

(1999) 08 MAD CK 0067
In the Madras High Court
Case No : S.A.No. 996 of 1986

Karuppayammal and another	Vs	APPELLANT
S. Ramaalingam Pillai and others		RESPONDENT

Date of Decision : 06-08-1999

Acts Referred:

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

Citation : (2000) 1 CTC 39 : (2000) 1 LW 593

Hon'ble Judges : K.P. Sivasubramaniam, J

Bench : Single Bench

Advocate : Mr. V. Raghavachari, for the Appellant; Mrs. R. Meenalochini and Mr. P. Arivudainambai for Mr. S. Selvarathinam, for the Respondent

Judgement

1. This second appeal is directed against the judgment of the learned District Judge, Dindigul in A.S.No.64 of 1985, confirming the judgment of the learned District Munsif, Palani, in O.S.No.547 of 1981. Defendants 1 and 2 in the suit are the appellants in the above second appeal.
2. As the decision in the second appeal revolves around the competence of the court to pass a decree in favour of a defendant as contemplated under Order 8, Rule 6, 6-A to 6-G, C.P.C., it is unnecessary to refer to the pleadings of the parties or the findings of the courts below in detail.
3. The plaintiffs filed the suit for recovery of possession and for mesne profits by impleading defendants 1 and 2 who were described as trespassers. The third defendant filed an application seeking to be impleaded as defendant. After the plaintiff filed the objections, the application was allowed and he was added as third defendant. According to the plaintiffs, the third defendant had no right, title or interest over the property, the first and second defendants disputed claims of the plaintiff and the identity

and description of the property were also disputed. They were in possession of the property and there was no truth in the allegation that they attempted to trespass into the suit property.

4. In the third defendant's statement, the genealogy table filed by the plaintiffs was disputed and he termed it as incorrect and incomplete. He

claims to be the only son of Vairana Pillaiu through whom the plaintiff had claimed title to the suit property. Consequently, after affixing the requisite

court fee, prayed for a declaration of his title over the suit property and a direction to defendants 1 and 2 to deliver possession of the suit property

to him. A reply statement was filed by the plaintiffs disputing and denying the various claims of the third defendant.

5. The trial court after considering the pleadings and evidence held that the plaintiffs had not properly described the suit property and that

defendants 1 and 2 alone were in possession of the property. It was also held that the plaintiffs had neither title nor possession of the property, that

the third defendant was entitled to the property and that therefore, defendants 1 and 2 were bound to deliver possession of the property to the

defendants. With the result, the suit was decreed as prayed for by the third defendant. On appeal by the plaintiffs, the appellate court confirmed the

decree of the trial court. The cross objection filed by defendants 1 and 2 questioning the decree as granted by the trial court was also dismissed.

Hence the present appeal by defendants 1 and 2. Apart from two substantial questions of law framed at the time of admission, the appellants had

sought leave of this Court to formulate, the following additional substantial question of law after due notice to the counsel for the respondents:-

Whether the courts below are right in granting a decree to the third defendant against defendant 1 and 2 and whether such an order is not legally

impermissible and against the provisions of Order 8, Rule 6-A C.P.C.

6. Both sides have argued in detail on the said additional substantial question of law, which is the only the issue on the basis of which this second

appeal is disposed of.

7. The facts as stated above would disclose that in a suit for recovery of possession by the plaintiff against defendants 1 and 2, the third defendant

gets himself impleaded and seeks for a decree for possession for himself. The courts below held that while the plaintiffs had not established either

title or possession and that the third defendant was entitled to the property consequently decree for possession is granted in favour of the third

defendant as against defendants 1 and 2 who are found to be in possession.

8. Order 8, Rule 6, 6-A to 6-G deal with the power of the court to pass a decree for set off and counter claim. While Order 8, Rule 6 deals with

the defendants entitlement to claim a set- off in a money decree, Rule 6-A deals with counter claim by the defendants and rules 6-B to 6-G deal

with procedural requirement in pleading a counter claim and hence rule 6-A is the relevant provision to be considered in this Second appeal,

which is as follows:-

6A. Counter-claim by defendant. -(1) A defendant in suit may, in addition to his right of pleadings a set-off under rule 6, 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

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.

(1) 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""(Italics supplied)

9. The contention of Mr. V.Raghavachari, learned counsel for the appellants, is that a counter claim can be maintained only as against the plaintiffs

and not as against the defendant. I am inclined to sustain his objection for the following reasons:-

(i) A mere reading of the provision and the words as underlined above reveal that the counter claim is visualised only as against the plaintiff. The

said expression has been used twice thus leaving no room for any doubt.

(ii) In the event of the plaintiffs choosing to withdraw the suit it would lead to anomalous situation regarding the maintainability of the counter decree against the co-defendants.

(iii) The defendants against whom the decree is to be passed are put to serious hardship for several reasons. Firstly, the framing of the suit is not in his hands. Secondly, neither Rule 6-A, nor any of the rules dealing with the procedure entitles the defendant to file any pleadings or objection in answer to the counter claim. Thirdly, the entitlement of the defendants to resist the counter claim of another co-defendant cannot be mixed up with his pleadings as against the plaintiff. His defence as against the co-defendant seeking counter claim could be of totally a different cause of action, completely unconcerned, with the plaintiff's cause of action. It would spell injustice to the defendants and the liberty which is given to the plaintiff to seek for an order to exclude the counter claim on the ground that the counter claim should be pursued in an independent suit (Rule 6-C) is not available to the defendant who is faced with the counter claim.

10. The above are reasons why the legislature had very emphatically used the expression "against the plaintiff twice under Rule 6-A, C.P.C. The courts below have therefore, completely ignored that they have no jurisdiction to grant the decree as they have done.

11. Mr. Arivudainambai. learned counsel for the respondents would however, contend that the object of the provision being to avoid multiplicity proceedings, the provision has to be interpreted so as to include counter claim as between co-defendants also. As stated earlier, the provision is clear and unambiguous and visualise counter claims only as against the plaintiff. Learned Counsel has also sought to rely upon the judgment of the

Supreme Court in Jag Mohan Chawla and another Vs. Dera Radha Swami Satsang and others, . In that case, the Supreme Court has pointed out that prior to C.P.C. Amendment Act of 1976, the cross claim or set-off was contemplated only in respect of money decrees and that after the amendment and the insertion of Rule 6-A to 6-G, C.P.C., the cross claim was maintainable in respect of any right or claim and not restricted to money decree alone. The Supreme Court has also further held that the counter claim need not relates to the original cause of action alone, but can be of an independent or different cause of action. The said ruling does not deal

with the competence of a defendant seeking counter claim as against another co-defendant, Hence the said ruling is not relevant to consider the issue under this appeal.

12. In the result, the decree granted by the courts below in favour of the third defendant against defendants 1 and 32 cannot be sustained. The second appeal is therefore, allowed. No costs.