

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.3794_2016

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed challenging the Order dt. 11.03.2016 in I.A.No.584 in O.S.No.385 of 2011 passed by the Principal Junior Civil Judge, Tenali, to grant leave to the petitioner/defendant to file counter claim/additional written statement by reopening the suit.

The petitioner filed two applications viz., to reopen the suit and to grant leave to file counter claim/additional Written Statement contending that the respondent/plaintiff filed suit for permanent injunction against the petitioner/defendant restraining him from interfering with his peaceful possession and enjoyment of the schedule property and after filing the suit, the respondent/plaintiff obtained *ad interim* injunction, in the guise of the said order, he constructed a compound wall on the north-east of the petitioner's site from the petitioner's house wall to the eastern side in his site. The respondent has no right to construct compound wall in his site at 'WXYZ' path way shown in the defendants plan filed along with the petition. Hence, the respondent/plaintiff shall remove the said compound wall and sought for permission of this Court to receive counter claim/additional written statement under Order 8 Rule 9 CPC and prayed to allow the petition.

The respondent/plaintiff filed Counter denying the material allegations *inter alia* contending that the suit is filed only for injunction and the evidence on either side was closed and the suit was posted for argument and at this stage, this Petition to receive counter

claim/additional written statement cannot be maintained and prayed for dismissal of the petition.

Upon hearing both the counsel, the trial Court dismissed the Petitions as such relief cannot be granted at the end of the proceedings i.e., at the stage of arguments, despite submitting that no fresh evidence or additional evidence is required to prove their counter claim.

Aggrieved by the Order passed by the trial Court, the present Civil Revision Petition is filed on the ground that the petitioner is entitled to set up such a counter claim at any stage and there was no limitation prescribed under the Limitation Act. Moreover, Order 8 Rule 9 CPC permits the parties to file subsequent pleadings to raise certain grounds and that no further or additional evidence is required to be adduced by the petitioner, but the trial Court did not consider the request of the petitioner and committed an error in dismissing the petition.

During hearing, learned counsel for the petitioner, reiterated those grounds in the grounds of petition and mostly demonstrated that the respondent/plaintiff constructed a compound wall in the guise of *ad interim* injunction and the petitioner is entitled to raise an additional plea to claim declaration of their title to the property, but the trial Court did not consider this request of the petitioner though there was no limitation to claim such relief under Order 8 Rule 9 CPC and prayed to set aside the Order permitting the petitioner to file a counter claim/additional written statement under Order 8 Rule 9 CPC.

A Notice was served on the respondent/plaintiff, but none appeared on his behalf.

Considering the contentions of the learned counsel for the petitioner, the point that arise for consideration is:

“ Whether the petitioners be permitted to file subsequent pleadings under Order 8 Rule 9 CPC to set up a counter claim/additional written statement under Order 8 Rule 6-A CPC when the suit is posted for arguments?

POINT: It is the contention of the learned counsel for the petitioner from the beginning that the respondent/plaintiff raised a compound wall encroaching into the land of the petitioner in the guise of *ad interim* injunction obtained by him from the Court below. The interim injunction was obtained in the year 2011 and the compound wall was constructed illegally within one year from the date of obtaining interim order allegedly and therefore, the respondent is disentitled to encroach into the land of the petitioner and sought for declaration of title to the property covered by “WXYZ” as shown in the written statement plan as absolute owner and for consequential relief of recovery of possession of property shown as “WXYZ” in the plan annexed to the Written Statement and for removal of construction (compound wall) raised by the respondent/plaintiff.

