
(1992) 10 PAT CK 0006

In the Patna High Court

Case No : Civil Revision No. 459 of 1990 (R)

Most. Pemlo alias Pemplo and Another

APPELLANT

Vs

Hiralal Mahto and Others

RESPONDENT

Date of Decision : 01-10-1992

Acts Referred:

Citation : (1992) 10 PAT CK 0006

Final Decision : Dismissed

Judgement

Binod Kumar Roy, J.—Defendants Nos. 1 and 2 assail an order rejecting their counter claim made in their written statement.

The Matrix:

2. Plaintiffs-Opposite Party Nos. 1 and 2 (son and widow respectively of Defendant No. 3-Opposite Party No. 3 Roshan Mahto) filed the suit in question impleading the Petitioners (widow and daughter respectively of Late Tiplu Mahto, who was brother of Roshan Mahto) as Defendants Nos. 1 and 2 for declaring their title to over the lands described in Schedules B, D and F of the Plaint and for confirming their possession. The alternatively prayed to restore their possession by evicting the Defendants, if found dispossessed during the pendency of the suit. They also prayed that the Defendants be permanently enjoined from interfering with their possession over the land in suit. They prayed for yet Anr. alternative relief that if the court comes to a finding, that the Defendants have shares in the lands described in Schedule B of the plaint, in that event a preliminary decree for partition of their 2/3rd shares in those lands after appointing a survey knowing Pleader Commissioner and carving a separate takhta of their 2/3rd shares and for giving Khus possessions to them be passed.

3. The Petitioners filed a joint written statement with counter claim under Order VIII Rule 6-A of the CPC (hereinafter to be referred to as the Code) denying the correctness of the claim of the Plaintiffs and prayed to dismiss the suit. They also prayed to grant reliefs by way of counter claim to this effect: (a) It be declared

that the lands detailed in Schedules I, II and III of their written statement are joint, family lands in which they have 50% shares, (b) A decree for partition be passed in their favour in respect of their 50% share in the aforesaid lands and a separate lot be carved out by appointment of survey knowing Pleader Commissioner, (c) It be declared that the sale deeds dated 31.3.1970 and 25.7.1970 alleged to be executed by Narain Mahto in favour of the Plaintiffs are sham, showy, without consideration, null and void and are not binding on them and (d). It be declared that alleged transfers by the Plaintiffs in respect of the lands described in Schedule III of their written statement are sham, showy, without consideration, null and void and not binding on them, alternatively, these lands be adjusted in the shares of the Plaintiffs and Defendant No. 3.

4. Defendant No. 3 also filed a written statement dubbing the claim of the Defendants 1 and 2 as incorrect and mala fide.

5. The matter in regard to the counterclaim made by the Petitioners was heard and by the impugned order it was rejected on the ground that it does not appear justifiable to treat their written statement as a counterclaim observing that within the purview of a declaratory suit a claim for partition does not come.

The Backdrop of reference to a Division Bench:

6. When this application came up for hearing before a learned Single Judge, a view was taken that the Division Bench judgment of this Court in Jashwant Singh Vs. Smt. Darshan Kaur and Others, holding that a counter claim is maintainable only in a case of money claim, the decision of the Supreme Court in Laxmidas Dahyabhai Kabarwala Vs. Nanabhai Chunilal Kabarwala and Others, was not considered. It was also considered that even though in Mahendra Kumar and Another Vs. State of Madhya Pradesh and Others, the question was not decided but it is relevant as it has arisen in a suit in which dispute of title was involved. The Kerala High Court in Raman Sukumaran v. Velayudhan Madhavan, reported in AIR 1982 Ker 252, and in Pathrose Samuel v. Karumban Parameswaran, reported in AIR 1988 Ker 161, has correctly held that on a plain reading of Order VIII Rule 6-A of the Code of Civil Procedure, it cannot be said that a counter claim must be confined only to a money claim. Hence the decision of this Court in Jashwant Singh (supra) requires re-consideration.

