**(2015) 05 RAJ CK 0007**

**In the Rajasthan High Court**

**Case No :** Civil Writ Petition No. 12511 of 2011

Chhagan Lal and Others — APPELLANT

Vs

Bhairu Lal and Others — RESPONDENT

**Date of Decision :** 11-05-2015

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, Order 8 Rule 6A, Order 8 Rule 6B, Order 8 Rule 6C, Order 8 Rule 8
Limitation Act, 1963 — Section 14

**Citation :** (2015) 05 RAJ CK 0007

**Hon'ble Judges :** Arun Bhansali, J

**Bench :** Single Bench

**Advocate :** Sanjay Nahar, for the Appellant; S. Saruparia, Advocates for the Respondent

**Final Decision :** Allowed

## Judgement

Arun Bhansali, J.—This writ petition is directed against order dated 11.10.2011 passed by Additional District Judge (Fast Track) No. 1, Bhilwara, whereby, the application dated 21.02.2009 filed by the petitioners seeking exclusion of the counter claim filed by the respondents has been rejected.

2. The petitioners-plaintiffs filed suit for declaration and permanent injunction against the respondents on 17.11.2006, inter alia, with the averments that the plaintiffs were members of Hindu undivided family (''HUF''); respondent No. 1 - Bhairu Lal sold property belonging to HUF without authorization to respondent No. 2 despite status quo order passed by the competent court and sought relief that sale deed dated 01.11.2006 executed by respondent No. 1 be declared null and void and also sought injunction.

3. The respondents-defendants filed written statement on 19.02.2007, inter alia, claiming that the suit property was self acquired property of defendant No. 1, who had right to sale the said property.

4. It appears that in the meanwhile the revenue suit filed by petitioner No. 1 - Chhagan Lal, seeking declaration and permanent injunction under Section 188 and 88 of the Rajasthan Tenancy Act, 1955 was decreed by the Sub Divisional Officer, Bhilwara (''SDO'') on 17.02.2007, against which, the respondent No. 2 sought permission to file first appeal being transferee of the suit land, which application was rejected by the Revenue Appellate Authority (''RAA'') on 10.05.2007 and second appeal filed by respondent No. 2 - Smt. Shanta Bai was rejected on 01.07.2008 by the Board of Revenue (''Board''); whereafter, on 14.07.2008 the defendant No. 2 - Smt. Shanta Bai filed counter claim under Order VIII, Rule 6A CPC seeking cancellation of judgment and decree dated 17.02.2007 passed by the SDO.

5. The plaintiffs filed an application on 21.02.2009, inter alia, indicating that written statement was filed by the defendants on 19.02.2007 and issues were framed on 21.03.2007 and the matter was fixed for plaintiffs'' evidence on 28.05.2007; whereafter, the counter claim has been filed on 14.07.2008; it was contended that after filing of the written statement and filing successive appeals before the revenue courts, the filing of counter claim was illegal; the counter claim would result in complications and the main issue would be destroyed and the evidence would be overlapping and it was prayed that the counter claim dated 14.07.2008 be rejected and excluded from the record.

6. No reply to the application was filed by the defendants.

7. The trial court after hearing the parties by its order dated 11.10.2011 came to the conclusion that the written statement has been filed by the defendants on 19.02.2007 whereafter the issues have been framed on 21.03.2007 and the evidence of the plaintiffs has not yet started and the defendant No. 2 has filed the counter claim on 14.07.2008, reply to the counter claim has been filed on 05.11.2008 and, as such, the law cited by the plaintiffs was not applicable and, consequently, dismissed the application.

8. It is submitted by learned counsel for the petitioners that the trial court was not justified in dismissing the application filed by the petitioners, inasmuch as, it is settled position of law that the counter claim has to be filed alongwith the written statement and in any case before the issues in the suit are framed and as admittedly the present counter claim has been filed not only after filing of the written statement but also after framing of the issues, the trial court was not justified in rejecting the application by wrongly distinguishing the law laid down by Hon''ble Apex Court and, therefore, the application filed by the petitioners deserves to be allowed and the counter claim filed by respondent No. 2 deserves to be excluded.

9. Reliance was placed on Bollepanda P. Poonacha and Another Vs. K.M. Madapa, AIR 2008 SC 2003 : (2008) 2 CTC 523 : (2008) 4 SCALE 140 : (2008) 13 SCC 179 : (2008) AIRSCW 2895 , Hadman Ram v. Ram Chandra and Anr. 2013 (2) DNJ (Raj.) 674 , Ramesh Chand Ardawatiya Vs. Anil Panjwani, AIR 2003 SC

 

2508 : (2003) 4 JT 450 : (2003) 134 PLR 636 : (2003) 4 SCALE 652 : (2003) 7 SCC 350 : (2003) 3 SCR 1149 : (2003) 2 UJ 1210 : (2003) AIRSCW 2590 : (2003) 4 Supreme 27 , Gayathri Womens Welfare Association Vs. Gowramma and Another, AIR 2011 SC 785 : (2011) 112 CLT 106 : (2011) 1 JT 315 : (2011) 1 SCALE 379 : (2011) 2 SCC 330 : (2011) 2 SCR 47 : (2011) 1 UJ 101 and Madan Lal Vs. Rajendra Kumar and Others, (2014) 1 CDR 248 .