When I adverted to counter claim, it is silent as to when the respondent raised compound wall encroaching into the land and if such construction was raised in the year 2011 immediately after obtaining *ad interim* injunction, the petitioner is entitled to claim the relief of declaration of title over ‘WXYZ’ portions shown in the plan annexed to the Written Statement, within three years from the date of such encroachment denying the title of the petitioners for claiming relief of declaration under Article 58 of Limitation Act. Now, the petitioner is claiming main relief as declaration and consequential relief is recovery of possession. But for claiming recovery of possession as main relief, the limitation is 12 years. However, the present petition was filed in the year 2015 i.e., after expiry of 3 years period for claiming main relief of declaration. Even otherwise, the

question of subsequent pleadings under Order 8 Rule 9 CPC does not arise, since, the defendant is entitled to file such subsequent pleading only when legal heirs are impleaded under Order XXII of CPC or a 3rd party is impleaded under Order 1 Rule 10 CPC or plaint is amended bringing on record certain new facts. But here, Written Statement was filed long back and later filed the present petition seeking leave of the Court to file subsequent pleadings i.e., a Counter claim. There is a lot of difference between Counter claim under Order 8 Rule 6 A CPC and Order 8 Rule 9 CPC i.e., subsequent pleadings. Both are mutually exclusive. At best, the petitioner may seek leave of the Court to set up counter claim under Order 8 Rule 6-A CPC. Even according to Order 8 Rule 6-A CPC, a defendant in a suit may, in addition to his right of pleading a set off under Rule 6 CPC, 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. Therefore, the petitioner being the defendant before the Court is entitled to file a counter claim whether it is based on a cause of action arose before or after filing of the suit but before the defendant has delivered his defence i.e., filing of Written Statement under Order 8 Rule 1 CPC. Curiously, in this matter, the petitioner filed Petition under Order 8 Rule 9 CPC and the petitioner is disentitled file such subsequent pleadings in the absence of allowing any petition under Order 22 or Order 1 Rule 10 or Order 6 Rule 17 of CPC. Moreover, the defence was delivered long prior to the filing of this petition and the trial was completed and at the stage of argument, the petition was filed under Order 8 Rule 9 CPC.

The main contention of the petitioner before trial Court and this Court is that the petitioner is not going to adduce additional evidence and in the absence of any limitation to file such counter claim, dismissal of the application filed by this petitioner under Order 8 Rule 9 CPC is erroneous.

But, this contention cannot be sustained for the reason that counter claim filed under Order 8 Rule 6-A, shall have the same effect as a cross suit so as to enable the Court to pronounce final judgment in the same suit, both on the original claim and on the counter claim in view of Rule 6 (A) (2) of Order 8 CPC and the plaintiff is at liberty to file written statement in answer to the counter claim vide Sub Rule (3) of Rule 6-A of Order 8 CPC. Therefore, for all practical purposes, the counter claim is a suit and the plaintiff/respondent herein will have a right to file Written Statement on the counter claim and thereafter the Court has to frame issues enabling the parties to adduce evidence on the issues involved in the counter claim. Merely because, the petitioner is not going to adduce any additional evidence in support of the counter claim, the Court cannot allow such counter claim after delivery of defence by the petitioner i.e., filing of Written Statement, since the suit is posted for arguments. If for any reason, such permission is granted, the Court has to afford an opportunity to file Written Statement on the counter claim under Sub Rule 3 of Rule 6A of Order 8 CPC and issues under Order 14 of CPC have to be framed permitting the parties to adduce additional evidence. Even if the petitioner is not going to adduce any evidence, the respondent will be given an opportunity of adducing additional evidence since the claim is for declaration and recovery of possession, which is substantive in nature. Therefore, at this stage, when the suit is posted for argument, the petitioner is disentitled to claim the relief either under Order

8 Rule 9 or under Order 8 Rule 6-A of CPC. Therefore, the Court below did commit no error in dismissing the petition warranting interference of this Court by exercising power under Article 227 of the Constitution of India.

Yet, in view of my foregoing discussion, the petitioner is disentitled to file subsequent pleadings under Order 8 Rule 9 CPC in the present facts and circumstances and set up counter claim when the suit is posted for arguments after delivery of defence and completion of trial. Therefore, the Civil Revision Petition is liable to be dismissed as it is devoid of merits.

Accordingly, this Civil Revision Petition is dismissed. If the petitioner filed any suit independently, the Court is bound to decide the suit uninfluenced by the observations herein above. No costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

Date: 29-01-2018
eha

M. SATYANARAYANA MURTHY, J



THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.3794 2016

Dt. 29-01-2018

cha