

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No.5358 of 2017 (O&M)
Date of decision : 03.04.2018

Manjit Singh and another

...Petitioners

Versus

Harpal Singh (deceased) through LRs and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Aakash Singla, Advocate for the petitioners.

Mr. Ashish Gupta, Advocate for the respondents.

ANIL KSHETARPAL, J.

The plaintiffs-petitioners are in the revision petition against the order passed by learned trial Court dismissing the application filed by the plaintiffs for striking of the counter-claim filed by defendant No.1 and for return of the same.

It would be necessary to note brief facts.

The plaintiffs sons of Late Sh. Narinder Singh filed a suit for declaration to the effect that the plaintiffs are owners in possession of 1/3rd share in the house i.e. Kothi No.1 measuring 217 square yards. Defendant Nos.1 and 2 are alleged to be uncles of the plaintiffs. In other words, father of the plaintiffs and defendant Nos.1 and 2 were three brothers.

On the other hand, defendant No.1 contested the suit and pleaded that the plaintiffs have no right, title or interest in the property as it

was purchased by defendant Nos.1 and 2 vide registered sale deed dated 16.01.1981 and the story put forth in the plaint that the property was purchased from the Joint Hindu Family Funds is erroneous. Defendant No.1 filed his written statement dated 20.04.2012. Defendant No.1 thereafter filed a counter claim dated 02.11.2016. In the counter claim, prayer for separate possession by way of partition was made primarily against defendant No.2 in the suit. The aforesaid counter claim was taken on record which led to filing an application for striking of the counter claim. Learned trial Court dismissed the application vide order dated 20.07.2017 against which the present revision petition has been filed under Article 227 of the Constitution of India.

Learned counsel for the petitioners has vehemently argued that under Order 8 Rule 6A of Code of Civil Procedure, defendant No.1 could only file counter claim primarily against the plaintiffs and not against co-defendants. He has further submitted that a reading of the counter claim proves that cause of action for filing the counter claim is after the filing of the written statement and, therefore, the counter claim could not be filed with respect to cause of action which had accrued after the filing of the written statement.

On the other hand, learned counsel for the respondents has submitted that the counter claim is in the nature of the plaint and the counter claim is filed to avoid multiplicity of the suits. He has submitted that counter claim being in the nature of a separate suit would always be maintainable.

Having heard the learned counsel for the parties at length and

with their able assistance gone through the paper book, this Court is of the considered opinion that the counter claim as filed is not maintainable. As contended by the learned counsel for the petitioners, the counter claim is primarily against defendant No.2. Defendant No.1 is not admitting that the plaintiffs are having any share in the property in dispute. Even the second contention of the learned counsel for the petitioners is correct because in para No.14 of the counter claim, it has been pleaded that the cause of action to file the counter claim arose a day before the filing of the counter claim i.e. on 01.11.2016.

On careful reading of Order 8 Rule 6A of the Code of Civil Procedure, it is clear that the counter claim primarily has to be against the plaintiff but it can incidentally be against the defendant. However, the position cannot be vice versa. Still further, the counter claim is permissible only with respect to cause of action which arose before the filing of the suit or after the filing of the suit but before the written statement was filed or time for filing the written statement has elapsed. In the present case, on both counts, the counter claim is not maintainable.

However, as per Order 8 Rule 6 Sub Rule 2 of CPC, the counter claim is to be treated as a separate suit/cross suit. Such being the position, while allowing the revision petition, this Court is of the considered opinion that the counter claim be treated as a separate suit. Since the property in dispute as well as the parties to the litigation in both the suits are common, the Court is directed to proceed with the two suits simultaneously and decide the suits in accordance with law. Needless to say that the Court would be at liberty to consolidate the suits and direct the parties to lead

evidence in one of the suit so as to avoid multiplicity and duplicity of the evidence to be recorded.

Revision petition is allowed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

03.04.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No