

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

SAO No.29 of 2013 (O&M)

Somnath and others

....Appellants

versus

Sheela Devi and others

....Respondents

SAO No.30 of 2013 (O&M)

Somnath and others

....Appellants

versus

Sheela Devi and others

....Respondents

Date of decision:18.07.2018

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Santosh Sharma, Advocate and
Mr. Johan Kumar, Advocate
for the appellants.

Mr. Ashwani Chopra, Senior Advocate with
Mr. Ankit Midha, Advocate
for respondent No.1.

Mr. Raj Pal Singh, Advocate for
Mr. R.S. Chauhan, Advocate
for respondent No.2.

None for respondents No.3 to 5.

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DEEPAK SIBAL, J. (Oral)

This order shall dispose of two appeals being **SAO No.29 of 2013 – 'Somnath and others vs. Sheela Devi and others'** and **SAO No.30 of 2013 – 'Somnath and others vs. Sheela Devi and others'**. For the sake

of convenience facts have been taken from SAO No.29 of 2013.

The present appeal has been filed to challenge therein judgment and decree dated 24.01.2013 passed by the Additional District Judge, Nuh (for short – 'the Appellate Court') through which judgment and decree dated 06.10.2009 passed by the Additional Civil Judge (Senior Division), Nuh (for short – 'the Trial Court') has been reversed.

The facts in brief which need to be noticed for adjudicating upon the present appeal are that respondent No.1 filed a suit seeking therein to be declared as owner in possession of the property detailed and described in para no.1 of the plaint (for short – the suit property). According to her, she had purchased the suit property from Amarjit Kaushal and Priya Vert Kaushal who in turn had purchased the same from respondent No.2, who was arrayed as defendant No.1 in the suit.

On being put to notice, respondents No.2 to 5 filed their written statement seeking dismissal of respondent No.1's suit. In addition, they filed a counter claim seeking injunction against respondent No.1 as they feared dispossession from the suit property.

After framing of issues, the Trial Court afforded several opportunities to respondent No.1 to prove her case but to no avail. Not even an *iota* of evidence was led by her. Resultantly, through judgment and decree dated 06.10.2009 her suit was dismissed. After dismissal of respondent No.1's suit, the Trial Court proceeded with the counter claim filed by respondents No.2 to 5. Since respondent No.1/plaintiff also did not lead any evidence to defend the counter claim, respondent No.2 to 5's counter claim was decreed on 03.08.2011.

Thereafter, respondent No.1 filed two appeals. In one appeal

she challenged the dismissal of her suit whereas in the other, the judgment and decree passed in respondents No.2 to 5's counter claim was assailed. Condonation of delay in filing of the appeal challenging the dismissal of her suit was also sought. Through a separate application filed by respondent No.1 under Order 41 Rule 27 CPC she sought to produce as additional evidence certified copies of sale deeds on the basis of which she intended to prove the pleas taken by her in her suit. In respondent No.1's appeal, the appellants filed an application for being impleaded as parties on the ground that they had now stepped into the shoes of respondents No.2 to 5 having purchased the suit property from them. Through order dated 27.08.2012, the Appellate Court allowed the appellant's impleadment application. Such order was not challenged. It, thus, attained finality.

After considering the pleas raised on behalf of the parties, the Appellate Court, after condoning the delay, allowed both the appeals filed by respondent No.1. However, the application filed by respondent No.1 seeking to place on record additional evidence was dismissed. The rejection by the Appellate Court of the application filed by respondent No.1 for placing on record additional evidence was challenged by respondent No.1 before this Court through **CR No.6828 of 2013 - 'Sheela Devi vs. Harun and others'**, which through an order of even date has been dismissed. The appellants, who were impleaded on 17.08.2012 have filed the present two appeals to challenge therein the aforesaid orders passed by the Appellate Court allowing both the appeals filed by respondent No.1.

Mr. Akshay Bhan, learned Senior counsel appearing on behalf of the appellants submitted that the Appellate Court erred in holding that both the suit and the counter claim are to be tried and decided together;

after dismissal of respondent No.1's suit, the Trial Court rightly allowed the counter claim filed by respondents No.2 to 5; a suit and a counter claim are both distinct and independent forms of litigation and therefore, should have be decided separately and that once the plea of respondent No.1 for leading of additional evidence in the form of the certified copies of the sale deeds had been rejected there was no occasion for the Appellate Court to remand the matter to the Trial Court as without the sale deeds respondent No.1 cannot maintain her suit.

Per contra, Mr. Ashwani Chopra, learned Senior counsel appearing on behalf of respondent No.1 submitted that the counter claim filed by respondents No.2 to 5 could only be decided alongwith respondent No.1's suit and that both the proceedings could not be adjudicated upon separately.

Learned counsel appearing on behalf of respondent No.2 supports the appellants.

After hearing learned counsel for the parties, I find merit in the present appeals.

In the year 2008, respondent No.1 had filed a suit seeking therein to be declared owner in possession of the suit property. According to her, she had purchased the suit property from Amarjit Kaushal and Priya Vert Kaushal who in turn had purchased the same from respondent No.2- Harun. After completion of pleadings, the Trial Court framed the issues and thereafter, since no evidence whatsoever was produced by respondent No.1, in the year 2009 her suit was dismissed. The Trial Court then proceeded to decide the counter claim made by respondents No.2 to 5 and since in the counter claim also no evidence was produced by respondent No.1, the same

was decreed in the year 2011. The appeals filed by respondent no.1 against the dismissal of her suit as also decretal of the counter claim were allowed by the Appellate Court and the matter has been remanded to the Trial Court only on the ground that the suit and the counter claim should have been decided together.

