

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

SECOND APPEAL NO. 249 OF 1995

Shamrao Sitaram Kadam
since decease through his legal
heirs,

1. Krishna Shamrao Kadam
Age : 67 yrs. Occ. Agriculture.

2. Vishnu Shamrao Kadam
Age : 60 yrs., Occ. Agriculture.
Both R/o. At Post Posewadi,
Tal. Khanapur, Dist. Sangli.

3. Nirabai Vacant Phalke.
Age : 54 yrs., Occ. Household,
R/o. Bhud, Tal. Khanapur,
Dist. Sangli.

..Appellants.

v/s.

Tukaram Savala Jadhav
Age 63 yrs., Occ. Agriculture,
resident of Posewadi, Taluka Khanapur,
Dist. Sangli.

..Respondent.

Mr. Umesh Mankapure, advocate for appellants.

Mr. Rajesh B. Parab i/b. Mr. D.S. Sawant, advocate for
respondent.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : JANUARY 9, 2020.

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JUDGMENT :

1 Heard respective Counsel.

2 The appeal was admitted on the following substantial questions of law :

“Interpretation, scope and ambit of Order 8 Rule 6A of C.P.C in respect of Counter-claim.”

3 The appellant herein impugns the Judgment and order dated 16/8/1993 in RC Appeal No. 1789 of 1988 passed by District Judge, Sangli, thereby upholding the Judgment and Order dated 29/2/1988 passed by Civil Judge, Junior Division, Vita in R.C.S. No. 235 of 1983.

4 The appellant herein is the plaintiff in RCS No. 235 of 1983. The prayer in the said suit was for perpetual injunction in respect of the house property bearing Gram Panchayat House No. 4 situated at village Khose wadi, more particularly, open side of the adjoining house. It was the claim of the plaintiff that one Dada Jadhav was the purchaser of the suit property and that the plaintiff had purchased the suit property on 4/5/1981 and the suit house was in dilapidated condition. It is further claimed that Dada Jadhav had sold the said land to

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Rajaram Jadhav and the defendant therein. According to the plaintiff, the said vacant land was used as access area to his land. That the defendant had built a cattle shed and poultry shed in the vacant land. The plaintiff had started digging portion in the southern portion of the suit property and the same is obstructed by the defendant on the ground that he has right of way over the suit property.

5 The defendant had filed written statement and had also filed counter claim contending therein that the suit area is a cart track and that it was always used as cart track.

6 By way of counter claim, the defendant had also sought the prayer for perpetual injunction.

7 The suit was dismissed and the counter claim was allowed.

8 The plaintiff had filed an appeal challenging that the counter claim was not maintainable. The appellate Court after considering the record and the evidence recorded in the trial court had dismissed appeal filed by the plaintiff and hence, this Second Appeal. The substantial question of law as raised by the appellant in the present second appeal is as follows :

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“Whether the respondent is entitled to the injunction claimed in the cross-objection without there being any material on record.”

9 The issue raised before the appellate court was that the appellant was in possession of the suit property and that the defendant had no right to way through the same in the absence of any record.

10 In the course of argument, learned Counsel for the appellant submits that in fact, substantial question of law involved in the said second appeal is that suit is barred by the provisions of Order 8 Rule 6A of the Code of Civil Procedure, 1908.

11 In view of the oral submission, the issues to be framed would be as to whether there is any specific embargo as contemplated by order 8 rule 6A of the CPC for filing a counter claim in a suit for perpetual injunction. The answer would be in the negative.

12 Order 8 Rule 6A reads as follows :

6A.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 plaints.

13 There is no such embargo. Learned Counsel for the respondent has placed implicit reliance upon the judgment of

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the Apex Court in the case of **Gurbachansing v/s. Bhagasing and others reported in AIR 1996 SC 1087**

“It is true that Rule 6A(a) was introduced by [Amendment Act](#) of 1976. Preceding the amendment, it was settled law that except in a money claim, counter claim or set off cannot be set up in other suits. The Law Commission of India had recommended, to avoid multiplicity of the proceedings, right to the defendants to raise the plea of set off in addition to a counter claim in Rule 6 in the same suit irrespective of the fact whether the cause of action for counter claim or set off had accrued to defendant either before or after the filing of the suit. The limitation was that the counter claim or set off must be pleaded by way of defence in the written statement before the defendant filed his written statement or before the time limit for delivering the written statement has expired, whether such counter-claim is in the nature of a claim for damages or not. Further limitation was that the counter-claim should not exceed the pecuniary limits of the jurisdiction of the court. In other words, by laying the counter claim pecuniary jurisdiction of the court cannot be divested and the power to try the suit

already entertained cannot be taken away by accepting the counter claim beyond its pecuniary jurisdiction. Thus considered, we hold that in a suit for injunction, the counter-claim for possession also could be entertained, by operation of Order 8 Rule 6 (A)(1) of CPC.”

14 There are concurrent findings recorded by both the courts below and the said findings are based upon the documents as well as substantive evidence recorded by the trial court. Judgments and orders passed by both the courts below do not call for any interference as no substantial questions of law as framed in the present appeal arise. Second Appeal being sans merits stands dismissed.

15 Needless to say that the interim relief granted vide order dated 12/9/1995 stands vacated.

16 Second Appeal is disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]