

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

RSA No. 1759 of 2019 (O&M)

Date of decision : April 12, 2019

Samay Singh

.....Appellant

Versus

Mona Yadav and another

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Ram Kumar Saini, Advocate
for the appellant.

LISA GILL, J.

This appeal has been filed by the appellant – plaintiff challenging judgment and decree dated 11.03.2019 passed by the learned Additional District Judge, Gurugram inasmuch as the plaintiff's appeal against the judgment and decree dated 20.03.2018 passed by the learned Civil Judge (Junior Division), Gurugram has been dismissed on the ground that a single appeal against the judgment and decree 20.03.2018 passed by the learned Civil Judge (Junior Division), Gurugram dismissing the plaintiff's suit and allowing the counter claim filed by the defendants is not maintainable. It is prayed that impugned judgment and decree dated 11.03.2019 passed by the learned Additional District Judge, Gurugram be set aside and the matter be remanded with a direction to the learned First Appellate Court to decide the matter afresh on merits.

Brief facts necessary for the adjudication of the case are that suit for permanent injunction was filed by the appellant – plaintiff for restraining defendants from interfering in his peaceful possession over the suit property, as detailed in the plaint, by resorting to unlawful or forceful

means and not to disturb his possession except in due course of law. It is pleaded that the plaintiff alongwith his family has been in peaceful possession of the suit property since 1992 after occupying the vacant land. He raised construction over this land in 1992 and constructed two rooms and a concrete boundary wall alongwith installation of hand pump for water. Plaintiff, it is stated, started using the property for residential purposes as well as running a milk dairy continuously and peacefully since 1992. Sukhbir Singh and Rambir Singh are alleged to have approached the plaintiff in 1992 and proclaimed themselves to be the owners of the land. They were rebuked by the plaintiff and were asked not to interfere in the peaceful possession of the property over which he had raised construction. It is claimed that the plaintiff alongwith his family was enjoying uninterrupted possession over the property to the exclusion of all others since 1992. Few months prior to the filing of the suit, defendants – respondents visited the suit property and informed him that they were in the process of purchasing the property from the previous owners on which the plaintiff apprised them that Sukhbir Singh and Rambir Singh had been asked not to interfere in the plaintiff's peaceful possession over the suit property till date. Children of the plaintiff, it is pleaded, were admitted in different schools since 1992 onwards and permanent address in the school records is the address of the property in question. Ration card and voter card of the plaintiff mention the said address. In the month of October, 2009 defendants started threatening the plaintiff, claiming to be the owners of the property in question. Despite genuine request of the plaintiff, they did not desist. Hence, the suit was filed.

Respondents – defendants resisted the suit. In the written

statement filed by them various preliminary objections were raised. It is stated that the plaintiff is a trespasser who raised a false plea of raising construction and installation of hand pump etc. on the suit property. It is further stated that the plaintiff was guilty of concealment of material facts.

Counter claim was also filed by the defendants claiming to be the lawful owners of the suit property, thus, claiming the right to recover possession of the property in question. It is pleaded that the property in question was owned and possessed by one Muni Lal, who sold land measuring 7 gathe x 3½ gathe to Rambir vide registered sale deed dated 15.06.1984. Mutation in this respect was sanctioned on 31.11.1984 (serial No. 10317). Muni Lal further sold a plot to Sukhbir Singh vide registered sale deed dated 15.06.1984 bearing No. 2610 and mutation in this respect was sanctioned on 30.11.1984 as well. Possession of the property was delivered by Muni Lal to the vendees Rambir and Sukhbir Singh who had raised construction of two rooms, boundary walls, main gate and hand pump. Government of Haryana issued notification dated 22.11.1984 under Section 4 of the Land Acquisition Act, 1894 (old Act) and notification dated 11.02.1985 under Section 6 of the Act for acquisition of land including the suit property. Civil Writ Petition No. 1368 of 1985 was filed by Rambir Singh and Sukhbir Singh before this Court for release of the plot from acquisition on the ground of construction being raised on the said plot, which was claimed to be used for residential purposes. During pendency of the said writ petition, the Government of Haryana released the plot from acquisition while admitting the construction as above of Rambir Singh and Sukhbir Singh on the acquired land. The writ petition was, accordingly, withdrawn on 24.01.1986.

