

(2010) 10 AP CK 0031

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No.4363 of 2010

Gurram Allabaksh and Others

APPELLANT

Vs

Shaik Habeebullabasha and Others

RESPONDENT

Date of Decision : 19-10-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 16 Rule 17, Order 8 Rule 6A, Order 8 Rule 6A(1)

Citation : (2011) 2 ALD 59 : (2011) 3 CivCC 830

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : V.R. Reddy Kovvuri, for the Appellant; T. Niranjan Reddy, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—The Respondents filed O.S. No. 15 of 2008 against the Petitioners in the Court of v. Additional District Judge, Rayachoty, for the relief of declaration to the effect that the 1st Respondent is the absolute owner of item No. 1 and Respondents 2 to 10 are the owners of item No. 2 of the suit schedule property. Relief of perpetual injunction is also prayed for. The trial of the suit commenced and it is said to be at the stage of arguments.

2. The Petitioners filed I.A. No. 358 of 2010 under Rule 17 of Order XVI C.P.C., with a prayer to permit them to amend the common written statement. They wanted to incorporate the plea as to the maintainability of the suit, on the ground of mis-joinder of causes of action, and to make a counter-claim. The Respondents opposed the application. The trial Court dismissed the I.A., through order, dated 06.07.2010. Hence, this revision.

3. Sri V.R. Reddy Kovvuri, learned Counsel for the Petitioners, submits that the causes of action for Respondent No. 1, on the one hand, and Respondent Nos. 2 to 10, on the other, are separate and specific and there was no basis for them to claim such independent reliefs in one and the same suit. He further submits that

the suit is hit by Order II Code of CPC Another contention of the learned Counsel is that there is no clear bar as such for the Defendants in a suit to make counter-claim at a stage after the written statement is filed. Placing reliance upon certain decided cases, learned Counsel contends that the view taken by the trial Court cannot be sustained in law.

4. Sri T. Niranjan Reddy, learned Counsel for the 1st Respondent, on the other hand, submits that all the Respondents i.e. the Plaintiffs, in the suit, have a common grievance against the Petitioners herein and the plaint accords with Order II Code of CPC He contends that the I.A., was filed only with a view to protract the proceedings, which are at the final stage. As regards the counter-claim, learned Counsel submits that Rule 6-A places a clear bar on filing of counter-claims, at any stage, subsequent to the filing of the written statement.

5. The suit filed by the Respondents for the relief of declaration of title and perpetual injunction is almost at the final stage of trial. The Petitioners filed a common written statement, and they sought permission of the Court to amend it by incorporating the plea as to mis-joinder of causes of action and to make counter-claim. The trial Court dismissed the I.A.

6. Order II Code of CPC mandates that a suit shall include the whole of the claim, which the Plaintiffs are entitled to make in respect of the cause of action. A note of caution is sounded to Rule 3, which is to the effect that if a person is entitled to more reliefs in respect of same cause of action, and omits to sue for some of those, without leave of the Court, he shall not be entitled to sue for them, at a later stage.

7. The common grievance of all the Respondents was the alleged interference by the Petitioners with their possession over the two items of the suit schedule property. Once this is so, the mere fact that the 1st Respondent claimed the relief of declaration in respect of one item and other Respondents in respect of the second item, does not make any difference. Even the relief of declaration of title is common against all the Petitioners herein. Therefore, the attempt made by the Petitioners to raise the plea as to mis-joinder of causes of action, by way of amendment, was untenable.

8. The suit was filed in the year 2006 in the Court at Kadapa and it was re-numbered in the year 2008, after it was transferred to the Court at Rayachoty; written statement was filed long back; issues were framed and the trial proceeded on them.

9. Before the Code of CPC was amended, through Act 104 of 1976, the facility of counter-claim was limited mostly to money suits. After the said amendment, it was extended to the suits of other categories also. However, Parliament placed certain restrictions in the matter of making of the counter-claim, by Defendant. Rule 6-A of Order VIII Code of CPC reads as under:

6-A 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.

