

(2015) 12 RAJ CK 0006
In the Rajasthan High Court
Case No : Civil Second Appeal No. 248/1999

Kishan Lal

APPELLANT

Vs

Shanker Lal Lakhara and Others

RESPONDENT

Date of Decision : 14-12-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 18, Order 20 Rule 19, Order 8 Rule 6, Order 8 Rule 6(a), Order 8 Rule 6(A)(1)

Citation : (2015) 12 RAJ CK 0006

Hon'ble Judges : Vineet Kothari, J.

Bench : Single Bench

Advocate : Manish Shishodia and Abhishek Singh, for the Appellant; Vipul Dharnia and Vikram Rajpurohit on behalf of Ravi Bhansali, for the Respondent

Judgement

Dr. Vineet Kothari, J.—The present second appeal under Section 100 of the Code of Civil Procedure has been filed by the plaintiff-appellant-Kishan Lal S/o Ram Pal, who had filed an injunction suit against the landlord, for not to evict him without adopting the due process of law, being aggrieved by the judgment and eviction decree dated 14.07.1999 passed by the learned Additional District Judge No. 1, Bhilwara in Civil Appeal No. 12/1999 "Kishan Lal v. Shanker Lal & Ors." by which, the learned First Appellate Court had affirmed the judgment and decree dated 28.01.1999 passed by the learned Civil Judge (Senior Division), Gangapur, District Bhilwara in Civil Original Suit No. 45/1991 "Kishan Lal v. Shanker Lal & Ors." by which, the learned Trial Court in view of decision of all the issues against the plaintiff, allowed the counter-claim of the defendants and directed eviction of the tenant, the plaintiff-appellant-Kishan Lal from the suit property in question, a house situated at Gangapur, District Bhilwara.

2. The plaintiff-Kishan Lal S/o Ram Pal has filed the present second appeal under Section 100 of the Code of Civil Procedure aggrieved by the decrees given in favour of the defendants-landlords upon their counter-claim being decreed by the Courts below in respect of the suit property, a kuchcha keluposh house, situated

at Gangapur, District Bhilwara which was originally let out by the defendants-Shanker Lal & Khem Raj, both sons of Dalchand Lakhara to the appellant-plaintiff-tenant-Kishan Lal S/o Ram Pal on 14.07.1987.

3. The plaintiff-tenant-Kishan Lal S/o Ram Pal filed the aforesaid suit, namely Civil Original Suit No. 45/1991, for injunction with the prayer that he may not be dispossessed from the house in question with the respondents-landlord adopting the due process of law. In the meantime, the said house in question came to be transferred by the defendants Nos. 1 and 2 in favour of the defendant No. 3-Ramchandra S/o Magna Lakhara.

4. The said suit (No. 45/1991) filed by the plaintiff-Kishan Lal initially came to be rejected by the learned Trial Court on 07.02.1994 but the learned Appellate Court of the Additional District Judge No. 1, Bhilwara remanded the case back to the learned Trial Court vide its order dated 05.08.1994 for trying the counter-claim filed by the defendants-landlord but maintained the dismissal of the suit of the plaintiff by the learned Trial Court.

5. After such remand, the learned Trial Court decreed the counter-claim of the defendants-landlord by the order dated 28.01.1999 with the following findings in favour of the defendants-landlord:--

6. Being aggrieved by the judgment and decree dated 28.01.1999, the plaintiff-Kishan filed the first appeal before the First Appellate Court of the learned Additional District Judge No. 1, Bhilwara, namely, Civil Appeal No. 12/1999 "Kishan Lal v. Shanker Lal & Ors" which also came to be dismissed by the learned Additional District Judge No. 1, Bhilwara on 14.08.1999 with the following observations:--

7. Being aggrieved by the aforesaid judgments and decrees of the learned Trial Court and the First Appellate Court, the plaintiff-tenant has preferred the present second appeal which was filed in this Court on 02.08.1999.

8. On 07.08.1999, a co-ordinate Bench of this Court has framed the following substantial questions of law for consideration by this Court which reads as under:--

"Whether in a suit for injunction against unlawful dispossession, a counter claim for possession could be allowed and entertained in view of O. 8 R. 6(a) , O. 8 R. 6(f) and O. 20 R. 19 CPC?"

9. The learned counsel, Mr. Manish Shishodia, appearing for the appellant-plaintiff-Kishan Lal, relying upon the decision of the Hon"ble Patna High Court in the case of Jashwant Singh Vs. Smt. Darshan Kaur and Others, urged that the right of the defendant to raise a counter-claim under Rule 6-A of Order 8 of the Code of Civil Procedure has been limited by the Court in the cases of the money claims only. The learned counsel, Mr. Manish Shisodia, therefore, urged that in the present suit for injunction filed by the plaintiff-tenant-Kishan Lal, the defendants-landlord was not entitled to file counter-claim claiming possession of

the suit property possessed by the plaintiff and, therefore, the Courts below have erred in decreeing the counter-claim, as filed by the defendants and, therefore, for this reason, while allowing the present second appeal of the plaintiff-appellant-tenant, the substantial question of law, as framed and quoted herein above, deserves to be answered in favour of the appellant-plaintiff-tenant and against the defendants-respondents-landlord.

