



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

SECOND APPEAL NO.549/2003

Govinda S/o Mirguji Worke,
aged about 55 years, Occupation – Cultivator,
R/o Rahaki, Post-Surgaon, Tahsil Seloo,
District – Wardha. **.....APPELLANT**

...V E R S U S...

1. Wasudeo S/o Anandrao Telenge,
aged about 50 years. Occupation Cultivator,
2. Sau, Kanta W/o Wasudeo Telenge,
aged about 45 years. Occupation
cultivator and house hold work.

Both R/o Deulgaon, Post Hamagapur,
Tahsil Seloo, District – Wardha

3. Rishi Chahadeorao Nagdevte,
aged major, Occ. Cultivator,
R/o Deulgaon, Post Hamdapur,
Tahsil Selu, District – Wardha
4. Rajesh s/o Rishi Nagdevte,
aged major, Occ. Cultivator.
R/o Deulgaon, Post Hamdapur,
Tahsil Selu, District – Wardha **...RESPONDENTS**

Mr. S. P. Dharmadhikari, Senior Advocate with Mr. B. B. Mehadia,
Advocate for appellant.

Mr. S. V. Manohar, Senior Advocate with Mr. A. P. Girhe, Advocate
for respondent Nos. 1 and 2.

CORAM:- ANIL L. PANSARE, J.

DATE OF RESERVING THE JUDGMENT :- 11.03.2024

DATE OF PRONOUNCING THE JUDGMENT :- 10.04.2024

ORAL JUDGMENT

The appeal has been admitted on the following substantial questions of law.

(1) Whether both the Courts below are justified in decreeing the counter claim filed by the defendants without considering the fact that the counter claim was apparently barred by limitation?

(2) Whether the counter claim filed by the defendants was barred by time in view of the clear recital in paragraph 15C of the written statement to the effect that the cause of action for counter claim arose on 4/3/1980 when the defendants were dispossessed by the plaintiff in pursuance of the temporary injunction order passed by the trial Court?

(3) Whether the plea of benami transaction taken by the respondents in their counter claim filed in the suit on 20.02.1997 that the appellant is the benami holder of the suit property on behalf of respondent No.2 is barred under the provisions of Section 4 of the Benami Transaction (Prohibition) Act, 1988?

(4) In the absence of challenge to decree of declaration of ownership granted by the trial Court in favour of the appellant by way of cross objection under Order 41 Rule 22 of the C.P.C. whether the lower Appellate Court was justified in recording a finding that the appellant is benami owner of suit field in the appeal of the appellant?"

2. Briefly stated, the facts are as under.

The appellant-plaintiff has allegedly purchased the agricultural field bearing Survey Nos.77/1, 77/4, (new Survey No.125) admeasuring about 11.74 Acre, situated at Mouja

Deoulgaon, post Hamdapur, Tq. Dist. Wardha, vide two sale deeds dated 09.06.1965 (Exh.-) and 25.04.1966 (Exh.-) respectively. The appellant claimed to be in possession of the fields from the date of its purchase. On 04.02.1980, respondent Nos.1 and 2 – original defendant Nos. 2 and 3, made an attempt to disturb the appellant's possession over the suit field. Therefore, on 06.02.1980, appellant lodged complaint with the police station. Accordingly, the appellant filed suit for declaration that he is owner of the suit field as also for injunction restraining the respondents from disturbing his peaceful possession.

3. Respondent Nos. 1 and 2 (original defendant Nos. 2 and 3) filed written statement below Exh.-63. One Gayabai, who was original defendant no.1, did not participate in the proceedings. Her name was deleted before the First Appellate Court. The respondent nos. 1 and 2 will be hereinafter referred to as the "Respondents".

4. Respondents put forth a plea that they are owners of the suit field, which was purchased in the name of appellant because they were short of funds and thus borrowed money from the appellant. The sale deed was executed in the name of appellant towards security of repayment of borrowed money.