10. I have considered the rival submissions made by learned counsel for the parties and have perused the material placed on record.

11. The dates in the present matter are not in dispute i.e. the written statement was filed on 19.02.2007, issues were framed on 21.03.2007 and the counter claim was filed on 14.07.2008 seeking setting aside of judgment and decree dated 17.02.2007 passed by the SDO.

12. The provisions of Order VIII, Rule 6A CPC in so far as the same is relevant read 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 or 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."

13. As per the requirements of Rule 6A there is no dispute that the cause of action to the respondents for filing the counter claim arose before they had filed the written statement as the cause of action arose on 17.02.2007 and the written statement was filed on 19.02.2007.

14. The stage of the suit when the counter claim can be filed has been dealt with by Hon''ble Supreme Court and in the case of Ramesh Chand Ardawatiya (supra), in which, Hon''ble Supreme Court laid down the following principles:-

"28. Looking to the scheme of Order VIII as amended by Act No. 104 of 1976, we are of the opinion, that there are three modes of pleading or setting up a counter-claim in a civil suit. Firstly, the written statement filed under Rule 1 may itself contain a counter-claim which in the light of Rule 1 read with Rule 6-A would be a counter-claim against the claim of the plaintiff preferred in exercise of legal right conferred by Rule 6-A. Secondly, a counterclaim may be preferred by way of amendment incorporated subject to the leave of the Court in a written statement already filed. Thirdly, a counter-claim may be filed by way of a subsequent pleading under Rule 9. In the latter two cases the counter-claim though referable to Rule 6-A cannot be brought on record as of right but shall be governed by the discretion vesting in the Court, either under Order VI Rule 17 of the CPC if sought to be introduced by way of amendment, or, subject to exercise of discretion conferred on the Court under Order VIII Rule 9 of the CPC if sought to be placed on record by way of subsequent pleading. The purpose of the provision enabling filing of a counter-claim is to avoid multiplicity of judicial proceedings and save upon the Court''s time as also to exclude the inconvenience to the parties by enabling claims and counter-claims, that is, all disputes between the same parties being decided in the course of the same proceedings. If the consequence of permitting a counter-claim either by way of amendment or by way of subsequent pleading would be prolonging of the trial, complicating the otherwise smooth flow of proceedings or causing a delay in the progress of the suit by forcing a retreat on the steps already taken by the Court, the Court would be justified in exercising its discretion not in favour of permitting a belated counter-claim. The framers of the law never intended the pleading by way of counter-claim being utilized as an instrument for forcing upon a reopening of the trial or pushing back the progress of proceeding. Generally speaking, a counter-claim not contained in the original written statement may be refused to be taken on record if the issues have already been framed and the case set down for trial, and more so when the trial has already commenced."

15. The judgment in the case of Ramesh Chand Ardawatiya (supra) has been followed in the case of Gayathri Women''s Welfare Association (supra), wherein, after quoting the paragraphs from the judgment in the case of Ramesh Chand Ardawatiya, the Hon''ble Supreme Court observed as under:-

"These observations make it clear that generally speaking the counter claim not contained in the original written statement may be refused to be taken on record, especially if issues have already been framed. In the present case, the counter claim is sought to be introduced at the stage of appeal before the High Court."

16. From the above, the categorical principle of law laid down by Hon''ble Supreme Court regarding non-maintainability of counter claim after the issues have been framed is well established.

17. This Court in the case of Madan Lal (supra) upheld the refusal of the trial court to take the counter claim on record and, inter alia, observed as under:-

"11. In my considered view, allowing counter claim after issues have been framed and the evidence of the plaintiff is commenced, would defeat the very object of treating the counter claim as a cross suit and trying the issues arising therefrom along with the issues arising in the suit. If that is allowed, it would frustrate the very intendment of Rules 6A, 6B and 6C of Order 8 of the Code of Civil Procedure, as held by the Supreme Court."

18. In view of the settled legal position, it is apparent that the counter claim filed by the respondents on 14.07.2008 after framing of issues on 21.03.2007 was not maintainable and the trial court was not justified in rejecting the application filed by the petitioners seeking exclusion of the counter claim. The submissions made

 

by learned counsel for respondent No. 2 attempting to distinguish the judgments cited by learned counsel for the petitioners on account of the stages in those cases, wherein, the counter claim was filed cannot be countenanced, inasmuch as, the law laid down by Hon''ble Supreme Court as noticed hereinbefore, is categorical regarding the stage of filing counter claim, which has been repeated and relied on, on more than one occasion.

19. So far as the submissions made by learned counsel for the petitioners that as the counter claim filed by the respondent No. 2 has been entertained by the trial court, which was filed within limitation and now if the same is ordered to be excluded, the respondent would be required to file a fresh suit seeking cancellation of judgment and decree dated 17.02.2007 and may face the aspect of limitation, suffice it to observe that the respondent, in case she decides to file a fresh suit, would be required to file application under Section 14 of the Limitation Act, 1963 and the jurisdictional court would decide the same on its own merit.

20. In view of the above discussion, the writ petition filed by the petitioners is allowed. The order dated 11.10.2011 passed by the trial court is set aside and the application filed by the petitioners seeking exclusion of the counter claim filed by respondent No. 2 is allowed. It is ordered that the counter claim filed by respondent No. 2 shall be excluded from the record and would be placed in part D. No order as to costs.

 