

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Second Appeal No.896 of 2017

Between

Jinendra Jewellers, Rep. by its Proprietor Kushal Raj,
S/o Seshmal Jain, Aged 46 years, D.No.27-14-59,
Rajagopalachari Street, Governorpet, Vijayawada
... Appellant/Defendant

and

1. B.Venkateswara Rao, S/o late B.V. Subba Rao,
Aged 62 years, R/o D.No.27-14-59,
Rajagopalachari Street, Vijayawada
2. B.Vinod Kumar, S/o late B.V. Subba Rao,
Aged 60 years, R/o D.No.27-14-59,
Rajagopalachari Street, Vijayawada
... Respondents/Plaintiffs

DATE OF JUDGMENT PRONOUNCED: 15-12-2017

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

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|---|--|--------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reports/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

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... Appellant/Defendant
Vs.

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Rajagopalachari Street, Vijayawada
... Respondents/Plaintiffs

! Counsel for Appellant: Mr V.S.R. Anjaneyulu

Counsel for Respondents: Mr. P.R. Prasad

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> Head Note:

? Cases referred:

1. 2007 (2) ALD 483
2. Manu/DE/0769/2014
3. AIR 2003 MP 185

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

Second Appeal No.896 of 2017Judgment:

Aggrieved by the rejection of his counter-claim both by the Trial Court and by the First Appellate Court, in terms of Order VII, Rule 11 C.P.C., the defendant in a suit for recovery of possession has come up with the above second appeal.

2. Heard Mr. V.S.R. Anjaneyulu, learned counsel appearing for the appellant and Mr. P.R. Prasad, learned counsel appearing for the respondents.

3. The respondents filed a suit in O.S.No.145 of 2016 on the file of the II Additional Junior Civil Judge at Vijayawada, praying for eviction of the appellant herein from the suit schedule property and for future damages at the rate of Rs.40,000/- per month. The case of the respondents/plaintiffs in the suit was that the suit schedule shop was taken on lease by the father of the appellant/defendant way back in December, 2003; that subsequently the defendant took over the shop from his father; that the defendant committed default in payment of rent from April, 2015 and that therefore after issuing a quit notice dated 23-12-2015, the respondents/plaintiffs were constrained to file the suit for eviction.

4. The appellant/defendant filed a written statement claiming that a lease agreement was entered into on 16-7-2005, in and by which, the lease was agreed to be

extended for a period of 25 years and that therefore he was not liable to be evicted. In addition to setting up such a defence, the appellant/defendant also made a counter-claim by seeking a decree for the relief of specific performance of the registration of the lease deed dated 16-7-2005. The appellant/defendant admittedly valued the relief of specific performance made in his counter-claim and also paid Court Fee thereon.

5. Thereafter, the respondents/plaintiffs appear to have made a request to the Trial Court to reject the counter-claim in terms of Order VII, Rule 11 CPC. Accordingly, the Court below, by a judgment and decree dated 27-8-2016, rejected the counter-claim alone.

6. The said judgment and decree was taken on appeal in A.S.No.222 of 2016 by the defendant, but the Appellate Court dismissed the appeal. Hence, the defendant has come up with the above second appeal.

7. The one and only substantial question of law arising for consideration in the above second appeal is – whether a counter-claim can be rejected in terms of Order VII, Rule 11 CPC, especially in the facts and circumstances of this case.

8. The power of the Court to reject a plaint cannot be in doubt and the parameters are well set out in Order VII, Rule 11 CPC. Order VIII, Rule 6-A(4) makes it clear that a counter-claim shall be treated as a plaint and governed by the rules applicable to plaints. Therefore, the applicability of

Order VII, Rule 11 CPC to counter-claims cannot be ruled out in total. In fact, many High Courts have taken the view that Order VII, Rule 11 CPC is applicable to counter-claims also. This Court held so in **Ananta Gas Suppliers v. Union Bank of India**¹. The High Court of Delhi took the same view in **Karan Madaan v. Nageshwar Pandey**². In **Mohan Lal v. Saukhi Lal**³ and the Madhya Pradesh High Court held that a counter-claim can be rejected under Order VII, Rule 11 CPC.

9. But one question which none of the Courts seem to have considered so far is as to the circumstances in which or the conditions under which a counter-claim can be rejected by applying the parameters of Order VII, Rule 11 CPC. If a counter-claim can be dissected into two portions, one comprising of the defence to the plaintiff's claim and another comprising of the counter-claim and the survival of one of which does not depend upon the other, it may be possible to apply Order VII, Rule 11 CPC with surgical precision. But where the defence to a suit and the counter-claim are joined in such a manner as Siamese twins, with inherent danger to the survival of the defence to the suit, upon the rejection of the counter-claim under Order VII, Rule 11 CPC, the Court would be doing something more than

¹ 2007 (2) ALD 483

² Manu/DE/0769/2014

³ AIR 2003 MP 185

what a Court would normally do with respect to a plaint under Order VII, Rule 11 CPC.