5. According to the Respondents, since the date of purchase till 04.03.1980 i.e. the date of passing of order injunction, they were cultivating the suit field and thus were in possession of the same. The appellant permitted the cultivation because he was aware of the real transaction. The Respondents have further averred that money borrowed for purchasing the suit filed was repaid to the appellant. However, they did not give serious thought to have re-conveyance in their favour because the appellant is their maternal uncle. The respondents then pleaded that they were dispossessed by the appellant under the garb of injunction order dated 04.03.1980 and thus prayed for dismissal of the suit.

6. These respondents on 20.02.1997, filed a counter claim seeking declaration that they were in continuous possession of the suit fields as owners till their dispossession. They further sought restoration of the possession from the appellant.

7. Trial Court had framed various issues and answered the same in para 9 of the judgment in the following terms.

Sr.No	Issues	Finding
1	Does the plaintiff prove his title to the suit fields described in para no.1 of the plaint on the basis of the sale-deed dated 9.6.65 and 25.4.66?	Yes

2	Does he further prove that he is in cultivating possession of the suit fields since the time he purchased it?	No.
3	Does the plaintiff prove that on 4.2.80 the defendant tried to dispossess the plaintiff from the suit field?	No.
4-a	Do the defendants no.2 and 3 prove that they are the real owner of the suit field?	No.
4-b	Do they prove that the sale-deeds of the suit fields in fields in favour of plaintiff are benami transaction?	No.
4-c	Do they prove that they have been in continuous, peaceful possession of the suit fields till the date of order of temporary injunction?	Yes
5	Do the defendants alternatively 2 and 3 prove that they have perfected title to the suit field by adverse possession?	Does not survive
6	Whether the defendants prove that they have become deemed tenant and therefore full fledged owner U/ Se.50 of the B.T.A.L. (V.R.) Act? If yes, what effect?	Does not survive.
7	Whether the plaintiff is entitled to relief of declaration and injunction against the defendants?	Entitled for declaration only and not for injunction.
7A	Are defendants 2 and 3 entitled to possession of the suit 1 and from the plaintiff?	Yes
7B	Are defendants 2 and 3 entitled to permanent injunction as prayed in counter-claim Exh.56?	Yes.
8	What order and decree?	As per final order.

8. As could be seen, the Trial Court held that the appellant -plaintiff has proved his title over the suit fields. The issue of possession was answered against the appellant. The theory of appellant that on 04.07.1980, he was dispossessed by respondent Nos. 2 and 3, was also not believed. Accordingly the appellant was declared as owner of the suit field. The Trial Court, by answering issue No.4-a in favour of the Respondents held that they were in possession of the suit field till the order granting temporary injunction was passed on 04.03.1980. The claim of ownership of respondents, however, has been denied. The Trial Court accordingly held that, since Respondents were dispossessed under the garb of order of injunction, they are entitled for restoration of possession.

9. Admittedly, the suit has been filed on 18.02.1980. The written statement has been filed on 16.11.1985 stating therein that Respondents were in possession of the suit field till the date of order of temporary injunction i.e. till 04.03.1980. The appellant led evidence and closed the side. The first five witnesses on behalf of the Respondents were examined prior to filing written statement. The sixth witness was examined on 26.02.1985. Thereafter, the Respondents, filed application to amend the written statement and to file counter claim which came to be

allowed despite objection by the appellant that the counter claim has been filed after 17 years, that too after leading evidence.

10. The appellant then sought permission to lead evidence on the issues framed on the basis of counter claim. The permission was granted. First witness was accordingly examined on 22.09.1998. The respondents then examined four witnesses and accordingly Trial Court answered various issues.

11. Thus it appears from the record that the plaint has been filed on 18.02.1980. The order of injunction restraining Respondents from disturbing possession of the appellant over the suit field came to be passed on 04.03.1980. The Respondents, filed written statement on 16.01.1985, stating therein that they were in possession of the suit field until the order dated 04.03.1980. Prior thereto i.e. prior to 16.01.1985, the plaintiff had led evidence and closed his side. The respondents had examined five witnesses. The sixth witness was examined subsequent to filing a written statement. Thereafter, written statement was amended and counter claim was filed.