It is further stated that defendant No. 1 purchased the suit

property measuring 2 biswa 9 biswansi i.e. 373.77 square yards now situated within the municipal limits of Gurugram and previously in the Estate of Gurugram village from Rambir Singh and Sukhbir Singh vide registered sale deed dated 07.10.2009 entered at serial No. 12048. Mutation No. 43592 dated 06.11.2009 was sanctioned in this respect. Actual physical possession of the property was handed over to defendant No. 1, who was in exclusive possession thereof. Husband of defendant No. 1 arrayed as defendant No. 2 is stated to be serving the Indian Army as a Colonel posted at Guwahati. Property in question was kept under lock and key by the defendants. It is categorically stated that the plaintiff is a well known land grabber in the area and in the month of January, 2010, he broke open the locks of the house and took forcible possession of the premises and constructed tin sheds without their notice, knowledge or consent. Plaintiff was claimed to be a trespasser whereas defendant No. 1 was the lawful owner of the suit property having a legal right to recover the possession thereof. Dismissal of the suit and allowing of the counter claim was prayed for.

Replication to the written statement and reply to the counter claim was filed.

Following issues were framed by the learned trial Court on the basis of the pleading:-

1. Whether the plaintiff is entitled for permanent injunction as prayed for?OPP.
2. Whether the suit of the plaintiff is not maintainable in the present form? OPD.
3. Whether the plaintiff has not come with clean hands before the Court? OPD.
4. Whether the suit of the plaintiff is barred for limitation?OPD
- 4a.Whether counter claimant is entitled to decree for

possession as prayed for?OPD/counter-claimant.

4b. Whether counter claimant is entitled to relief for mesne profits as prayed for?OPD/counter-claimant.

5. Relief.

Evidence was led by both the parties.

Learned trial Court dismissed the suit filed by the plaintiff while allowing the counter claim filed by the defendants. It is specifically observed that Samay Singh (PW1), Islam Khan (PW2) and Umesh Sharma (PW3) have specifically admitted in their cross examination that the suit property was owned by Muni Lal. Defendants, it is noted, have successfully proved to have purchased the property from Rambir Singh and Sukhbir Singh who were the vendees of the original owner Muni Lal. Reference is also made to the Civil Writ Petition No. 1368 of 1985 filed before this Court by Rambir Singh and Sukhbir Singh. However, prayer of the defendants in the counter claim for directing the plaintiff to pay ₹10,000/- to defendant No. 1 as mesne profits of the property was declined. Present appellant (plaintiff), being aggrieved preferred an appeal which has been dismissed by the learned Additional District Judge, Gurugram vide judgment and decree dated 11.03.2019 on the ground that one single appeal filed by the present appellant challenging dismissal of his suit and allowing of the counter claim, was not maintainable. Decision in the counter claim would operate as res judicata. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant vehemently argues that though a counter claim is stated to have been filed, no separate number, as was required, was appended to the same by the learned trial Court.

Therefore, in effect it remains one suit only, thus, a single appeal is

maintainable. Moreover, the appellant, it is submitted, is assailing all the findings which were rendered by the learned trial Court, therefore, there was no occasion for the learned First Appellate Court to have dismissed the plaintiff's appeal on the ground as above. Moreover, it is not a case where separate court fee would be payable and that the appellant has not appended the same. Therefore, learned First Appellate Court has erred in dismissing the appeal preferred by the appellant without appreciating the merits thereof. Learned counsel further seeks to distinguish the judgment of the Hon'ble Supreme Court in **Harbans Singh and others versus Sant Hari Singh and others (2009(2) Supreme Court Cases 526**, which has been relied on by the learned Additional District Judge, Gurugram, on the ground that in the said case, the Hon'ble Supreme Court was dealing with a matter where two separate suits had been filed but were decided by one consolidated judgment. In the present case, there was no such separate suit which was filed by the defendants. In fact, even the counter claim has not been separately numbered and neither a separate decree passed.

It is submitted that following substantial questions of law are involved for consideration of this Court in this appeal:-

- i) Whether the judgment of the Hon'ble Supreme Court in Harbans Singh and others Vs. Sant Hari Singh and others (2009) 2 SCC 526 is applicable in the facts of the present case?
- ii) Whether the principle of res-judicata can apply to the proceedings in question even when the appellant had challenged the findings of the trial Court in the appeal filed by it?
- iii) Whether in the absence of separate number being assigned to the counter claim of the respondents, the singular appeal filed by the appellant was maintainable in law?

iv) Whether the filing of a separate appeal is the requirement in law even when the appellant has assailed the findings returned in the suit and the counter claim filed by the defendants.

It is, thus, prayed that this appeal be allowed, impugned judgment and decree dated 11.03.2019 passed by the Additional District Judge, Gurugram be set aside and the learned First appellate Court be directed to decide the appeal afresh on merits.

I have heard learned counsel for the appellant and have gone through the file with his able assistance.

