
(2016) 06 JH CK 0097

In the Jharkhand High Court

Case No : Writ Petition (C) No. 4868 of 2015.

**Binay Prakash S/o Late Ramchandra Prasad, Managing Director, M/s
Ahelesha Corporation Ltd, Line Tank Road Ranchi - Petitioner @HASH
The State of Jharkhand**

Date of Decision : 17-06-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 6A
Constitution of India, 1950 — Article 226, Article 227

Citation : (2017) 171 AIC 307 : (2017) AIRCC 328 : (2016) 4 AIRJharR 574 :
(2017) 1 CivilLJ 702 : (2016) 4 JCR 766

Hon'ble Judges : Aparesh Kumar Singh, J.

Bench : Single Bench

Advocate : Mr. Rajeev Ranjan Tiwari, Advocate, for the Petitioner; M/s Satya Narayan Prasad, Shashank Shekhar, Advocates, for the R.M.C.; Mr. Satish Kumar, J.C to G.A, for the State

Final Decision : Dismissed

Judgement

Mr. Aparesh Kumar Singh, J. - Heard learned counsel for the petitioner, learned counsel for the respondent-Ranchi Municipal Corporation and the State.

2. The brief fact of the case as are necessary to be noticed for deciding the present matter are as follows: A Title Suit No. 112 of 2006 was instituted for declaration of right, title, interest and confirmation of possession as also for recovery of possession and for temporary injunction by the plaintiff/petitioner herein against the defendant No.1/respondent no.2- Ranchi Municipal Corporation in respect of M.S Plot no. 1735 measuring an area of 0.281 acres situate at village Chandri, Sarda Babu Street, P.S. Kotwali, Ranchi as described in the schedule there in. The Defendant no.1/Respondent no.2 herein filed written statement and also claimed exclusive title and possession over the suit land.

3. Plaintiff's claim was based upon the deed of sale dated 17.5.2002, which was in respect of plot no. 1736 having been conveyed through vendor Satish Chandra Ghosh. It is not in dispute between the parties that the right, title, interest and

possession over the plot no. 1736 of the vendor was affirmed up to the Apex Court in Civil Appeal No. 1034 of 1971 arising out of Title Suit No. 57 of 1957 decreed by the learned Court of Special Subordinate Judge, Ranchi. The plaintiff got the deed of rectification executed with Defendant no. 2 to 6 including M.S. Plot no. 1735 by registered deed dated 7.8.2007. An injunction petition was filed before that on 11.7.2006 (Annexure-E to the counter affidavit filed by the respondent no.2) by the plaintiff and rejoined by the Defendant no.1/respondent no.2, Corporation on 27.7.2006(Annexure-F).

4. Issues were framed on 24.7.2008 and the suit was kept for evidence. The plaintiff/petitioner herein filed an amendment petition dated 29.8.2008 and sought addition in para 27 of the plaint in respect of deed of rectification dated 7.8.2007, which was allowed after objection of the defendant/respondent no.2 - Corporation herein vide order dated 11.8.2010 (Annexure-J). In W.P.C. 6469 of 2010 filed by the Corporation, the learned Single Judge of this Court vide order at Annexure-K dated 20.1.2011 while dismissing the challenge to the order of the amendment, allowed the Corporation to file additional written statement. Prior to that the plaintiff/petitioner herein seems to have pressed injunction petition dated 11.7.2006 and got interim injunction vide order 29.1.2011 (Annexure-M/2). The Miscellaneous Appeal No. 175 of 2011 preferred against that by the defendant no. 1 is said to be still pending.

