghunatha Reddy died. His daughter filed L.R application in O.S.No.174 of 2005 stating that she is representing Karya Vidyalaya. At the same time, the Deputy Director, Social Welfare, Chittoor, received notices from Khadi and Village Industries Commissioner, Hyderabad, stating that they have purchased the property in open auction, wherein Madanapalle Hand Spinners and Hand Weavers Co-operative Society obtained loan and grant from Khadi Village Industries for Development Activity, but as they failed to repay the loan, an auction was conducted for recovery of dues. The averments in the plaint also show that the premises was vacated, the hostel was shifted to new building and the property is now to be handed over to the real owner. In view of the rival claimants, suit has been filed seeking direction, for handing over of the property to the original owner.

4) In the said suit, these two petitioners, who are the daughter and son of P.Narayana Reddy are also parties. Written statements came to be filed by all the defendants including the petitioners herein. In the written statement filed by the petitioners, it has been stated that the property belongs to one Marpuri Seethamma

and her son Sddappa, who sold away the schedule property to P.Narayana Reddy and Dr.K.S.Krishna Murthy, for a valuable consideration, under registered sale deed dated 16.10.1948. Later, Dr.K.S.Krishna Murthy, relinquished his half share in the property and executed a registered relinquishment deed dated 17.11.1971 in favour of P.Narayana Reddy, giving up his rights over the said property. It is stated that P.Narayana Reddy became absolute owner of the property by virtue of the above said document. The averments in the written statement further show that defendant No.2 initiated some proceedings for recovery of some amount due by Narayana Reddy and appears to have brought suit property for sale without impleading the petitioners and without sending any proper notice to Narayana Reddy. It is stated that the property came to be purchased after the death of Narayana Reddy, without impleading his legal representatives as such all proceedings against dead persons are null and void.

5) It is stated that when defendant Nos.3 and 4 are taking steps against defendant No.1 for recovery of possession, the plaintiff filed a comprehensive suit. This written statement came to be filed in the year 2011. Basing on the material available on record, issues were framed on 17.02.2014 and thereafter the petition came to be filed seeking permission to file counter claims on 11.08.2014.

6) Respondent No.1 filed counter stating that the suit property was sold in public auction and defendant No.1 purchased the

same. There is a dispute over title between the petitioners and respondent No.2. It is stated that the petitioners cannot file counter claim basing on the rental value of the plaint schedule property and that they have to file a separate suit.

7) The Government filed counter stating that the petition is not maintainable under law at a belated stage and that the petitioners have no right to file the counter claims. It is also stated that the petitioners have to file separate suit.

8) After considering the rival submissions made, the trial Court dismissed the said application on 21.10.2016, on the ground that there cannot be any counter claim against the co-defendants and that these applications are filed with an abnormal delay. The same is subject matter of challenge in the present Civil Revision Petition.

9) Reiterating the averments made in the affidavit filed in support of the I.A. and relying upon the judgments of the Apex Court in *Mahendra Kumar and another v. State of Madhya Pradesh*¹, (2) *Vijay Prakash Jarath v. Tej Prakash Jarath*,² learned counsel for the petitioners would submit that grave prejudice would be caused to the petitioners, if the request of the plaintiff for withdrawal of the suit is allowed.

10) On the other hand, learned counsel for respondent No.3 would submit that earlier defendant No.1 filed C.R.P.No.1754 of

¹ AIR 1987 1395

² (2016) 1 Decisions Today (SC) 221

2013 for handing over the keys to the rightful owner but the same was dismissed. In view of the above, he submits that the request of the petitioners cannot be accepted.

11) Learned counsel for the respondent No.1 would submit that when the suit is coming up for trial, the present application for filing counter claim is not permissible. It is stated that if the request of the petitioners is accepted now, the valuation of the property gets changed and the said Court will not have any jurisdiction to try the matter.

12) Before proceeding further, it would be useful to refer to Order VIII Rule 6-A of C.P.C., which reads as under:

“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) Admittedly, the trial in the said suit has not yet commenced. Issues came to be framed on 17.02.2014 and within six months thereafter the present application came to be filed. The main grievance of the petitioners is that if the request of the plaintiff for withdrawal of the suit, sought for by way of Memo, is accepted, the entire proceedings get frustrated. It is his case that the said suit is sought to be withdrawn due to collusion between the plaintiff and defendant Nos.1 and 2. The said argument of the learned counsel for the petitioners cannot be brushed aside at this stage.