The Submissions:

7. Mr. N.K. Prasad, learned Counsel appearing for the Petitioners, submitted as follows: The Division Bench judgment of this Court in Jashwant Singh (supra) is incorrect inasmuch as the earlier decision of the Supreme Court in Laxmidas Dayabhai Kabrawala (supra) was not considered. In Mahendra Kumar (supra) the Supreme Court held that a counter claim in a suit in which title alone was in dispute, can be filed even after filing of the written statement. Since the Division Bench in Jashwant Singh (supra) had not considered the earlier judgment of the Supreme Court in Laxmidas (supra), it is not even binding on us and, thus, there is no necessity to refer this case to a larger Bench. The new rules confer

statutory rights in the Petitioners to set up their counter claim. The words "a claim for damages or not" mentioned in Rule 6-A of Order VIII of the Code are wide and are couched in such a way which shows that counter claim can be brought in respect of any claim and not to money claims alone. He placed strong reliance in this regard on the comments made in "Mulla on the Code of Civil Procedure, Volume II 14th Edition" and the two decisions of the Kerala High Court referred to above.

8. Mr. Banerjee, learned Counsel for the Opposite party, on the other hand submitted that the decision of the Division Bench of this Court is correct and instead of referring this case to a larger bench, it should be followed and the revision application be dismissed.

My Findings:

9. Rules 6-A to 6-G of Order VIII of the Code run as follows:

6-A. (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 counterclaim 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 jurisdiction of the Court.

(2) Such counterclaim 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 counterclaim.

(3) The Plaintiff shall be at a 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.

6-B. Where any Defendant seeks to rely upon any ground as supporting a right of counter claim, shall, in his written statement, state specifically that he does so by way of counter claim;

6-C. Where a Defendant sets up a counter claim and the Plaintiff contends that the claim thereby raised ought not be disposed of by way of counter claim but in an independent suit, the Plaintiff may, at any time before issues are settled in relation to the counter claim, apply to the Court for an order that such counter claim may be excluded and the Court may, on the hearing of such application make such order as it thinks fit.

6-D. If in any case in which the Defendant sets up a counter claim, the suit of

the Plaintiff is stayed, discontinued or dismissed, the counter claim may nevertheless be proceeded with.

6-E. If the Plaintiff makes default in putting in a reply to the counterclaim made by the Defendant, the Court may pronounce judgment against the Plaintiff in relation to the counter claim made against him, or make such order in relation to the counter claim as it thinks fit.

6-F. Where in any suit a set-off or counter claim is established as a defence against the Plaintiff's claim, and any balance is found due to the Plaintiff or the Defendant, as the case may be, the Court may give judgment to the party entitled to such balance.

6G. The rules relating to a written statement by a Defendant shall apply to a written statement filled in answer to a counter claim.

10. The Comments made in regard to the aforementioned Rules in "Mulla on the Code of Civil Procedure, Volume II, 14th Edition, are as follows:

Rules 6A to 6G are new and confer in addition to a right of set-off under Rule 6A statutory right to file a counter claim. Before their addition in 0.8 a set-off and counter claim were strictly speaking not permissible unless they fell within the limited compass of Rule 6 (*Laxmidas v. Nanabhai* 1964 SC 11). Even in the case of an equitable set-off where the Defendant's claim made in the set off was larger than the Plaintiff's claim and courts in view of 0.20, Rule 9 allowed a counter claim for the balance amount as a cross suit, such procedure was admitted only where the claim in the plaint and that in the counter claim arose from the same transaction or a series of transactions which amounted to the same transaction. The new rules now confer a statutory right to a Defendant to set up a counter claim. The claim need not be for liquidated amount. That is clear from the words "a claim for damages or not" in Rule 3A. The wide words in which Rule 6A is couched shows that it can be brought in respect of any claim that could be the subject of an independent suit. It is no longer confined to money claims or to causes of action of the same nature as the original action and it need not relate to or be connected with the original cause of action or matter. The words "any right or claim in respect of a cause of action accruing to the Defendant" show that the cause of action from which the counter claim arises need not arise from or have any nexus with the cause of action pleaded by the Plaintiff. A claim founded in tort may be opposed by one founded on contract. Further, the Defendants by his counter claim may ask for any relief e.g. a declaration, relief against forfeiture, injunction, receiver, specific performance, an account, payment of a money claim or damages. The words both before or after the filing of the suit" in the suit" in Rule 6A show that a Defendant may set up a cause of action which has accrued since the suit was filed.

The effect of a counter claim is to place the Plaintiff in the position of the Defendant who must defend himself and put in a reply thereto or suffer judgment in relation to the counter claim (See Rule 6E) Since a counter claim is

an independent suit allowed to be heard together with a Plaintiff's suit to enable the Court to pronounce one judgment it would appear that where there are several co Plaintiffs a counterclaim would be allowable either against all of them or some of them only (*Manchester and Sheffield Rly. Co. v. Brooks* (1977) 2 Ex. D. 243).

Since a counter claim is in its nature a cross suit, a Defendant seeking to avail himself of a counter claim must set out all the materials facts on which he relies in support thereof with the same particularity as he would as a Plaintiff in an independent suit.

A counter claim may contain more than one cause of action provided the different causes of action are such as can be joint in a suit as an independent suit. Rules applicable to the form of a plaint would apply to a counterclaim (Rule 6A(4)).

11. There cannot be any doubt that the words used in Rule 6A are very wide but to my mind the expressions used therein cannot be said to be settlor of the issue.

12. It is a settled rule of interpretation of statutes that the court must endeavour to harmonise different provisions of the same Act and prefer an interpretation which lead to a harmonious construction rather than lead to inconsistency or to make a provision .redundant. We must keep in mind that Rule 6A to 6G of Order VIII of the Code were brought together in the Code by the Amending Act of 1976.

13. While making the aforementioned commentary, apparently the learned commentator has overlooked the provisions of Rule 6F of Order VIII of the Code which lays down the procedure, the Court has to follow when a counterclaim is established. This provision clearly speaks of a balance which means money. By no stretch of imagination it can be said that its provision applies to the cases of title and/or ascertainment of shares in a property.

14. Besides, Rule 19(1) of Order XX of the Code, which is also relevant for the purpose of construing the provisions of Rule 6 of Order VIII are as follows:

Where the Defendant has been allowed a set-off (or counterclaim) against the claim of the Plaintiff, the decree shall state what amount is due to the Plaintiff and what amount is due to the Defendant, and shall be for the recovery of any sum which appears to be due to either party.

This provision also shows that a counter claim has to be in relation to money.

15. It further appears that the provisions of Rule 19(1) of Order XX have also not been considered by the learned Commentator. In my view, Rule 6A of Order VIII of the Code has to be considered along with Rule 6F and Rule 9(1) of Order XX of the Code. In *Jashwant Singh* (supra) this Court, after taking into consideration Rule 6F and Rule 19(1) of Order XX of the Code aforesaid speaking through Nagendra Prasad Singh, J (as he then was, now of the Hon"ble Supreme Court) and Ashwini Kumar Sinha, J., held that a counter claim can be made in such suits

in which there is a dispute in respect of money.

16. In *Laxmidas Dahyabhai Kabarwala Vs. Nanabhai Chunilal Kabarwala and Others*, , also the suit in question was filed claiming, inter alia, that the account of the partnership, which stood dissolved, had been settled. Thus, this decision is not an authority to support the proposition mooted before us rather it supports the ratio laid down by our division bench.

17. In *Mahendra Kumar and Another Vs. State of Madhya Pradesh and Others*, this question was not gone into at all. What was decided therein that on the face of Rule 6A(1) of Order VIII of the Code, there is no bar to filing of a counterclaim even after filing of a written statement. In this context it is relevant to remember the settled dictum that a precedent is an authority only for which it actually decides and not for what may remotely or even logically follow from it. (See *Goodyear India Ltd., Gedore (India) Pvt. Ltd., Kelvinator of India Ltd. and the Food Corporation of India and Another Vs. State of Haryana and Another*,). It cannot be suggested and very fairly it was not suggested by Mr. Prasad that this question was gone into by the Supreme Court.

18. Now I proceed to consider the judgments of two learned Single Judges of Kerala High Court relied upon by Mr. Prasad. The first *Raman Sukumaran v. Velayudhan Madhavan*, reported in AIR 1982 Kerala 252. With greatest respect, even though Rule 6F was referred to therein but it has not been considered in its true perspective vis-a-vis Rule 19(1) of Order XX of the Code. *Laxmidas* (supra) was considered observing that the suit in question was not a money suit. I have already pointed that the suit in question in this case was also for accounts which is apparent from a bare perusal of the judgment. Besides, it is a judgment rendered prior to the division bench judgment of our own High Court. The later judgment *Pathrose Samuel v. Karumban Paramaswaran* reported in AIR 988 Ker 161 expressly dissented from our judgment but for the reasons already stated as above, I beg to differ respectfully and prefer to follow our own Division Bench's judgment which is also binding on us.

19. In the aforementioned view of the matter, I do not see any merit in this civil revision application. It is accordingly dismissed but in the peculiar facts and circumstances, I make no order as to cost.

R.N. Prasad, J.

20. I agree.