5. The respondent Corporation alleged that by virtue of injunction order, plaintiff took forcible possession and raised construction blocking Municipal Road and drainage, which lead to dispossession of the defendant/respondent no.2, Corporation. Defendant/Corporation was allowed to amend the written statement vide order dated 21.1.2013 (Annexure-O) on its dispossession in respect of M.S. Plot no. 1735. It also filed an additional written statement on 25.2.2011 (Annexure-L) alleging that the deed of rectification was fraudulent, illegal, null and void and barred by the provision under Section 26 of the Specific Relief Act. Issues have been recast on 5.3.2011. Certain witnesses were adduced by the plaintiff, such as P.W.3 and only thereafter, the Defendant No.1/Corporation filed their counter claim on 9.7.2013(Annexure-Q) for declaration of their right, title and possession over plot no M.S.1735; that the deed of sale dated 17.5.2002 and rectification deed dated 6/7.08.2007 has not delivered the possession of the suit property to the plaintiff and that the rectification deed dated 6/7.08.2007 be declared as null and void as also fraudulent. Plaintiff objected to the same vide Annexure-S. Thereafter, the impugned order dated 16.7.2015 allowing counter claim of the Defendant no.1/respondent no.2, Corporation herein was passed.

6. The impugned order has been challenged by the plaintiff inter alia on the ground that averments in the counter claim, specifically para 37 clearly depict that cause of action for filing counter claim has accrued to the Defendant no.1 on the basis of the injunction order dated 29.1.2011 in favour of the plaintiff and much after institution of suit in 2006 and filing of written statement by the Defendant no.1. Therefore, it is in teeth of Order 8, Rule 6A of the Civil

Procedure Code(C.P.C) and should not have been allowed. Reference has been made to the plaint, which referred to the cause of action of the plaintiff in respect of plot no. 1735 only. Any correction in the sale deed in 2007 does not change the cause of action which originally existed in favour of the plaintiff or Defendant no.1. Petitioner has relied upon the judgment rendered by the Apex Court in the case of Bollepanda P. Poonacha & another v. K.M.Madapa reported in 2008(13) SCC 179, more specifically para 11 thereof in support of his submission.

7. Learned counsel for the respondent-Corporation after taking through sequence of facts as narrated herein above, submitted that the content of the written statement filed on its behalf, specifically para 12 and 24 also reiterated in the averments made in the counter claim do clearly show that the relief sought for through counter claim in respect of declaration of their right, title and possession over plot no. 1735 relates back prior to institution of the suit itself. Specific plea has been taken in the written statement about the right, title, ownership and possession of the defendant no.1/Corporation in the written statement in respect of the suit land. The development which have taken place during pendency of the suit such as rectification deed dated 7.8.2007, the amendment allowed thereafter in favour of the plaintiff on 11.8.2010, dispossession of the Defendant no.1 pursuant to passing of the interim injunction on 29.1.2011 and amendment in the written statement permitted thereafter on 21.1.2013 only show that cause of action originally existed and has been reinforced by the subsequent development to persuade the Defendant no.1/Corporation to file counter claim in respect of M.S.Plot no. 1735, which is the subject matter of suit itself. Order 8, Rule 6A of C.P.C permits filing of counter claim if the cause of action has arisen prior to the institution of the suit or before the delivery of written statement by the Defendant. Reliance has been placed upon judgment rendered by the Apex Court in the case of Vijay Prakash Jarath v. Tej Prakash Jarath reported in AIR 2016 SC 1304. Reliance has also been placed upon a judgment rendered by the Bombay High Court in the case of Sheshrao Bhaurao Sable v. Ganesh Mahadeorao Sable & 2 others reported in [2007(1) AIR Bom R 459 (Nagpur Bench)]. Learned counsel for the respondent-Corporation submits that the counter claim in respect of the subject matter i.e., M.S Plot no. 1735 has been allowed by the learned Trial Court to avoid multiplicity of the proceeding and enable the learned Court to pronounce judgment on the same subject matter. Therefore, there is no illegality in the order.

8. I have considered the submission of the parties in the light of relevant material facts pleaded on record. The provision of Order 8, Rule 6A is quoted herein below for better appreciation:-

"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".

