

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 314 of 2008****Order reserved on 25.02.2020****Order delivered on 20.05.2020**

1. Smt. Titri Bai (died and deleted).
2. Smt Jugia Bai, D/o Late Fekan, Agriculturist R/o Village Litipur, Near Pratappur, Tahsil Bemetara, District Durg, Chhattisgarh.
3. Hagru S/o Late Fekan, Aged 42 years.
4. Rambai D/o Late Fekan, Aged 33 years.
5. Ramhan D/o Late Fekan (died) through LRs. :-
 - (i). Ravi Pal S/o Late Ramhan, Aged about 19 years.
 - (ii). Mithlesh Pal S/o Late Ramhan, Aged about 23 years.Both R/o Village Navagarh, P.S. and Tahsil Navagarh, District Bemetara, Chhattisgarh.
 - (iii). Smt. Satrupa D/o Late Ramhan, Aged about 27 years, R/o Village Mudarbod, Tahsil and District Bemetara, Chhattisgarh.
 - (iv). Smt. Sangeeta D/o Late Ramhan, Aged about 24 years, R/o Village Tifra, Tahsil and District Bilaspur, Chhattisgarh.
6. Ramu S/o Fekan, Aged 30 years.

No. 1, 3, 4, 5 and 6 all agriculturists, R/o Village Nawagarh, Tahsil Nawagarh, District Durg, Chhattisgarh.

All legal representatives of deceased defendant No. 3 Fekan substituted during pendency of the

suit and were respondents 2, 3, 4, 6, 7 and 8 in the Lower Appellate Court in C.A. No. 4A/2007.

--Appellants/LRs. Of Defendant No. 3

Versus

1. Sitaram (died) through LRs. :-

(I). Shanti Bai, Wd/o Sita Ram, Aged about 65 years, Ward No. 10, Near Ram Mandir, Navagarh, Tahsil Navagarh, District Durg, Chhattisgarh. (Now, Distt. Bemetara)

2. Jairam, Aged 44 years.

3. Dilip, Aged 40 years.

All Sons of Late Shriram, Agriculturists, R/o Village Nawagarh, Tahsil Bemetara, District Durg, Chhattisgarh.

4. Ashok Kumar S/o Late Shriram died after the impugned judgment now represented by the following.

A. Smt. Mamta, Wd/o Late Ashok, Aged about 35 years.

B. Somu S/o Late Ashok, Aged about 12 years.

C. Kumari Shalu D/o Late Ashok, Aged about 10 years.

D. Vicky S/o Late Ashok, Aged about 6 years.

All R/o Village Bazarpara, Nawagarh, Tahsil Nawagarh, District Durg, Chhattisgarh.

Nos. 4B to 4D minors, through mother and natural guardian No. 4A Smt. Mamta.

Nos. 1 to 4 were substituted as legal representatives of deceased defendant No. 2 Dharmin Bai during the pendency of the suit on

the basis of will and were appellants before the Lower Appellate Court in C.A. No. 4A/2007.

5. Smt. Khorbaharin, Wd/o Late Shriram, Aged about 69 years.

6. Ramesh S/o Late Shriram, Aged about 24 years.

7. Ku. Manju D/o Late Shriram, Aged about 19 years.

8. Smt. Ramkali Bai W/o Garib Gajbihey, Aged about 66 years.

9. Smt. Kaushalya W/o Ramlal Nandgouri, Aged about 64 years.

Nos. 5 to 9 were substituted as legal representatives of the deceased Shriram during pendency of the first appeal. Shriram was plaintiff in the suit and respondent No. 1 in first appeal No. 4A/2007.

10. State of Chhattisgarh, through the Collector, Durg, District Durg, Chhattisgarh.

--- Respondents/LRs. Of Plaintiff

For Appellants	:- Mr. H.V. Sharma, Advocate
For State	:- Mr. Ravi Kumar Bhagat, Dy. G.A.

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by legal representatives of original defendant No.3 - Fekan Bai under Section 100 of the CPC. Learned trial court

decreed the suit of the plaintiff - Shriram and granted decree for registration of sale deed in his favour by defendant No. 1 Ramkunwar Bai and dismissed the counter claim preferred by defendant No.2. Feeling aggrieved against the judgment and decree of the trial court, legal heirs of defendant No. 3 preferred civil appeal No.3/2007 and the legal heirs of defendant No.2 preferred civil appeal No.4-A/2000 before the first appellate court. Learned first appellate court allowed the appeal preferred by Sitaram and others (legal heirs of defendant No.2) and dismissed the suit of plaintiff/Shriram and also partly allowed the appeal of legal heirs of defendant No.3/Titri bai and it was maintained against defendants No. 2A to 2D and thereby, granted the counter claim of defendants No. 2A to 2D and directed that defendants No. 2A to 2D are entitled for possession of half of the suit land bearing khasra No. 1741/1 area 1.84 acre, khasra No. 1749/1 area 0.74 acre and khasra No. 1781/1 area 0.88 acre total area 3.46 acre from the legal heirs of defendant No. 3/Fekan Bai.

