

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5878 OF 2018

Maruti Natu Salunkhe

... Petitioner

v/s.

Vijay B. Patil & ors.

... Respondents

Mr. Rajesh S. Datar for the petitioner.

Mrs. M.P. Thakur for respondents 1 to 4.

CORAM : DAMA SESHADRI NAIDU, J.

10th July 2019.

P.C.

The petitioner is the tenant; the respondents are the landlords. After taking a piece of vacant land on lease from the respondent's predecessor, the petitioner established a sugar-cane-juice shop. Later, there arose a dispute about the extent leased out. In that context, the tenant filed Civil Suit No.308 of 2014 for a declaration about the extent of land under lease and also for injunction. But the tenant chose to file a suit only against the original landlord's son and his daughter-in-law—that son's wife. By then, in fact, the landlord died, survived by four children.

2. Pending the Suit, the successor landlords—that is, all the legal

heirs of the original landlord—filed R.C. Suit No.927/2014 for eviction. In the Suit, the petitioner as a defendant filed a counter-claim.

3. The landlords filed Ext.19 application before the Trial Court to exclude the tenant's counter-claim from the suit. They have, in that context, contended that the tenant has already filed an independent suit for whatever he is claiming in his counter-claim. Acting on that application, the Trial Court, through its order, dt.12.01.2018, rejected the tenant's counter-claim. Aggrieved, he has filed this writ petition.

4. Heard Shri Rajesh Datar, the learned counsel for the petitioner, and Mrs. M.P. Thakur, the learned counsel for respondents 1 to 4.

5. As seen from the impugned order, I reckon the Trial Court has rightly observed that the tenant in his Suit No.308 of 2014 has already sought the relief of declaration about the area under lease, besides seeking a prohibitory injunction. He cannot, then, seek an identical relief as a counter-claim in the landlords' suit for eviction.

6. There can be no multiple proceedings on a singular cause of action; in fact, a counter-claim is a suit within a suit for all practical purposes. It is separable from the plaintiff's claim; the defendant can enforce it through a cross-action. And the fate of the suit does not dictate the course of counter-claim. Through the 1976 Amendment, CPC had Rules 6-A to 6-G added to Order 8, to give statutory force to this common claim. Plainly put, the defendant can set up a counter-

claim on a cause of action which, in fact, gives him a right to file a separate suit. And, here, the tenant-defendant has already done that—only a little early—before the landlords could initiate the eviction proceedings.

7. To be explicit, the defendant's counter-claim shall be treated as a plaint, and this gives a right to the plaintiff in the original suit to file his written statement. Pertinently, the court will decide the counter-claim on merits, unaffected by what happens to the suit—that is, even when the is stayed, dismissed, discontinued, or withdrawn. A counter-claim is not a quasi-suit; it is a suit proper.

So I find no fault with the Trial Court's order impugned in this Writ Petition. At any rate, any procedure being only a facilitator for proper adjudication of a case, the defendant may, if he desires, request the Trial Court to try his suit and the landlords' suit together.

(DAMA SESHADRI NAIDU, J)

L.S. Panjwani, P.S.