12. In the written statement filed by the respondents, they raised a plea that they were in possession till 04.03.1980 and

were, thereafter, dispossessed by the appellant, taking advantage of the said order. The respondents, in the year 1997, sought to amend the written statement and to file counter claim, stating therein that the cause of action arose on 04.03.1980. Thus, admittedly there was delay of 17 years in filing counter claim. Whether this delay will make counter claim time barred is the question before this Court.

13. Mr. S. P. Dharmadhikari, the learned Senior Counsel for the appellant, has invited my attention to Order VIII Rule 6A of the Civil Procedure Code, 1908 (hereinafter referred to as the, “Code”), to contend that though there is no limitation set out for filing a counter claim, the counter claim ought to be filed within a reasonable period. He submits that this issue is no more res integra. A Three Judge Bench of the Supreme Court in **Ashok Kumar Kalra Vs. Wing CDR. Surendra Agnihotri and Ors; (2020) 2 SCC 394** has laid down principles in this regard. The Supreme Court considered following two questions;

“6.1 Whether Order 8 Rule 6-A CPC mandates an embargo on filing the counterclaim after filing the written statement?”

6.2. If the answer to the aforesaid question is in negative, then what are the restrictions on filing the counterclaim after filing of the Written Statement?”

The majority bench took following view.

“17. The time limitation for filing of the counterclaim, is not explicitly provided by the Legislature, rather only limitation as to the accrual of the cause of action is provided. As noted in the above precedents, further complications stem from the fact that there is a possibility of amending the written statement. However, we can state that the right to file a counterclaim in a suit is explicitly limited by the embargo provided for the accrual of the cause of action under Order 8 Rule 6-A. Having said so, this does not mean that counterclaim can be filed at any time after filing of the written statement. As counterclaim is treated to be plaint, generally it needs to first of all be compliant with the limitation provided under the Limitation Act, as the time-barred suits cannot be entertained under the guise of the counterclaim just because of the fact that the cause of action arose as per the parameters of Order 8 Rule 6A.

18. As discussed by us in the preceding paragraphs, the whole purpose of the procedural law is to ensure that the legal process is made more effective in the process of delivering substantial justice. Particularly, the purpose of introducing Rule 6A in Order 8 of the CPC is to avoid multiplicity of proceedings by driving the parties to file separate suit and see that the dispute between the parties is decided finally. If the provision is interpreted in such a way, to allow delayed filling of the counterclaim, the provision itself becomes redundant and the purpose for which the amendment is made will be defeated and ultimately it leads to flagrant miscarriage of justice. At the same time, there cannot be a rigid and hypertechnical approach that the provision stipulates that the counterclaim has to be filed along with the written statement and beyond that, the Court has no power. The Courts, taking into consideration the reasons stated in support of the counterclaim, should adopt a balanced approach keeping in mind the object behind

the amendment and to subserve the ends of justice. There cannot be any hard and fast rule to say that in a particular time the counterclaim has to be filed, by curtailing the discretion conferred on the Courts. The trial court has to exercise the discretion judiciously and come to a definite conclusion that by allowing the counterclaim, no prejudice is caused to the opposite party, process is not unduly delayed and the same is in the best interest of justice and as per the objects sought to be achieved through the amendment. But however, we are of the considered opinion that the defendant cannot be permitted to file counterclaim after the issues are framed and after the suit has proceeded substantially. It would defeat the cause of justice and be detrimental to the principle of speedy justice as enshrined in the objects and reasons for the particular amendment to [the CPC](#).