2. Mr. H.V. Sharma, learned counsel for the appellants/legal heirs of defendant No.3 would submit that the counter claim made by defendant No. 2 against defendant No. 3 was not maintainable as it relates to different property than the property involved in the suit, and as such, the counter claim as framed and decreed was not maintainable and appeal deserves to be admitted for final hearing by formulating substantial question of law.

3. In order to consider the plea raised at the bar, it would be appropriate to notice Order 8 Rule 6-A of the CPC which provides for counter claim by the defendants which states 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 plaint and governed by the rules applicable to the plaint."

4. The Supreme Court in the matter of **Jag Mohan Chawla & Another v. Dera Radha Swami Satsang & Others**¹ considered the question, whether in the suit for injunction, counter claim for injunction in respect of the same or different properties is maintainable. While answering the issue in affirmative, Their Lordships held that the counter claim even in respect of different property is maintainable. It was observed as under:-

¹ (1996) 4 SCC 699

"5. xxxxxxxxxxxx. Instead of relegating the defendant to an independent suit, to avert multiplicity of the proceeding and needles protection, the legislature intended to try both the suit and the counter-claim in the same suit as suit and cross suit and have them disposed of in the same trial. In other words, a defendant can claim any right by way of a counter-claim in the same suit as suit and cross suit and have them disposed of in the same trial. In other words, a defendant can claim any right by way of a counter-claim in respect of any cause of action that has accrued to him even though it is independent of the cause of action averred by the plaintiff and have the same cause of action adjudicated without relegating the defendant to file a separate suit. Acceptance of the contention of the appellant tends to defeat the purpose of amendment. Opportunity also has been provided under Rule 6-C to seek deletion of the counterclaim. It is seen that the trial Court had not found it necessary to delete the counter-claim. The High Court directed to examine the identity of the property. Even otherwise, it being an independent cause of action, though the identity of the property may be different, there arises no illegality warranting dismissal of counter-claim.

Nonetheless, in the same suit, both the claim in the suit and the counter-claim could be tried and decided and disposed of in the same suit."

5. The principle of law laid down in Jag Mohan Chawla (supra) has been followed with approval by the Supreme Court in the matter of Thomas Mathew v. The Construction Engineer, K.L.D.C. Ltd.² holding that the purpose of introducing Order 8 Rule 6A was to avoid multiplicity of proceedings and a counter-claim expressly is treated as a cross-suit with all the indicia of pleadings as a plaint including the duty to aver the cause of action and also the payment of the requisite Court fee.

6. Thus, in the aforesaid report, Their Lordships have clearly held that the defendant is within its rights to counter claim in respect of cause of action accrued to him, though it is independent to the cause of action averred by the plaintiff in his suit.

7. The question is whether such a counter claim made by defendants No. 2A to 2D against defendant No. 3 claiming possession was maintainable. The Supreme Court in the matter

² (2018) 12 SCC 560

of Rohit Singh & Others v. State of Bihar (Now State of Jharkhand) & Others³ held that the counter claim made by the defendant along with the plaintiff would be maintainable.

"21. Normally, a counter-claim, though based on a different cause of action than the one put in suit by the plaintiff could be made. But, it appears to us that a counter-claim has necessarily to be directed against the plaintiff in the suit, though incidentally or along with it, it may also claim relief against codefendants in the suit. But a counter-claim directed solely against the co-defendants cannot be maintained. By filing a counter-claim the litigation cannot be converted into some sort of an interpleader suit. Here, defendants 3 to 17 had no claim as against the plaintiff except that they were denying the right put forward by the plaintiff and the validity of the document relied on by the plaintiff and were asserting a right in themselves. They had no case even that the plaintiff was trying to interfere with their claimed possession. Their whole case was directed against defendants 1 and 2 in the suit and they were trying to put forward a claim as against the State and were challenging the claim of the State that the land

3 (2006) 12 SCC 734

involved was a notified forest in the possession of the State. Such a counter-claim, in our view, should not have been entertained by the trial court."

8. (a). At this stage, it would be appropriate to notice the description of the suit land. Plaintiff claimed the following relief in the plaint :-

"अ. यह घोषित किया जावे कि विवादित भूमि के संबंध में पंजीबद्ध विक्रय पत्र दिनांक 17-1-75 उस पर बंधन कारक नहीं है ।

ब. 2000/ रुपया या विवादित भूमि की वास्तविक कीमत के रूप में जो भी राशि न्यायालय उचित समझे पटाये जाने पर विवादित भूमि के कब्जे की आज्ञा पारित की जावे ।

स. उसे वाद व्यय दिलाया जावे ।

ड. अन्य अनुतोष जो प्रकरण की परिस्थितियों में न्यायालय उपयुक्त एवं साम्यपूर्ण समझे दिलाया जावे ।"

(b). Paragraph 5 of the plaint gives details about the sale deed dated 17/01/1975 and states as under :-