9. From perusal of the pleadings of the written statement it is apparent that the respondent-Corporation has not only objected to the cause of action and prayer made in the suit relating to declaration of right, title, ownership and possession of the plaintiff over M.S. Plot no. 1735 but also claimed its own right, ownership and possession over the said plot. As a matter of fact M.S. Plot no. 1736 does not appear to be in controversy because of the earlier litigation settled up to the Apex Court in the judgment rendered in Civil Appeal No. 1034 of 1971. On the basis of sale deed executed in 2002 by the Defendant No.2 to 6 Plaintiff has chosen to seek declaration of right, title, ownership and possession over plot no. 1735 on which the respondent-corporation/defendant no.1 has also sought its right, title, ownership and possession. Certain development have taken place during pendency of the suit, such as correction of the original sale deed dated 17.5.2002 relating to plot no. 1736 through rectification deed dated 7.8.2007. Pursuant thereto, the plaintiff was also allowed to amend its plaint incorporating the deed of rectification dated 7.8.2007. As a matter of fact, Defendant No.1/ respondent-Corporation was allowed to file additional written statement to the new fact incorporated in the plaint by the order dated 0.1.2011 in W.P.C. 6469 of 2010.

10. It further seems that there is an allegation of forcible dispossession of the Defendant No.1 from M.S.Plot no.1735 during pendency of the suit and after passing of the injunction order dated 29.1.2011, which has also been allowed to be incorporated by way of amendment in the written statement of the Defendant no.1 by the order of the learned trial Court dated 21.1.2013, Annexure-O. Issues have there after again been recast on 7.3.2011. Defendant no.1, as is obvious, has also taken objection of the rectification deed questioning its legality as being in teeth of Section 26 of the Specific Relief Act.

11. The sequence of fact, which emerged from the pleadings on record and briefly referred to herein above, therefore, does give an impression that Defendant no.1/respondent-Corporation herein has only tried to seek relief in respect of the subject matter of suit of plot no. 1735 to which it had not only

objected to the petitioner's cause of action but had also claimed its own right, title, ownership and possession in the written statement filed on 27.7.2006 itself. The subsequent event that have occurred during the pendency of the suit, therefore, gives an explanation for the delay on the part of Defendant no.1 in raising a counter claim in respect of the same plot no. 1735. The learned trial Court upon consideration of these facts has rightly found the counter claim of the respondent-Corporation/Defendant no.1 to be proper and permissible under Order 8, Rule 6A of C.P.C. The judgment on the point rendered by the Apex Court, both relied by the plaintiff as well as respondent-Corporation do not leave any room of doubt that a counter claim is permissible to be raised in a suit provided that cause of action has accrued before institution of suit or before filing of the written statement, as is the case herein. The relevant para 8 of the judgment rendered in the case of Vijay Prakash Jarath v. Tej Prakash Jarath(supra) is quoted herein below for better appreciation of the case:-

Para 8:- ".....A perusal of Sub-clause(1) of Section 6A of Order 8, leaves no room for any doubt, that the cause of action in respect of which a counter claim can be filed, should accrue before the defendant has delivered his defence, namely, before the defendant has filed a written statement. The instant determination of ours is supported by the conclusions drawn in Bollepanda P. Poonacha & Anr. v. K.M. Madapa (AIR 2008 SC 2003)(supra) wherein this Court observed as under:

"11. The provision of Order 8, Rule 6A must be considered having regard to the aforementioned provisions. A right to file counterclaim is an additional right it may be filed in respect of any right or claim, the cause of action therefor, however, must accrue either before or after the filing of the suit but before the defendant has raised his defence. The respondent in his application for amendment of written statement categorically raised the plea that the appellants had trespassed on the lands in question in the summer of 1998. Cause of action for filing the counter-claim inter alia was said to have arisen at that time. It was so explicitly stated in the said application. The said application, in our opinion, was, thus, clearly not maintainable. The decision of Ryaz Ahmed (supra) is based on the decision of this Court in Baldev Singh v. Manohar Singh [(2006)6 SCC 498]:(AIR 2006 SC 2832)"

(Emphasis is ours)

It is not a matter of dispute in the present case, that cause of action for which the counter-claim was filed in the present case, arose before the respondent-plaintiff filed the suit(out of which these petitions/appeals have arisen). It is therefore apparent that the appellants before this Court were well within their right to file the counter-claim".

12. In such circumstances, this Court does not any find error of jurisdiction in the order of the learned Trial Court in allowing counter claim of the Defendant no.1/ respondent-Corporation which would also avoid multiplicity of the proceeding.

Learned Trial Court has not gone beyond jurisdiction in exercise of its power, therefore no grounds for interference are made out under Article 227 of the Constitution of India.

13. The writ petition is dismissed accordingly.