10. On the other hand, the learned counsels, Mr. Vikram Rajpurohit and Mr. Vipul Dharnia on behalf of Mr. Ravi Bhansali, appearing for the defendants-respondents-landlord has relied upon the following two Hon''ble Supreme court decisions in his favour to counter the aforesaid arguments made by the learned counsel for the appellant-plaintiff.

"(i). Jag Mohan Chawla and another Vs. Dera Radha Swami Satsang and others, ; and

(ii) Gurbachan Singh Vs. Bhag Singh and others,

11. I have heard the learned counsels for the parties at length and perused the record of the case, including the judgments cited at bar by the learned counsels for the parties. The Hon''ble Supreme Court in the case of Jag Mohan Chawla & Anr. (supra) has held as under:--

"5. The question, therefore is: whether in a suit for injunction, counter-claim for injunction in respect of the same or a different property is maintainable? Whether counter-claim can be made on different cause of action? It is true that preceding PC Amendment Act, 1976, Rule 6 of Order 8 limited the remedy to set off or counter-claim laid in a written statement only in a money suit. By CPC Amendment Act, 1976, Rules 6A to 6G were brought on statute. Rule 6a(1) provides that a defendant in a suit may, in addition to his right of pleading a set off under Rule 6, set up 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 damage or not. A limitation put in entertaining the counter-claim is as provided in the proviso to sub-rule (1), namely, the counterclaim shall not exceed the pecuniary limits of the jurisdiction of the Court. Sub-rule (2) amplified that 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. The plaintiff shall be given liberty to file a written statement to answer the counterclaim of the defendant within such period as may be fixed by the Court. The counter-claim is directed to be treated, by operation of sub-rule (4) thereof, as a plaint governed by the rules of the pleadings of the plaint. Even before 1976 Act was brought on statute, this Court in Laxmidas Dahyabhai Kabarwala Vs. Nanabhai Chunilal Kabarwala and Others, , had come to consider the case of suit and cross suit by way of counter-claim. Therein, suit was filed for

enforcement of an agreement to the effect that partnership between the parties had been dissolved and the partners had arrived at a specific amount to be paid to the appellant in full satisfaction of the share of one of the partners in the partnership and thereby decree for settlement of accounts was sought. Therein the legal representatives of the deceased partner contended in the written statement, not only denying the settlement of accounts but also made a counter-claim in the written statement for the rendition of accounts against the appellant and paid the court fee as plaint. They also sought a prayer to treat the counter-claim as a cross suit. The trial Court dismissed the suit and the counterclaim. On appeal, the learned Single Judge accepted the counter-claim on a plaint in a cross suit and remitted the suit for trial in accordance with law. On appeal, per majority, this Court had accepted the respondents' plea in the written statement to be a counter-claim for settlement of their claim and defence in written statement as a cross suit. The counter-claim could be treated as a cross suit and it could be decided in the same suit without relegating the parties to a fresh suit. It is true that in money suits, decree must be conformable to Order 20, Rule 18, CPC but the object of the amendments introduced by Rules 6A to 6G are conferment of a statutory right to the defendant to set up a counter-claim independent of the claim on the basis of which the plaintiff laid the suit, on his own cause of action. In sub-rule (1) of Rule 6A, the language is so couched with words of wide width as to enable the parties to bring his own independent cause of action in respect of any claim that would be the subject matter of an independent suit. Thereby, it is no longer confined to money claim or to cause of action of the same nature as original action of the plaintiff. It need not relate to or be connected with the original cause of action or matter pleaded by the plaintiff. The words "any right or claim in respect of a cause of action accruing with the defendant" would show that the cause of action from which the counter-claim arises need not necessarily arise from or have any nexus with the cause of action of the plaintiff that occasioned to lay the suit. The only limitation is that the cause of action should arise before the time fixed for filing the written statement expires. The defendant may set up a cause of action which has accrued to him even after the institution of the suit. The counter-claim expressly is treated as a cross suit with all the indicia of pleadings as a plaint including the duty to aver his cause of action and also payment of the requisite court fee thereon. Instead of relegating the defendant to an independent suit, to avert multiplicity of the proceeding and needless protection, the legislature intended to try both the suit and the counterclaim in the same suit as suit and cross suit and have them disposed of in the same trial. In other words, a defendant can claim any right by way of a counter-claim in the same suit as suit and cross suit and have them disposed of in the same trial. In other words, a defendant can claim any right by way of a counter-claim in respect of any cause of action that has accrued to him even though it is independent of the cause of action averred by the plaintiff and have the same cause of action adjudicated without relegating the defendant to file a separate suit. Acceptance of the contention of the appellant tends to defeat the purpose of amendment. Opportunity also has been

provided under Rule 6-C to seek deletion of the counterclaim. It is seen that the trial Court had not found it necessary to delete the counter-claim. The High Court directed to examine the identity of the property. Even otherwise, it being an independent cause of action, though the identity of the property may be different, there arises no illegality warranting dismissal of counter-claim. Nonetheless, in the same suit, both the claim in the suit and the counter-claim could be tried and decided and disposed of in the same suit. In Mahendra Kumar and Another Vs. State of Madhya Pradesh and Others, where a Bench of two Judges of this Court was to consider the controversy, held that since the cause of action for the counter-claim had arisen before filing of the written statement, the counter-claim was maintainable. The question therein was of limitation with which we are not concerned in this case. Thus considered we find that there is no merit in the appeal."

