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

**SECOND APPEAL NO.435 OF 2021
WITH
INTERIM APPLICATION NO.3831 OF 2021
IN
SECOND APPEAL NO.435 OF 2021**

Krishna Shivram Ghadge and Anr. ...Appellants
Versus
Ranjana Baburao Jadhav and Anr. ...Respondents

- Mr. Nikhil Wadikar a/w Sejal Jain, Malhar Pawar i/b. Mr. Nandu Pawar, for the Appellants.

CORAM : MADHAV J. JAMDAR, J.

DATE : 13th JUNE 2023

PC. :

1. Heard Mr. Wadikar, learned counsel appearing for the Appellants. The Appellants are the original plaintiffs. The judgment and decree impugned in this Second Appeal is dated 29th November 2011 passed by the learned 3rd Joint Civil Judge, Junior Division, Satara in Reg. Civil Suit No.560 of 1996 as confirmed by the learned Appellate Court.

2. The said suit was filed by the plaintiff claiming the relief of permanent injunction against the defendants. In the said suit, defendants filed counter-claim seeking declaration of their ownership

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and injunction. The learned Trial Court dismissed the suit. However, it decreed the counter-claim and granted injunction restraining the plaintiffs and their agents from causing obstruction to the possession of the defendants over the property in the counter-claim. The original plaintiff filed an Appeal before the District Judge, Satara, Dist. Satara bearing Reg. Civil Appeal No.50 of 2012 and the said Appeal was dismissed by judgment and decree dated 3rd February 2020 passed by the learned District Judge-3, Satara.

3. Mr. Wadikar, learned counsel for the Appellants submitted that the suit was filed by the plaintiff seeking relief of permanent injunction and therefore, the counter-claim seeking declaration of ownership is not competent. He also submitted that as per the provision of Rule 6A to 6G of Order VIII of the Civil Procedure Code, 1908, counter-claim can be filed only in a suit regarding money claim. He submitted that therefore, counter-claim is not maintainable.

4. However, the Supreme Court in the judgment reported in the matter of *Jag Mohan Chawla & Anr. vs. Dera Radha Swami Satsang & Ors.*¹, after examining the scheme of Order VIII Rule 6A to 6G as well

1 1996(4) SCC 699.

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as object behind the said scheme held that the counter-claim could be treated as a cross-suit and it could be decided in the same suit without relegating the parties to a fresh suit. It has been held that the object of the amendment introduced by Rules 6A to 6G are conferment of a statutory right on the defendant to set up a counter-claim independent of the claim on the basis of which the plaintiff laid the suit, on his own cause of action. In sub-rule (1) of Rule 6A, the language is so couched with words of wide width as to enable the parties to bring his own independent cause of action in respect of any claim that would be the subject-matter of an independent suit. Apart from the above, by the Code of Civil Procedure, 1908 (Bombay Amendment), Rules 11 to 13 were added in Order VIII. The relevant Rule is Rule 13 which reads as under :-

“13. Defendant may set up counter-claim against the claims of the plaintiff in addition to set-off.-

A defendant in a suit, in addition to his right of pleading a set-off under Order VIII, rule 6 of the Code of Civil Procedure, 1908 may set up by way of counter-claim against the claims of the plaintiff any right or claim in respect of a cause of action accruing to the defendant either before or after the filing of the suit, but before the defendant has delivered his

defence and before the time limited for delivering his defence has expired, **whether such counter-claim sounds in damages or not, and 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 and on the counter-claim**, and the plaintiff (if so advised) shall be at liberty to file a written statement in answer to the counter-claim of the defendant within four weeks after service upon him or his pleader of a copy of the defendant's counter-claim, and the Court or a Judge may, on the application of the plaintiff before, trial, if in the opinion of the Court or Judge such counter-claim cannot be disposed of in the pending suit or ought not to be allowed, refuse permission to the defendant to avail himself thereof, and require him to file a separate suit in respect thereof."

(Emphasis added)

5. A reading of Rule 13 of Order VIII (Bombay Amendment) clearly shows that even the Bombay Amendment also contemplates that counter-claim need not be confined to the money claim. In Order VIII Rule 13 (Bombay Amendment), it has been specifically provided that the defendant in a suit, in addition to his right of pleading a set-

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off under Order VIII, rule 6 of the Code of Civil Procedure, 1908 may set up by way of counter-claim against the claims of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant either before or after the filing of the suit, but before the defendant has delivered his defence and before the time limited for delivering his defence has expired, whether such counter-claim sounds in damages or not. It has been further provided that such a 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.

6. Therefore, there is no substance in the substantial question of law raised by Mr. Wadikar.

7. Accordingly, Second Appeal is dismissed with no order as to costs. In view of dismissal of the Second Appeal, nothing survives in the Civil Application and the same is also dismissed.

[MADHAV J. JAMDAR, J.]