21. We sum up our findings, that Order 8 Rule 6A of the CPC does not put an embargo on filing the counterclaim after filing the written statement, rather the restriction is only with respect to the accrual of the cause of action. Having said so, this does not give absolute right to the defendant to file the counterclaim with substantive delay, even if the limitation period prescribed has not elapsed. The court has to take into consideration the outer limit for filing the counterclaim, which is pegged till the issues are framed. The court in such cases have the discretion to entertain filing of the counterclaim, after taking into consideration and evaluating inclusive factors provided below which are only illustrative, though not exhaustive:

- i. Period of delay.
- ii. Prescribed limitation period for the cause of action pleaded.
- iii. Reason for the delay.
- iv. Defendant's assertion of his right.

- v. *Similarity of cause of action between the main suit and the counterclaim.*
- vi. *Cost of fresh litigation.*
- vii. *Injustice and abuse of process.*
- viii. *Prejudice to the opposite party.*
- ix. *And facts and circumstances of each case.*
- x. *In any case, not after framing of the issues.”*

14. His Lordship Justice Mohan M. Shantanagoudar, rendered a minority view by partly supplementing and partly dissenting with the majority ruling. His Lordship supplemented the majority view by showing agreement with the conclusion that a Court may exercise its discretion and permit filing counter claim after written statement till the stage of framing the issues. However, his Lordship added that in an exceptional circumstance, subsequent filing of counter claim may be permitted till the stage of commencement of recording of evidence on behalf of the plaintiff. Paragraph 57 of the judgment reads thus:

“57. At the same time, in exceptional circumstances, to prevent multiplicity of proceedings and a situation of effective re-trial, the court may entertain a counterclaim even after the framing of issues, so long as the court has not started recording the evidence. This is because there is no significant development in the legal proceedings during the intervening period between framing of issues and commencement of recording of evidence. If a counterclaim is brought during such period, a new issue can still be framed by the Court, if needed, and evidence can be recorded accordingly, without seriously prejudicing the rights of either party to the suit.”

15. Mr. Dharmadhikari, the learned Senior Counsel submits that there is a concurrence amongst the Judges on the point that the Court, in its discretion, may allow the counter claim to be filed after filing of the written statement but till the issues are framed. He further submits and rightly so, that even minority view, that in an exceptional circumstance, a counter claim may be permitted to be filed after the written statement, till the stage of commencement of recording of evidence on behalf of the plaintiff, will favour the appellant herein because the permission to file counter claim was sought subsequent recording evidence, not only of the appellant/plaintiff but after examining five witnesses by the respondents.

16. Mr. Sunil Manohar, the learned Senior Counsel argued that the finding rendered by the Court below is, primarily, on the basis of plea taken by the respondents in the written statement and, therefore, the filing counter claim belatedly will have to be considered as an extension to written statement. He submits that in the peculiar circumstances, the counter claim may not be dislodged on the ground of limitation, particularly when such limitation is not stipulated in the provisions under the Code. He further submits that, in any case, the finding being rendered on the basis of the written statement, the appellant may not get any

advantage by raising the plea of limitation.

17. I do not agree with the submissions made by Mr. Manohar, inasmuch as the additional issue viz. issue Nos. 7A and 7B were framed, based on the counter claim. The respondents, for the first time, sought declaration that they were in continuous possession of the suit fields as owners since the date of purchase till their dispossession, with a further prayer to restore their possession and to injunct the appellant from disturbing their possession. If the counter claim is found to be barred by limitation, these prayers will not arise for consideration at all.

18. It will have to be, therefore, examined whether the counter claim was filed within time. Admittedly, the counter claim was filed after 17 years of the accrual of cause and most importantly, subsequent to framing issues and further subsequent to the closure of evidence by the plaintiff. In the circumstances and considering the law laid down by the Supreme Court in *Ashok Kumar*, supra I have no hesitation in holding that the counter claim herein is barred by limitation.

19. Once the counter claim is found to be barred by limitation, there arises no question of granting decree in terms of

prayers made therein. First two substantial questions of law are answered accordingly.