Order 8 Rules 6A to 6D CPC, which are relevant are extracted below:-

“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 unit, 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.

6-B. Counter-claim to be stated.-Where any defendant seeks to rely upon any ground as supporting a right of counter-claim, he shall, in his written statement, state

specifically that he does so by way of counter-claim.

6-C. Exclusion of counter-claim.- *Where a defendant sets up a counter-claim and the plaintiff contends that the claim thereby raised ought not to be disposed of by way of counter-claim but in an independent suit, the plaintiff may, at any time before issues are settled in relation to the counter-claim, apply to the Court for an order that such counter-claim may be excluded, and the Court may, on the hearing of such application make such order as it thinks fit.*

6-D. Effect of discontinuance of suit.- *If in any case in which the defendant sets up a counter-claim, the suit of the plaintiff is stayed, discontinued or dismissed, the counter-claim may nevertheless be proceeded with.”*

As per the afore-quoted provisions, the defendant in a suit may in addition to his right of pleading, set up a counter claim against the claim made by a plaintiff in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but such claim is to be made before the defendant has delivered his defence or before the time limited for delivering his defence has expired. Order 8 Rule 6-A provides that a counter claim by the defendant shall have the same effect as a cross suit so as to enable the Court to pronounce a final judgment both on the original claim as also on the counter claim. Order 8 Rule 6-A(4) further provides that the counter claim shall be treated as a plaint and governed by the Rules applicable to plaints. As per Order 8 Rule 6-D if in any case in which the defendant sets up a counter claim, the suit of the plaintiff is stayed, discontinued or dismissed, the counter-claim may nevertheless be proceeded with.

A harmonious reading of the afore-quoted provisions leave no

manner of doubt that a counter-claim is to be treated as a plaint and as per Order 8 Rule 6-D CPC even if the suit of the plaintiff in which a counter-claim has been made by the defendant is dismissed, the counter-claim is to be proceeded with. Thus, there is ample indication in the above provisions that a suit and a counter-claim may not necessarily be decided together and having arrived at such conclusion the findings of the Appellate Court that both, the suit and the counter claim should necessarily have been decided together cannot be sustained.

Even otherwise, respondent No.1 had filed a suit seeking therein to be declared owner in possession of the suit property which according to her she had purchased from Amarjit Kaushal and Priya Vert Kaushal, who in turn had purchased the same from respondent No.2-Harun. In her suit, no evidence was led by her. At the appellate stage also the only evidence sought to be produced by her were certified copies of the sale deeds purportedly executed between herself and Amarjit Kaushal/Priya Vert Kaushal. No evidence was produced to show the basis of conferment of title of the suit property upon the afore-referred Amarjit Kaushal/Priya Vert Kaushal. Only if Amarjit Kaushal/Priya Vert Kaushal were having title of the suit property could they confer on respondent No.1 a valid title. The Appellate Court did not allow the certified copies of the sale deeds to be produced as additional evidence. The petition filed against such rejection in this Court being **CR No.6828 of 2013 - Sheela Devi versus Harun and others**, has also been dismissed by an order of even date. Thus, the certified copies of the sale deeds sought to be produced by respondent No.1 have not been permitted to be produced. The above-referred certified copies of the sale deeds were the only evidence sought to be produced by respondent

No.1. Thus, there is no evidence at all on behalf of respondent No.1 for the Court to opine in her favour.

It requires to be noticed that on the merits of the matter, the Appellate Court upheld the dismissal of respondent No.1's suit. Further acceptance of the counter claim by respondents No.2 to 5 was also held to be in accordance with law. In this regard para no.23 of the judgment is reproduced as under:-

“So far as the suit is concerned, the plaintiff has failed to lead any evidence despite availing seven opportunities and therefore, the suit of the plaintiff was dismissed vide impugned judgment and decree dated 06.10.2009. Therefore, the suit of the plaintiff was rightly dismissed by learned lower court. However, the counter claim of the defendants was accepted vide judgment and decree dated 03.08.2011 on the basis of evidence of Sahid son of Hasan Mohd. DW1 and documentary evidence Exhibit D1 to D3, i.e. Jamabandi for the year 1988-89 and documents mark A to E tendered by learned counsel for the defendants. The revenue record supports the case of defendants No.1 to 4 that they are owners of the suit land. The learned counsel was appearing on behalf of the plaintiff when the counter claim was decided. Hence, the whole evidence of defendants No.1 to 4 has gone unrebutted. Since the revenue record i.e. Exhibit D1 to D3 favours the ownership of defendants No.1 to 4, therefore, the counter claim of the defendants No.1 to 4 was rightly decreed.”

After having recorded the above findings, the Appellate Court remanded the matter to the Trial Court only on the ground that both the suit and the counter claim have not been decided together. As observed earlier,

such a direction is unsustainable especially when the Appellate Court on merits had upheld both the orders impugned by respondent No.1 before it as also for the reason that the above extracted findings returned by the Appellate Court, to uphold the dismissal of respondent No.1's suit and the counter claim filed by respondents No.2 to 5, were never challenged by respondent No.1. Even no cross-objections were filed in the present appeals.

In view of the above, after setting aside the impugned orders both the appeals being **SAO No.29 of 2013 - Somnath and others vs. Sheela Devi and others** and **SAO No.30 of 2013 - Somnath and others vs. Sheela Devi and others**, are allowed.

(DEEPAK SIBAL)
JUDGE

July 18, 2018
Jyoti 1

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No