

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

131

2023:PHHC:130862

CR-5533-2019

Date of decision: 09.10.2023

KAMLA DEVI

..Petitioner

Versus

MANJU AND ORS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Mani Ram Verma, Advocate
for the petitioner.

Mr. Ajay Vijarania, Advocate
for respondent No.1.

ANIL KSHETARPAL, J(Oral)

1. The dispute in the present case is with regard to the maintainability of the counter claim filed by defendant No.1 (Smt. Manju) has come up for disposal. The trial Court has permitted defendant No.1 to file the counter claim particularly when counter claim filed by Smt. Sonia (defendant No.2) is already pending.

2. This bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

3. The learned counsel representing the petitioner submits that the petitioner filed a suit for grant of decree of declaration to the effect that she is owner in possession of land measuring 21 kanal and 3 marlas on the basis of the sale deeds No.1701, dated 13.05.2015, 1770 dated 14.05.2015, and 1794 dated 15.05.2015. During the pendency of the suit, Smt. Sonia filed the counter claim. The plaintiff withdrew her suit on 18.09.2017. Thereafter, defendant No.1 namely Smt. Manju wife of Sh. Vinod filed an application for permission to file a separate counter claim. The trial Court allowed the

application vide order dated 15.07.2019. In this counter claim, Smt. Sonia has challenged the correctness of sale deeds allegedly claimed by the plaintiff (Smt. Kamla Devi). The learned counsel representing the petitioner submits that the counter claim filed by Smt. Sonia was also withdrawn on 26.09.2022 and therefore, the permission to file a separate counter claim was not maintainable. He relies upon the judgment passed in **Ashok Kumar Kalra Vs. Wing Commander Surendra Agnihotri and others, (2020) 2 SCC 394.**

4. On the other hand, the learned counsel representing the respondent No.1 submits that the trial Court in exercise of its discretion has already permitted the respondent to file the counter claim and it shall be treated as an independent suit. He submits that now at this stage, the Court should not interfere in the order passed by the trial Court.

5. This Court has considered the submissions of the learned counsel representing the parties.

6. Once Smt. Kamla Devi has withdrawn her suit, the counter claim filed against the plaintiff is not maintainable, however, in the facts of the present case, the matter does not end here. It is the argument of the learned counsel representing the petitioner that Smt. Manju, the respondent (counter claimant) is entitled to file her independent suit. As per the Code of Civil Procedure, 1908, the counter claim filed by defendant No.1 is an independent suit.

7. As already noticed, the counter claim is required to be decided as an independent suit. Hence, the revision petition is disposed of with the

observations that the counter claim filed by defendant No.1 shall be registered as an independent suit and the case will proceed accordingly.

8. As regards the judgment relied upon by the learned counsel representing the petitioner in **Ashok Kumar Kalra's case (supra)**, it may be noted that in a supplementary opinion, one of the Hon'ble Member of the Bench has observed that the counter claim should be ordinarily permitted to be filed till framing of the issues for the trial and not after that. However, such observations with highest respect does not form the part of the *ratio decidendi*. In the present case, the facts are peculiar. In the first stage, the plaintiff (petitioner) withdrew her suit. Subsequently, defendant No.2 also withdrew her counter claim. In such circumstances, the counter claim filed by defendant No.1 is required to be treated as an independent suit.

9. Keeping in view the aforesaid facts and discussion, the trial Court is requested to proceed with the case.

10. Disposed of accordingly.

11. Needless to observe that it shall be open to the original plaintiff who has now become the defendant in the counter claim to take all the objections before the trial Court.

12. All the pending miscellaneous applications, if any, are also disposed of.

October 09th, 2023

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(ANIL KSHETARPAL)
JUDGE

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