12. The Hon"ble Supreme Court in the case of Gurbachan Singh (supra) has clearly laid down that in a suit for injunction, a counter-claim for possession can also be entertained. The relevant portion of the said judgment is quoted herein below for ready reference:--

"3. It is true that Rule 6A(a) was introduced by Amendment Act of 1976. Preceding the amendment, it was settled law that except in a money claim, counter claim or set off cannot be set up in other suits. The Law Commission of India had recommended, to avoid multiplicity of the proceedings, right to the defendants to raise the plea of set off in addition to a counter claim in Rule 6 in the same suit irrespective of the fact whether the cause of action for counter claim or set off had accrued to defendant either before or after the filing of the suit. The limitation was that the counter claim or set off must be pleaded by way of defence in the written statement before the defendant filed his written statement or before the time limit for delivering the written statement has expired, whether such counter-claim is in the nature of a claim for damages or not. Further limitation was that the counter-claim should not exceed the pecuniary limits of the jurisdiction of the court. In other words, by laying the counter claim pecuniary jurisdiction of the court cannot be divested and the power to try the suit already entertained cannot be taken away by accepting the counter claim beyond its pecuniary jurisdiction. Thus considered, we hold that in a suit for injunction, the counter-claim for possession also could be entertained, by operation of Order 8 Rule 6 (A)(1) of CPC."

13. In view of the aforesaid binding precedents of the Hon"ble Supreme Court, apparently, the judgment of the Hon"ble Patna High Court in the case of Jashwant Singh v. Smt. Darshan Kaur & Ors. (supra) based on pre-amended provisions of Code of Civil Procedure, as relied upon by the learned counsel for the plaintiff-appellant-tenant appears to be per incuriam and cannot hold the field. The said proposition appears to be against the clear language of Order 8 Rule 6-A of the Code of Civil Procedure, which is also quoted herein below for ready reference:--

"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."

14. The said provision of law was brought on the statute book w.e.f. 01.02.1977 by the Amendment Act of 1976 and in the present case, admittedly, the counter-claim filed by the defendants-landlord was after the said amendment was brought on the statute book, therefore, there remains no iota of doubt that the learned Trial Court has not committed any error in deciding the counter-claim in favour of the defendants after remand of the matter in the first instance and the same has rightly been decreed and affirmed by the learned First Appellate Court, therefore, this Court finds no error in the orders impugned in the present second appeal. In view of the aforesaid circumstances and aforesaid Hon'ble Supreme Court decisions, the present second appeal filed by the appellant-plaintiff-tenant-Kishan Lal is found to be devoid of any merit and is liable to be dismissed, therefore, the substantial question of law deserves to be answered in favour of the defendants.

15. Accordingly and in view of the above, the present second appeal filed by the appellant-plaintiff-tenant is dismissed, while answering the substantial question of law, as framed and quoted herein above, against the appellant-plaintiff-tenant and in favour of the defendants-respondents-landlord. No costs. A copy of this order be sent to the Courts below and to the parties concerned forthwith.

16. In the circumstances of the case, it is directed that the appellant-plaintiff-tenant-Kishan Lal shall hand over the peaceful and vacant possession of the suit shop or house to the respondents-defendants-landlord on or before 30.06.2016 and shall pay mesne profit @ Rs. 1,000/- per month (Rupees One Thousand only) commencing from the month of January, 2016 and will further continue to pay the mesne profit each month by 15th day of the next succeeding month or in advance to the respondents/defendants also and in case there is any default in

payment of mesne profit, the period of Six Months for eviction shall stand reduced and the decree of eviction would become executable forthwith. The appellant/plaintiff/tenant shall also clear all the arrears of rent and mesne profit and pay the same to the respondents/defendants within three months from today, otherwise the same will bear interest @9% per annum. The appellant/tenant shall also not sub-let, assign or part with the possession of the suit shop or any part thereof in favour of any one else and would not create any third party interest in the same during the aforesaid period and if it is so done, the same would be treated as void. The appellant-plaintiff shall furnish a written undertaking incorporating the aforesaid conditions in the trial court within one month and one copy thereof along with affidavit, in this Court. It is made clear that if the peaceful and vacant possession of the suit premises is not handed over to the respondents-defendants (plaintiffs for their counter-claim) within a period of Six Months from today or mesne profits are not paid as directed above, besides the expeditious execution of the decree in normal course, the respondents-defendants shall also be entitled to invoke the contempt jurisdiction of this Court.