10. It could be seen from Order VIII, Rule 6-A(1) CPC that it entitles a plaintiff to set up by way of counter-claim, 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 limit for delivering his defence has expired. This is irrespective of whether the counter-claim is in the nature of a claim for damages or not. Under sub-rule (2) of Rule 6-A of Order VIII CPC, the counter-claim is to 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. Therefore, the judgment and decree required to be delivered by the Court in a case where there is a counter-claim, is to be in common for both the claim and the counter-claim. In other words, there will be only one judgment and one decree and not two judgments and two decrees despite the fact that there are virtually two suits, one in the form of a suit and another in the form of a counter-claim.

11. Sub-rule (4) of Rule 6-A of Order VIII CPC states that the counter-claim shall be treated as a plaint and governed by the rules applicable to plaints. But it does not mean that it is no more a written statement. It is also a written statement to which Order VIII CPC applies,

even while Order VII CPC is made applicable to a part of the same.

12. In fact, Rule 6-C of Order VIII CPC gives a right to the plaintiff to seek an order to exclude the counter-claim on the ground that the counter-claim ought not to be disposed of except by way of an independent suit.

13. Therefore, the counter-claim is not exactly the same as a plaint, despite having the traits of a plaint, since the same is raised in a written statement. The scheme of Order VIII, Rules 6-A to 6-G CPC itself recognises the fact that there could be two different scenarios, one where the counter-claim could be inextricably intertwined with the defence and another where it is capable of being prosecuted as an independent suit (as provided in Order VIII, Rule 6-C, CPC).

14. Therefore, in addition to the parameters provided in Order VII, Rule 11 CPC, the Court may also have to examine while dealing with a prayer for rejection of the counter-claim, as to whether the rejection of the counter-claim would have the effect of striking off the defence or rendering the defendant defenceless.

15. It must be remembered that at the stage of invoking Order VII, Rule 11 CPC, the Court is not concerned with the merits of the claim. But while dealing with a written statement, the Court will certainly be considering the merits of the claim.

16. In the case on hand, the suit is one for eviction. The defence raised by the defendant is that he is entitled to have a lease deed executed and registered for a period of 25 years from 16-7-2005. The document accompanying the counter-claim appears to be an unstamped and unregistered document. If the counter-claim is taken up for trial, we do not know whether the said document will be allowed to be marked in evidence at all, in view of the recitals contained therein and the document not being duly stamped and registered. We do not even know whether the defendant can actually secure a decree directing the plaintiffs to execute and register a lease deed for a period of 25 years with effect from 16-7-2005, especially in the light of the limitations imposed by the Registration Act, 1908 to the registerability of a document executed several years ago.

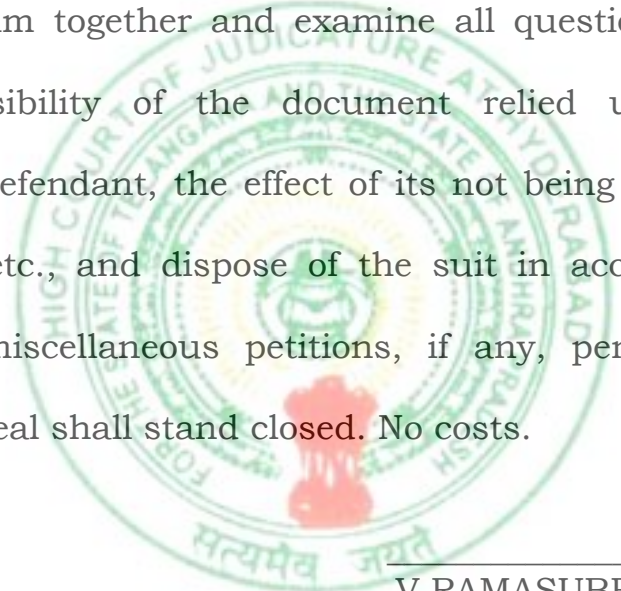
17. But all the above are on the merits of the case. That the counter-claim raised is so weak and eventually can only be thrown out, may not be a ground to invoke Order VII, Rule 11 CPC, especially when the defence to the suit, depends for its survival upon the counter-claim.

18. Therefore, the substantial question of law raised in the above second appeal is answered to the following effect:

(i) Wherever the defence to a suit can survive even if the counter-claim goes, then the Court will be entitled to invoke Order VII, Rule 11 CPC and reject the counter-claim.

(ii) Wherever the defence to the suit is so intertwined with the counter-claim that the rejection of the counter-claim will have the effect of killing the defence to the suit, the Court cannot invoke Order VII, Rule 11 CPC to reject the counter-claim.

19. In the light of the above answer to the substantial question of law, the second appeal is allowed and the judgments and decrees of both the Courts below are set aside. The Court below may take up the trial of the suit and the counter-claim together and examine all questions including the admissibility of the document relied upon by the appellant/defendant, the effect of its not being stamped and registered etc., and dispose of the suit in accordance with law. The miscellaneous petitions, if any, pending in this second appeal shall stand closed. No costs.



V.RAMASUBRAMANIAN, J.

15th December, 2017.
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Note:-
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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

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15th December, 2017.
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