The entire controversy revolves around the question whether a single appeal filed by the present appellant challenging dismissal of his suit and allowing of the counter claim is maintainable. At this juncture, it is relevant to refer to Order 8 Rule 6A CPC, which deals with a counter claim filed by the defendants in a suit. Order 8 Rule 6A CPC reads as under:-

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 suit, 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 plain and governed by the rules applicable to plaints.

It cannot be disputed that the counter claim is to be treated as a plaint and governed by the rules applicable to a plaint. The counter claim preferred by the defendant to a suit is obviously in the nature of a cross suit. Even if the suit in question is dismissed, the counter claim shall survive and has to be adjudicated upon. Needless to say the counter claim is an independent suit and has to be decided accordingly. The Hon'ble Supreme Court in **Harbans Singh's** case (supra) while dealing with a case where two connected suits were decided by a consolidated judgment held that a single appeal would not be maintainable as decision in one would operate as res judicata between the parties. As mentioned above, once a counter claim is to be treated as a separate suit, ratio of judgment in **Harbans Singh's** (supra) is clearly applicable. Furthermore, Hon'ble Supreme Court in **Rajni Rani and another versus Khairati Lal and others (2015) 2 SCC 682** has held that there may be situations where an order can get the status of a decree. A court may or may not draw up a formal decree but if by virtue of decision of the Court, the rights have been finally adjudicated, it would irrefutably assume the status of a decree. It is specifically observed in para 17 of the said judgment as under:-

“17. We have referred to the aforesaid decisions to highlight that there may be situations where an order can get the status of a decree. A Court may draw up a formal decree or may not, but if by virtue of the order of the Court, the rights have finally been adjudicated, irrefutably it would assume the status of a decree. As is evincible, in the case at hand, the counter-claim which is in the nature of a cross-suit has been dismissed.

Nothing else survives for the defendants who had filed the counter-claim. Therefore, we have no hesitation in holding that the order passed by the learned trial Judge has the status of a decree and the challenge to the same has to be made before the appropriate forum where appeal could lay by paying the requisite fee. It could not have been unsettled by the High Court in exercise of the power under Article 227 of the Constitution of India. Ergo, the order passed by the High Court is indefensible.”

In the judgment passed by a co-ordinate bench of this Court in **Bhajan Singh versus Jasbir Kaur in RSA No. 581 of 2013**, decided on 27.01.2016, the matter has been discussed threadbare and it is clearly observed as under:-

“ From the above, it is clear that counter claim is an independent suit and in this regard, separate court fee is required to be paid. The Court may draw up a formal decree or may not, but if by virtue of the judgment of the Court, the rights have finally been adjudicated, it would assume the status of a decree. In the present case, the suit has been decreed and counter-claim has been dismissed, but the defendant(appellant before this Court), filed one appeal before the first appellate Court. Thus, the suit and counter-claim are to be treated as two suits and if two suits, filed by the parties against each other pertaining to the same property/subject matter involving same questions were heard and decided by the Court by a common judgment, then the status of judgment in the counter -claim would be treated as independent decree. In view of the discussion above a appeal filed against one of the decree would not be sustainable and other decree which remains unchallenged will operate as res- judicata. So the question is answered accordingly.”

In the case of **Bhajan Singh** (supra), a single decree had been passed by the Court of the first instance, while deciding both the suit and

counter claim vide a common judgment. In such a situation, it was observed that the principal of res judicata would apply when only one single appeal has been filed challenging the said judgment and decree.

In the present case, argument raised by learned counsel for the appellant at first flush, is attractive, but on a deeper consideration cannot be countenanced. Merely because a separate number was not somehow given by the learned trial Court to the counter claim or that a single decree was passed cannot come to the rescue of the appellant. At this juncture, it is useful to refer to the specific issues which were framed by the learned trial Court. Issues No. 4A and 4B framed specifically in respect to the counter claim, read as under:-

4a. Whether counter claimant is entitled to decree for possession as prayed for? OPD/counter-claimant.

4b. Whether counter claimant is entitled to relief for mesne profits as prayed for? OPD/counter-claimant.

It is a matter of record that written statement to the counter claim was duly filed by the present appellant who was very well alive to all the issues framed. Once the learned trial Court decreed the counter claim of the defendants with a direction to the plaintiff to hand over vacant possession of the suit property, a single appeal challenging the findings of the learned trial Court cannot be countenanced. The learned Additional District Judge, Gurugram has rightly dismissed the appeal filed by the appellant. In my considered opinion, no question of law much less a substantial question of law, is involved in this appeal.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in judgment and decree dated 11.03.2019 passed by the learned Additional District Judge, Gurugram, which calls for

any interference by this Court in second appeal.

No other argument has been addressed.

Accordingly, this appeal is dismissed with no order as to costs.

April 12, 2019
rts

(Lisa Gill)
Judge

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