

(2017) 03 KL CK 0016

In the High Court Of Kerala

Case No : C.R.P. No. 646 of 2015 (Against The Order In I.A.No.2440 of 2013 In O.S.No.122 of 2012 of the Additional Munsiff's Court, Cherthala, Dated 12.10.2015)

Gopalakrishnan Nair

APPELLANT

Vs

Vasudevan Nair

RESPONDENT

Date of Decision : 15-03-2017

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 6C

Citation : (2017) 2 ILRKerala 480 : (2017) 2 KLT 132

Hon'ble Judges : Mr. P. Somarajan, J.

Bench : Single Bench

Advocate : Sri. T. Jayakrishnan and Sri. R. Krishnakumar (Cherthala), Advocates, for the Petitioner; Sri. J. Om Prakash, Advocate, for the Respondent Nos. 1 and 2

Final Decision : Disposed Off

Judgement

Mr. P. Somarajan, J.—Challenging the order passed in I.A.No.2440 of 2013 in O.S.No.122 of 2012 on the file of the Additional Munsiff's Court, Cherthala, dated 12.10.2015, the plaintiff/petitioner came up with this revision.

2. The above said application was filed by the plaintiff under Order 8, Rule 6C CPC for the exclusion of counter claim raised in that suit. It was dismissed by the trial court by its order dated 12.10.2015. Aggrieved by the said order, the present revision is filed by the plaintiff/petitioner.

3. Heard the learned counsel appearing for the petitioner and the learned counsel for the respondents.

4. The question came up for consideration is under what circumstances it is permissible to exclude the counter claim raised in a suit under Order 8, Rule 6C CPC.

5. Before going into that question it is necessary to narrate the short facts of the

case which are as follows:

The suit for injunction simpliciter was filed by the plaintiff pertaining to plaint schedule immovable property owned by the plaintiff against trespass. The defendants entered appearance and filed written statement raising a counter claim claiming a right of way through the said property under prescriptive right of easement. It is thereon the plaintiff came up with the above said petition in I.A.No.2440 of 2013 with the aid of Order 8, Rule 6C CPC before the lower court for exclusion of the counter claim.

6. Nowhere it is stated or specified in the Code of Civil Procedure under what circumstance an exclusion of counter claim is permissible. But, the principle laid down under Rule 6C CPC is well evident from the various amendments carried out to the CPC by Amendment Act 104 of 1976. Earlier there was only a provision for raising set off by the defendant in a suit for money governed by Order 8, Rule 6 and Order 20, Rule 19 CPC. Rule 6A to G are inserted by Act 104 of 1976 with effect from 01.02.1977. It is by virtue of Rule 6A a right of counter claim by the defendant in addition to right of set off under Rule 6 was incorporated and inserted enabling the defendant to raise counter claim in any of the suit instituted. Prior to its insertion/amendment, the right of defendant was confined only to a right of set off, that too, in a suit for recovery of money alone. Rule 6A to G are incorporated with a view to extend a right of counter claim to the defendant in any suit, irrespective of nature of suit, whether it is for recovery of money or for other purpose with a view to avoid multiplicity of proceedings and delay in adjudication of disputes. But, that does not mean that a counter claim is permissible to the defendant for all the remedies available to him on any cause of action. It is restricted within the four corners of the suit instituted, but may be on separate grounds. Though the provisions contained in CPC are silent about the requirements, it can be gathered by the nature of amendment by Act 104 of 1976 and also the provisions contained in Order I Rule 1 and Rule 3A of CPC. The requirements for exclusion of a counter claim under Rule 6C Order 8 CPC are as follows:

(1) It should be within the pecuniary and territorial jurisdiction of the court wherein the suit is instituted (2) it must have some nexus with the claim raised in the suit/relief sought in the suit (3) it must be a relevant one in adjudicating the issue involved in the suit (4) it should not embarrass or delay the trial of the suit. Rule 6C Order 8 would come into play only on satisfying all the above four requirements.

7. The distinction between a set off and a counter claim lies on its character and application. (1) A set off can be pleaded only in a money suit instituted and set off can be raised only in terms of money though it can be raised either as damages or compensation or otherwise. (2) In so far as a set off is concerned, it is not at all necessary that the set off claimed is having some relevancy in the matter of adjudication of the issue involved in the suit. But, in so far as counter claim is concerned, it should be relevant for adjudication of the issue involved in

the suit.

8. In the present suit, the counter claim raised is by way of easement of way over a portion of the subject matter of the suit over which the plaintiff is claiming a decree of permanent prohibitory injunction against trespass. The counter claim raised, if proved, would be relevant for the adjudication of the relief sought by the plaintiff in the suit. As such, it would not come under the purview of Rule 6C Order 8 CPC. The lower court has exercised its jurisdiction in its correct perspective and there is no reason for interference. Hence revision fails, deserves only dismissal and I do so. No order as to costs.