20. Another important aspect is the absence of challenge, to the decree of the declaration of ownership granted by the Trial Court in favour of the appellant. The Trial Court had framed issues on the basis of defence raised by the Respondents as to whether the sale deed of the suit fields in favour of the appellant is a Benami transaction. The Trial Court held that the respondents failed to prove so. This finding has been not challenged by the respondents either by filing appeal under order XLI of the Code or by filing cross objection. Despite such status, the First Appellate Court has upset the findings of the Trial Court on the issue of Benami transaction and answered the same in favour of the respondents.

21. Mr. Dharmadhikari, the learned Senior Counsel submits that in absence of challenge to the finding given by the Trial Court on this issue, the First Appellate Court ought not to have formulated an issue of Benami transaction. In support, he has placed reliance upon judgment of the Supreme Court in *Banarsi and ors. Vs. Ram Phal, (2003) 9 SCC 606*. The Supreme Court, while considering the scope of Order XLI Rule 22(1) as also Rule

33, has held thus:

10. The *CPC* Amendment of 1976 has not materially or substantially altered the law except for a marginal difference. Even under the amended Order 41 Rule 22 sub-rule (1) a party in whose favour the decree stands in its entirety is neither entitled nor obliged to prefer any cross objection. However, the insertion made in the text of sub-rule (1) makes it permissible to file a cross objection against a finding. The difference which has resulted we will shortly state. A respondent may defend himself without filing any cross objection to the extent to which decree is in his favour; however, if he proposes to attack any part of the decree he must take cross objection. The amendment inserted by 1976 amendment is clarificatory and also enabling and this may be made precise by analysing the provision. There may be three situations:-

- (i) The impugned decree is partly in favour of the appellant and partly in favour of the respondent;
- (ii) The decree is entirely in favour of the respondent though an issue has been decided against the respondent;
- (iii) The decree is entirely in favour of the respondent and all the issues have also been answered in favour of the respondent but there is a finding in the judgment which goes against the respondent.

11. In the type of case (i) it was necessary for the respondent to file an appeal or take cross objection against that part of the decree which is against him if he seeks to get rid of the same though that part of the decree which is in his favour he is entitled to support without taking any cross objection. The law remains so post amendment too. In the type of cases (ii) and (iii) pre-amendment *CPC* did not entitle nor permit the respondent to take any cross objection as he was not the person aggrieved by the decree. Under the amended *CPC*, read in the light of the explanation, though it is still

not necessary for the respondent to take any cross objection laying challenge to any finding adverse to him as the decree is entirely in his favour and he may support the decree without cross objection; the amendment made in the text of sub-rule (1), read with the explanation newly inserted, gives him a right to take cross objection to & finding recorded against him either while answering an issue or while dealing with an issue. The advantage of preferring such cross objection is spelled out by sub-rule (4). In spite of the original appeal having been withdrawn or dismissed for default the cross objection taken to any finding by the respondent shall still be available to be adjudicated upon on merits which remedy was not available to the respondent under the unamended [CPC](#). In pre-amendment era, the withdrawal or dismissal for default of the original appeal disabled the respondent to question the correctness or otherwise of any finding recorded against the respondent.

12. The fact remains that to the extent to which the decree is against the respondent and he wishes to get rid of it he should have either filed an appeal of his own or taken cross objection failing which the decree to that extent cannot be insisted on by the respondent for being interfered, set aside or modified to his advantage. The law continues to remain so post-1976 amendment....”

22. The decree in the present case is partly in favour of the appellant and partly in favour of the respondents. The appellant has been declared owner of the suit field but the respondents were found entitled for the possession. Thus the decree falls in the first category of paragraph 10 of the above judgment. In the circumstances, it was necessary for the respondents to file an appeal or to file a cross objection. In

absence of challenge to the decree, which favours the appellant, the First Appellate Court cannot reverse the decree, which the respondents have permitted to attain finality, to the advantage of the respondents. In fact, in the present case, the First Appellate Court has not reversed the decree but has taken a view that the transaction under question is Benami, which according to Mr. Dharmadhikari, was not permissible.