"यह कि दिनांक 17-1-75 को प्रतिवादी क्रमांक १ ने वादी के उक्त पूर्वक्रयाधिकार की ओर दुर्लभ करते हुए और भूमि को बेचने का अपना मन्तव्य वादी के समक्ष प्रगट न करते हुए पंजीबद्ध विक्रय पत्र द्वारा 4 हजार रुपये की कीमत दर्शाकर विवादित भूमि ख. न. 1741:1 टुकड़ा : रकबा 0.44 एकड़ के साथ प्रतिवादी क्रमांक 3 के पास बेच दिया । वास्तव में प्रतिवादी क्र. 1 उक्त भूमि वास्तविक कीमत 2400/ रु लेकर बची थी जो कि उसका वास्तविक बाजार मूल्य है ।

प्रतिवादी क्रमांक 3 ने प्रतिवादी क्रमांक 1 को केवल 2400/- रु उक्त भूमि की कुल कीमत के रूप पटाये है ।”

(c). The copy of the sale deed dated 17/01/1975 has been filed as Exhibit D/1 in which description of the property sold has been mentioned as under :-

खसरा न.	रकबा	हेक्टेयर	लगान
1741/1 का टुकड़ा	0.92	0.372	2.39 पैसे
1749 का टुकड़ा	0.37	0.150	
1781 का टुकड़ा	0.44	0.178	
3	1.73	0.790	2.39 पैसे

9. Paragraphs 18, 19, 20 and 21 of the counter-claim state as under :-

“18. वाद पत्र की कंडिका 5 में वर्णितानुसार विक्रयपत्र प्रतिवादी क्र. 1 रामकुंवरबाई ने दिनांक 17-1-75 को विवादित निम्नलिखित ग्राम नवागढ़, तहसील बेमेतरा, जिला दुर्ग स्थित भूमि का विक्रयपत्र स्व. फेकन के पक्ष में कर देने के बाद स्वर्गीय फेकन ने अपनी भूमि का प्रमाणीकरण करवा लिया है ।

ख. न.	रकबा	लगान
1741/1 का टु.	0.92	
1749 का टु.	0.37	
1781 का टु.	0.44	
3	1.73 एकड़	

19. इस प्रकार से निम्न भूमि स्वर्गीय धरमिन बाई के नाम से दर्ज है जिसके एकमात्र उत्तराधिकारी गण प्रतिवादी क्र. 2 अ से 2 ड है जिसका विवरण निम्नानुसार है :-

ख. न.	रकबा	लगान
1741/1	0.373	2.39

1749/1	0.450	
1781/1	0.178	
3	0.701	2.39 रु.

किन्तु स्वर्गीय फेकन ने जबरदस्ती उपरोक्त भूमि में कब्जा बना लिया है। इसलिए प्रतिवादी क्र. 2 ब की ओर से निवेदन है कि उसे उपरोक्त भूमि का कब्जा दिलाया जावे। विक्रयपत्र के आधार से भी स्व. फेकन अथवा उसके वारिसान को इस कंडिका में वर्णित भूमि को कब्जा करने का अधिकार नहीं है।

20. प्रतिवादी क्र. 2 ब के वाद मूल की उत्पत्ति विक्रयपत्र दिनांक 17-1-75 के पश्चात स्वर्गीय फेकन द्वारा लिखित विवरण की कंडिका 19 में लिखित भूमि को बलात कब्जा कर लेने के कारण पैदा हुआ। इस प्रकार से यह वाद अवधि के अंतर्गत है।

21. प्रतिवादी क्र. 2 ब अपने प्रतिवाद पत्र का मूल्यांकन लिखित विवरण की कंडिका 19 में वर्णित भूमि का लगान 2.39 रु. की बीस गुना 47.80 रु. पर न्यूनतम न्यायलय शुल्क 5/- रु. चस्पा करता है।

अतएव निवेदन है कि प्रतिवादी क्र. 2 अ से 2 ड के पक्ष में विवादित भूमि की डिक्री की जावे। विकल्प में यह भी निवेदन है कि यदि वादी का वाद खारिज करने योग्य हो जो कि अस्वीकार है तो भी से विकल्प में निवेदन है कि लिखित विवरण की कंडिका 19 में वर्णित भूमि के कब्जे की डिक्री प्रतिवादी क्र. 2 अ से 2 ड के पक्ष में किया जावे।"

10. The conjoint reading of the plaint allegations, relief claimed in the plaint along with the description of suit land mentioned in the sale deed (Ex. D/1) and the averment made in the counter-claim would show that the suit land shown in the plaint by the

plaintiff in his suit and suit land claimed by defendants No. 2A to 2D in counter-claim, both are same, and it cannot be held that the counter-claim was only directed against defendant No. 3. It was also directed against the plaintiff as he was claiming the suit land. Following the principles of law laid down by the Supreme Court in Rohit Singh (supra), the counter-claim was directed not only against the plaintiff but also against defendant No. 3, therefore, counter-claim as framed and filed was maintainable in law. Learned first appellate Court has not committed any illegality in decreeing the counter-claim filed by defendants No. 2A to 2D in which I do not find any illegality or perversity.

11. The second appeal deserves to be and is accordingly dismissed *in limine* without notice to the other side. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge