

(2023) 04 TEL CK 0082
In the Telangana High Court
Case No : Writ Petition No. 37894 Of 2022

K.Thirumala And Others

APPELLANT

Vs

State Of Telangana And Others

RESPONDENT

Date of Decision : 25-04-2023

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 19, 300A

Citation : (2023) 04 TEL CK 0082

Hon'ble Judges : Surepalli Nanda, J

Bench : Single Bench

Advocate : G.Ravi, S.Surender Reddy, B.Shiv Kumar

Final Decision : Allowed

Judgement

1. This civil revision petition is filed challenging the propriety and legality of the order dated 27.06.2023 passed in I.A.N.483 of 2022 in O.S.No.46 of 2018 on the file of the Senior Civil Judge at Nirmal.

PERUSED THE RECORD

2. The impugned order dated 27.06.2023 passed in I.A.N.483 of 2022 in O.S.No.46 of 2018 on the file of the Senior Civil Judge at Nirmal, in particular, para 9, reads as under:

"As seen in the present suit, the issues have been framed and the suit is posted for trial. The counter claim by the defendant is allowed before the defendant has delivered his defence or before the time limited for delivering his defence has expired. When the defendant has delivered his defence and the time limit has expired for delivering his defence, as such the petition to accord leave to the petitioner to present the counter claim (subsequent pleadings) is not maintainable. Hence, at this stage, the petition to accord permission to receive the counter claim is not maintainable and liable to be dismissed."

DISCUSSION AND CONCLUSION

DISCUSSION

3. The petitioners/defendant Nos. 2 and 1, filed I.A.No.483 of 2022 under Order 8 Rule 9 read with Section 151 C.P.C. seeking grant of leave to file counter claim for declaration, and recovery of possession and mandatory injunction as against the suit claim of the respondent/plaintiff.

4. The plea of the petitioners is that the 1st petitioner purchased 23 guntas of land in Survey No.178/A of Bainsa Revenue Village under registered sale deed dated 10.02.2018 from the 2nd petitioner, but the respondent/plaintiff without any manner of right whatsoever dispossessed him i.e. the 1st petitioner and raised structures on the land and so it became necessary to seek the counter claim.

5. The respondent/plaintiff filed counter seriously opposing the petition contending, inter alia that the petition is not maintainable since the counter claim is sought to be filed, subsequent to the filing of the written statement, which is contra to the provision under Order 8 Rule 6A Sub Rule (1) C.P.C. and that he validly purchased the suit land under registered sale deed dated 21.01.1989 and that he is in possession and enjoyment of the land. He alleged that the alleged sale deed dated 10.02.2018 in favour of the 1st petitioner is created though the land shown therein is not in existence. The lower Court after considering the material on record and after hearing both side dismissed the petition on merits, aggrieved by the same, both the defendants filed the present revision petition.

CONCLUSION:

6. As can be seen from the record the defendants filed their written statement on 24.01.2019 and issues were framed on 02.08.2022. The petition seeking leave of the Court to file the counter claim was filed on 07.11.2019. It is therefore clear that the counter claim is sought to be filed with the leave of the Court long after filing of the written statement. Order 8 Rule 6 (A) clearly stipulates that a defendant may file counter claim as against the claim of the plaintiff before the defendant delivered his defence or before the time limited for delivering his defence has expired. Here the defendant filed the written statement on 24.01.2019, whereas the counter claim is sought to be filed nearly ten months after filing of the written statement and more particularly after the issues were framed.

7. The Apex Court in the judgment dated 19.11.2019 reported in 2020(2) SCC page 394 in Ashok Kumar Karla v Wing CDR Surendra Agnihotri and others at para 21 observed as under:

"We sum up our findings, that Order VIII Rule 6A of the CPC does not put an embargo on filing the counterclaim after filing the written statement, rather the restriction is only with respect to the accrual of the cause of action. Having said so, this does not give absolute right to the defendant to file the counterclaim with substantive delay, even if the limitation period prescribed has not elapsed.

The court has to take into consideration the outer limit for filing the counterclaim, which is pegged till the issues are framed. The court in such cases have the discretion to entertain filing of the counterclaim, after taking into consideration and evaluating inclusive factors provided below which are only illustrative, though not exhaustive:

- i. Period of delay.
- ii. Prescribed limitation period for the cause of action pleaded.
- iii. Reason for the delay.
- iv. Defendant's assertion of his right.
- v. Similarity of cause of action between the main suit and the counterclaim.
- vi. Cost of fresh litigation.
- vii. Injustice and abuse of process.
- viii. Prejudice to the opposite party.
- ix. and facts and circumstances of each case.
- x. In any case, not after framing of the issues.

8. From the above decision, it is evident that leave to file counter claim cannot be sought for after framing of issues.

9. Taking into consideration the aforesaid facts and circumstances and the law laid down by the Apex Court in the judgment dated 19.11.2019 reported in 2020(2) SCC page 394 in Ashok Kumar Karla v Wing CDR Surendra Agnihotri and others (referred to and extracted above), this Court opines that the petitioners are not entitled for grant of leave for filing the counter claim by invoking the provision of Order 8 Rule 6A of C.P.C. and accordingly, the civil revision petition is dismissed since the same is devoid of merits. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.