23. As against, Mr. Manohar, the learned Senior Counsel, submits that the first appeal being continuation of the suit, the First Appellate Court was fully justified in formulating the aforesaid point and in rendering a finding in favour of the respondents. He has also referred to the judgment in *Banarasi's* case supra, wherein, in para 15, the Court has considered the scope of Rule 33 of Order XLI and held thus.

“15. Rule 4 seeks to achieve one of the several objects sought to be achieved by Rule 33, that is, avoiding a situation of conflicting decrees coming into existence in the same suit. The abovesaid provisions confer power of widest amplitude on the appellate court so as to do complete justice between the parties and such power is unfettered by consideration of facts like what is the subject matter of appeal, who has filed the appeal and whether the appeal is being dismissed, allowed or disposed of by modifying the judgment appealed against. While dismissing an appeal and though confirming the impugned decree, the appellate

court may still direct passing of such decree or making of such order which ought to have been passed or made by the court below in accordance with the findings of fact and law arrived at by the court below and which it would have done had it been conscious of the error committed by it and noticed by the Appellate Court. While allowing the appeal or otherwise interfering with the decree or order appealed against, the appellate court may pass or make such further or other, decree or order, as the case would require being done, consistently with the findings arrived at by the appellate court. The object sought to be achieved by conferment of such power on the appellate court is to avoid inconsistency, inequity, inequality in reliefs granted to similarly placed parties and unworkable decree or order coming into existence. The overriding consideration is achieving the ends of justice. Wider the power, higher the need for caution and care while exercising the power. Usually the power under Rule 33 is exercised when the portion of the decree appealed against or the portion of the decree held liable to be set aside or interfered by the appellate court is so inseparably connected with the portion not appealed against or left untouched that for the reason of the latter portion being left untouched either injustice would result or inconsistent decrees would follow. The power is subject to at least three limitations: firstly, the power cannot be exercised to the prejudice or disadvantage of a person not a party before the Court; secondly, a claim given up or lost cannot be revived; and thirdly, such part of the decree which essentially ought to have been appealed against or objected to by a party and which that party has permitted to achieve a finality cannot be reversed to the advantage of such party. A case where there are two reliefs prayed for and one is refused while the other one is granted and the former is not inseparably connected with or necessarily depending on the other, in an appeal against the latter, the former relief cannot be granted in

favour of the respondent by the appellate court exercising power under Rule 33 of Order 41.”

24. The Supreme Court has held that wide powers are conferred upon the Appellate Court to avoid inconsistency, inequity, inequality in reliefs granted to the similarly placed parties and unworkable decree or order coming into existence. This power has been granted for achieving the ends of justice. Mr. Manohar, the learned Senior Counsel contends that the decree passed by the Trial Court is inseparably connected with the portion not appealed against and, therefore, the First Appellate Court has rightly considered the issue of Benami transaction and answered it in favour of the respondents.

25. As against, Mr. Dharmadhikari, the learned Senior Counsel submits that these wide powers, though available to Appellate Court, are subject to three limitations. First, the power cannot be exercised to the prejudice or disadvantage of a person not a party before the Court. Second, a claim given up or lost cannot be revived. And third, such part of the decree which essentially ought to have been appealed against or objected to by a party and which that party has permitted to achieve a finality cannot be reversed to the advantage of such party.

26. I have given thoughtful consideration to the submissions made by learned Counsels on this point. Order XLI Rule 22 (1) of the Code provides that the respondents, though may not have appealed any part of the decree, may not only support the decree but may also state that the finding against them in the Courts below in respect of any issue, ought to have been in their favour and may also take any cross objection to the decree, which they could have taken by way of appeal.

