

(2017) 02 OHC CK 0007

In the Orissa High Court

Case No : 63 of 2016

Indumati Sahu

APPELLANT

Vs

The Secretary, Rotary Club, Puri & another

RESPONDENT

Date of Decision : 15-02-2017

Acts Referred:

Constitution of India, Article 227 -
Power of superintendence over all courts by the High Court
Code of Civil Procedure, 1908, <a href=3859 — Order 1Rule
10>Order 1Rule 10, <a href=3859-O

Citation : (2017) 02 OHC CK 0007

Hon'ble Judges : A.K.Rath

Bench : SINGLE BENCH

Advocate : Samir Kumar Mishra, Ashok Mohanty, H.N. Mohapatra

Final Decision : Dismissed

Judgement

1. The seminal question that hinges for consideration of this Court is as to whether a defendant can set up a counter claim against a co-defendant ?

2. Opposite party no.2 as plaintiff instituted C.S No.71 of 2008 in the court of the learned Civil Judge (Junior Division), Puri for permanent injunction impleading the opposite party no.1 as defendant. The petitioner filed an application under Order 1 Rule 10 CPC for impleadment. The same having been rejected by the learned trial court, she approached this Court in WP(C) No.27298 of 2013. This Court allowed the petition, whereafter she has been impleaded as defendant no.2. She filed a written statement-cum-counter claim praying for the following reliefs; "6. That the defendant No.2, therefore prays a) pass a decree that the alleged lease executed on dated 28.8.2000 (Twentyeighth August Two thousand) in favour of defendant no.1 (One) in respect of Schedule-"B" property of Counter Claim is illegal and void one.

b) pass a decree of permanent injunction against the defendant no.1 (One) from causing any disturbance in the use of the Schedule-"A" property of Counter

Claim, as Public Road.

c) cost of the suit be decreed in favour of defendant no.2.

d) pass any other relief, what the defendant No.2 is entitled."

3. Learned trial court came to hold that the counter claim of defendant no.2 is directed only against defendant no.1 and not against the plaintiff. Defendant no.2 has claimed for reliefs against defendant no.1. Therefore, the counter claim directed against the codefendant is not maintainable. Relying upon the decision of the apex Court in the case of Rohit Singh and others v. State of Bihar (Now State of Jharkhand) and others, (2006) 12 SCC 734, learned trial court rejected the counter claim; but then accepted the written statement filed by defendant no.2.

4. Heard Mr.Mishra, learned counsel for the petitioner, Mr. Mohanty, learned Senior Advocate for the opposite party no.1 and Mr. Mohapatra, learned counsel for the opposite party no.2.

5. Mr.Mishra, learned counsel for the petitioner, submitted that the counter claim is not directed against the co-defendant but the same is directed against the plaintiff. Thus the learned trial court has committed manifest illegality in rejecting the counter claim.

6. Per contra, Mr. Mohanty, learned Senior Advocate and Mr.Mohapatra, learned counsel for the opposite parties supported the impugned order.

7. Sub-Rule (1) of Order 8 Rule 6A CPC postulates that 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.

8. In Rohit Singh, the apex Court held that normally, a counter claim, though based on a different cause of action than the one put in suit by the plaintiff could be made. A counter claim has necessarily to be directed against the plaintiff in the suit, though incidentally or along with it, it may also claim relief against the codefendants in the suit. But a counter claim directed solely against the co-defendants cannot be maintained. By filing a counter claim the litigation cannot be converted into some sort of an inter pleader suit.

9. In view of the authoritative pronouncement of the apex Court in the case of Rohit Singh (supra), the learned trial court is justified in rejecting the counter claim. The order of the learned trial court cannot be said to be perfunctory or flawed warranting interference of this Court under Article 227 of the Constitution of India. Accordingly, the petition is dismissed. No costs.