

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.123

Case No. : C. R. No.1643 of 2024

Date of Decision : March 15, 2024

Shiv Lal Petitioner
vs.
Ranbir and others Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr.Vikram Singh, Advocate
for the petitioner.

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GURBIR SINGH, J. :

1. Challenge in the present revision petition filed under Article 227 of the Constitution of India is to the order dated 20.01.2024 (Annexure P-7), passed by learned Additional Civil Judge (Senior Division), Pataudi, (for brevity – Trial Court), whereby application dated 07.12.2021 (Annexure P-5) under Order 8 Rule 6-C CPC, filed by the petitioner, for exclusion of counter-claim, has been dismissed.

2. The brief facts, necessary for disposal of the present revision petition, are that the plaintiff/petitioner filed a suit for declaration and permanent injunction, thereby challenging the allotment of *Rasta* by defendant/respondent no.9 – Director of Consolidation, Haryana, Chandigarh, vide order dated 18.01.1978, on the ground that the said order was obtained by playing fraud by Amar Singh. In the said suit, defendant no.1 has set up a counter-claim to the effect that the plaintiff and his brother

dispute was obtained, in which it was found that the plaintiff and his brother have illegally occupied the land and *Rasta*.

3. It has been argued by learned counsel for the petitioner that cause of action to file the suit arose on 09.06.2021, whereas for the counter-claim, it is mentioned that cause of action to file the same arose on 22.06.2021 at the time of demarcation. Thus, the cause of action of suit is quite different from cause of action of counter-claim. The subject matter of the suit is regarding illegal allotment of *Rasta* in Killa No.13/2/2(0-8) out of agricultural land of the plaintiff/petitioner whereas the counter-claim is regarding encroachment and possession of encroached area over Killa No.13/2/2(0-8). The relief claimed in the counter-claim has no nexus with the relief claimed in the main suit. The plaintiff/petitioner is a senior citizen. The case of the plaintiff/petitioner is based on documentary evidence and some oral evidence, whereas to decide the counter-claim, decision on complicated demarcations would be required, which will take a long time. So, proceedings of the counter-claim are required to be separated from the main suit. Otherwise, it will complicate the matter. It has therefore been prayed that counter-claim be excluded from the suit and ordered to be tried separately.

4. I have heard the arguments advanced by learned counsel for the petitioner and have also perused the paper book.

5. A defendant can very well institute a counter-claim in order to avoid multiplicity of litigation but subject to certain limitations. Order VIII Rule 6-A CPC reads as under :-

“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.”

6. A counter-claim can only be set up “against the claim of the plaintiffs” and the same can even be on a separate or independent cause of action. It is so held in **Jag Mohan Chawla and another vs. Dera Radha Swami Satsang and others** reported as **(1996) 4 SCC 699** that counter-claim by a defendant can be made even on a separate or independent cause of action. The case of the plaintiff/petitioner pertains to *Rasta* in Killa No.13/2/2(0-8). Since both the parties to the lis are the same, this Court is of the view that there is no ground to ask the defendants/respondents to file a separate suit and counter-claim cannot be excluded from the main suit.

Accordingly, there is illegality or perversity in the impugned order passed by learned Trial Court and there is no ground to interfere in the same.

7. In view of the above discussion, the present revision petition, being devoid of merit, is hereby dismissed in limine.

8. Pending applications, if any, shall stand disposed of along with this judgment.

March 15, 2024
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(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.