27. Thus, it was permissible for the respondents to argue before the First Appellate Court that the finding against them on the point of Benami transaction ought to have been answered in their favour. This was permissible even without filing cross objection. The requirement of filing of appeal or cross objection is to the decree and not to the finding on an issue.

28. In the present case, decree is partly in favour of the appellant and partly in favour of the respondents. The First Appellate Court had dismissed the appeal and thus maintained the decree. In doing so, it has upset the finding of the Trial Court on the issue of Benami transaction. The First Appellate Court held that the sale deed executed in favour of the appellant was Benami. Despite such finding, for want of challenge at the hands of the

respondents to the decree passed by the Trial Court, it appears that the First Appellate Court has not reversed the decree passed by the Trial Court in favour of the appellant. I do not find any error in such an approach.

29. The difficulty, however, is that the respondents having not challenged the decree of declaration of ownership granted by the Trial Court in favour of the appellant, this part of the decree has attained finality. In that view of the matter, it was not permissible to the First Appellate Court to touch the finding of ownership of the plaintiff. The First Appellate Court, therefore, while answering the issue of Benami transaction, ought to have taken into account the effect of unchallenged decree of ownership of suit field in favour of appellant. Having not done so, the First Appellate Court has committed serious error of law in reserving the finding of the Trial Court that the appellant is not the Benami owner of the suit field. The fourth substantial question of law is answered accordingly.

30. So far as the third substantial question of law is concerned, Mr. Dharmadhikari, learned Senior Counsel has not pressed for order on this point. Even otherwise, the answer to fourth question of law will render the third question redundant.

31. At this stage, Mr. Manohar, the learned Senior Counsel for the respondents, submitted that pending suit the possession of the suit field was taken over by the appellant in terms of the order of injunction passed by the Trial Court. He submits that the Trial Court has, therefore, rightly ordered restoration of the possession of the suit field to the respondents.

32. To this, Mr Dharmadhikari, the learned Senior Counsel, submits that the order of injunction is preventive in nature and not mandatory and, therefore, it will be not open to the respondents to contend that the possession has been taken by the appellant in terms of the order of injunction passed by the Trial Court.

33. I find substance in the submissions made by Mr.Dharmadhikari. The order of injunction was preventive in nature and was in favour of the appellant. He cannot, therefore, take possession in terms of the order. In fact, the case of the respondents is that, under the garb of order of temporary injunction, the appellant has dispossessed them. Thus, it is a case of wrongful dispossession and precisely, for this reason, the respondents have lodged counter claim to restore their possession. There is thus no substance in the argument of respondents that

they were dispossessed in terms of the order of injunction passed by the Trial Court.

34. The sum and substance of the above discussion is that plaintiffs are owners of the suit field. They were in possession of the suit field, at the time of passing of decree by the Trial Court, may be by wrongful act. The counter claim, by which the prayer of restoration of the possession was made, was time barred. Consequently, relief for restoration of possession could not have been granted in favour of the respondents. Despite such status, the Trial Court has passed a decree of restoration of possession with consequential relief of injunction. The First Appellate Court has maintained the decree. Both the judgments are, therefore, unsustainable for the reasons given above. The appellant has made out a case. Accordingly, following order is passed.

ORDER

(i) The appeal is allowed.

(ii) The judgment and order dated 07.10.2003 passed by 3rd Ad hoc Additional District Judge, Wardha in Regular Civil Appeal No.155/1998 and judgment and decree dated 31.10.1998 passed by 2nd Jt. Civil Judge Senior Division, in Special Civil Suit No.51/1980, are set aside to the extent of granting relief to the respondents.

(iii) Regular Civil Suit No.51/1980 is decreed. The appellant-plaintiff is declared as owner and possessor of the suit field as described in paragraph (1) of the plaint. Respondent nos. 2 and 3 are restrained permanently from interfering with the peaceful possession of the appellant.

(iv) Decree be drawn up accordingly. No order as to costs.

(Anil L. Pansare, J.)

kahale