14) As seen from the record, three parties namely Khadi & Village Industries Commission, Raghunatha Reddy and his legal heirs and the petitioners herein, who are legal heirs of P.Narayana Reddy are claiming right over the property. All of them are claiming possession of the property. These facts are very clear from the written statement filed by all the defendants including the petitioners. In fact, in the written statement itself these petitioners claim ownership over the property, which they have got from their father, who in turn purchased the same from one Marpuri Seethamma. Though a specific claim is not made, but the averments in the written statement amply establish their claim over the property. Having regard to the above, a counter claim

came to be filed by both the petitioners, who are children of P.Narayana Reddy. Therefore, the argument of the learned counsel for the respondents that there cannot be any counter claim against co-defendants may not be correct. There is a title dispute amongst the parties, and each one of them claiming possession of the property. Therefore, it cannot be said that the claim is only against the co-defendant.

15) Coming to the delay, issues came to be framed in the month of February, 2014 and within six months thereafter the present application came to be filed. The issue as to when a counter claim can be filed, came up for consideration before the Apex Court in *Vijay Prakash Jarath case (2 supra)*. It was a case where issues framed on 18.10.1993 and counter claims were filed by the defendants, before the Court almost two and half year after framing of issues. Dealing with the same, the Apex Court held as under:

“9. It is quite apparent from the factual position noticed hereinabove, that after the issues were framed on 18.10.1993, the counter claim was filed by the appellants before this Court (i.e. by defendant Nos.3 and 4 before the trial court) almost two and a half years after the framing of the issues. Having given our thoughtful consideration to the provisions relating to the filing of counter claim, we are satisfied, that there was no justification whatsoever for the High Court to have declined, the appellant before this Court from filing his counter claim on 17.06.1996, specially because, it is not a matter of dispute, that the cause of action, on the basis of which the counter claim was filed by defendant Nos.3 and

4, accrued before their written statement was filed on 11.11.1992. 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 would be suffered by the respondent-plaintiff in this case.”

16) The case on hand stands on a much better footing than the case referred to above. In the instant case application seeking permission to file counter claims came to be filed within six months from the date of framing of issues and further the trial in the instant case has not yet commenced.

17) In *Mohd. Mujtaba v. Mohd. Ahmed Pasha and others*³, while interpreting Order VIII Rule 6 of C.P.C. this Court held as under:

“The object of rule introduced in the Civil Procedure Code is to avoid multiplicity of proceedings and to treat them as suit and cross suit, the counter claim expressly treated as a cross suit with all the initiation of pleadings as a plaint including the duty to avert the cause of action and also payment of requisite Court fee thereon. In spite of recalling the defendant to an independent suit to avert multiplicity of proceedings and needless protection, the Legislature intended to try both the suit and counter claim in the same suit as suit and cross suit and for disposing of in the same trial. In other words, the defendant can claim any right by way of counter claim in respect of any cause of action that is accrued to him even though it is an

³ (2009) 2 ALT 209

independent cause of action averred by the plaintiff and being the same cause of action adjudicated without recalling the defendant to file a separate suit.”

18) Insofar as the request made by the learned counsel for the petitioners for handing over of keys, it is to be noted that earlier defendant No.1 filed C.R.P.No.1754 of 2013 seeking a direction to the plaintiffs to hand over the keys to him was dismissed holding that it is not desirable to grant the relief as prayed for by the petitioner. Instead, this Court directed the trial court to dispose of the suit as expeditiously as possible preferably within a period of four months from the date of receipt of a copy of this Order, subject to other old and part-heard matters.

19) Such being the position, the question of handing over of keys to the petitioners at this point of time would not arise. Since, the trial Court has already directed this Court to dispose of the suit as early as possible, preferably, within a period of four (04) months from the date of receipt of a copy of the order, the request of the Government/plaintiff seeking withdrawal of the suit cannot also be granted. If the request as sought for is granted, definitely it would frustrate the rights of the petitioners, who are also claiming right and title over the property.

20) In view of the judgments referred to above and having regard to the facts stated above, the request of the petitioners for filing counter claim has to be accepted. Insofar as the jurisdiction of the Court is concerned, the parties are directed to agitate the same before the trial Court.

21) Accordingly, the Civil Revision Petition is allowed.

22) Miscellaneous Petitions, if any, pending in this Civil Revision Petition, shall stand closed. There shall be no order as to costs.

JUSTICE C. PRAVEEN KUMAR

23.02.2017

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