10. One of the important restrictions is that, a counter-claim must be made before the Defendant has delivered his defence, or before the time limited for delivering his defence, has expired. There is an underlying purpose in placing this restriction. A counter-claim, wherever permitted, is as good as an independent suit, so much so, that the Plaintiff shall have an opportunity to file a written statement, in defence to it. The reason for insistence on presentation of counter-claim along with the written statement is that the trial to be undertaken by the Court, shall be comprehensive in respect of the suit claim as well as the counter-claim. If the counter-claim is permitted to be made at a later stage, the progress that has been recorded in the suit up to that stage, would virtually become redundant and a fresh exercise has to be undertaken once again. In the instant case, as observed earlier, the written statement was filed several years ago and the suit is at the final stage of trial.

11. Learned Counsel for the Petitioners places reliance upon the judgment rendered by a learned Single Judge of this Court in *Sugesan and Co. Pvt. Ltd. Vs. Hindustan Machine Tools Ltd.*, . The judgment was rendered in appeal and one of the points urged was that, the trial Court did not permit a counter-claim on the ground that it was presented after the written statement was filed. The purport of Rule 6-A was explained in para 17. It reads as under:

As already noticed, what all envisaged by Rule 6-A(1) of Order 8 is, the Defendant can make a counter-claim in respect of cause of action that accrues to him either before or after filing of the suit. Therefore, it is the time of accrual of cause of action, whether or not before filing of the suit or subsequent to the filing of the suit. The only limitation is, such a counter-claim irrespective of time of accrual either before or after filing of the suit must be made before filing of the

written statement. In other words, it is sufficient for making a counter-claim if the cause of action accrues before filing of the written statement.

12. The judgment rendered by the Supreme Court in *Jag Mohan Chawla v. Dera Radha Swami Satsang* 1996 (4) ALD 57, was referred to. In that judgment, the Supreme Court observed that a counter-claim need not relate to the cause of action, on the basis of which the suit is filed and it can be in respect of an independent cause of action also. This Court summed up the purport of the said judgment as under:

The above observations made the situation clear to the extent that the causes of action of the suit and counter-claim need not necessarily be inter related or there need not be any nexus between the suit and the counter-claim, but, the only limitation is the cause of action should arise before the time fixed for filing the written statement.

13. However, after referring to Rules 6-C, 6-E and 6-G, it was opined that the Code is silent as to the cause of action, which had accrued to a Defendant, subsequent to the filing of a written statement, and in that view of the matter, a counter-claim can be presented even after the filing of written statement, subject to the law of limitation. Para 37 of the judgment reads as under:

A conjoint reading of sub-rules (1) and (4) of Rule 6-A and Rules 6-C, 6-E and 6-G, in my considered view, would only suggest that a counter-claim, being a suit in status, subject to the law of limitations can be entertained even after the written statement is filed by the Defendant, of course and however, subject to the condition that such cause of action arises either before or after filing of the suit, the upper limit of which, is, filing of the written statement.

14. With great respect to the learned Judge who rendered the said judgment, it is noticed that the proposition runs contrary to Rule 6-A enacted by the Parliament. It is not as if a Defendant in a suit is without any relief, if a cause of action has arisen to him, vis-?-vis the Plaintiff, at a stage subsequent to the filing of the written statement. He can file an independent suit, and the facility of filing counter-claim cannot be permitted to be used to shatter the entire progress that has taken place in the suit, on the basis of the written statement and the issues framed therein. The judgment of the Supreme Court, which was relied upon, was on a different aspect. Therefore, it is difficult to treat the said judgment in *Sugesan and Company's* case as a precedent for the proposition that a counter-claim can be presented, even after filing of the written statement. At the most, it can be deduced from that judgment that in case a written statement is filed much before expiry of the time stipulated therefor, and in the meanwhile, any cause of action has arisen, before the expiry of the time, for filing the written statement, there may be a possibility to permit the presentation of a counter-claim, that too, before the expiry of the period for filing of written statement, though a written statement may have been filed earlier.

15. Further, the facts in the instant case, do not fit into the judgment in *Sugesan*

and Company's case. The reason is that the Petitioners herein did not plead that any cause of action has arisen to them subsequent to the filing of the common written statement.

16. Reliance is placed upon the judgment of the Supreme Court in *Olympic Industries v. Mulla Hussainy Bhai Mulla Akberally and Ors.* . That was a case, in which additional defence was sought to be delivered at a belated stage. On finding that the delay was properly explained, the Supreme Court permitted the same. It does not relate to the making of counter-claims. To the same effect is the judgment of the Madras High Court in *Soundaraesane v. Pouhapavady* .

17. For the foregoing reasons, the C.R.P. is dismissed. There shall be no order as to costs.