
(1996) 12 GAU CK 0012
In the Gauhati High Court
Case No : Civil Revision No. 331 of 1994

Nurul Haque Choudhury

APPELLANT

Vs

Safiqul Haque Choudhry and Others

RESPONDENT

Date of Decision : 04-12-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, Order 8 Rule 6, Order 8 Rule 6A,
Order 8 Rule 6B, Order 8 Rule 6C
Limitation Act, 1963 — Article 113

Citation : (1998) 4 GLT 457

Hon'ble Judges : J.N. Sharma, J

Bench : Single Bench

Advocate : N. Dhar and M.H.R. Borbhuiyan, for the Appellant; H.R.A. Choudhury, S. Baruah and K.A. Mazumdar, for the Respondent

Final Decision : Allowed

Judgement

J.N. Sarma, J.—This Civil Revision is against the order dated 21.4.94 passed by the Munsiff No. 2 Karimganj (now Civil Judge (Jr) Division No. 2) in Title suit No 235 /87 allowing an application with a prayer to file counter claim by the Defendant.

2. A suit was filed on 16.7.87 for declaration of title, confirmation of possession and injunction, The Written statement was filed on 18.11.87. Because of usual delay in Civil Court hearing (examination of witness) did not start till 21.4.94. Thereafter an application was filed by Defendants Nos. 1, 2, and 3 under Order 6 Rule 17 read with Section 151 CPC to insert a counter claim in the Written statement for declaration of title and possession of Defendants Nos. 1, 2 and 3. The schedule of counter claim with prayers are quoted below:

(Ga) The principal Defendants No. 1, 2, 3 on receipt of the notice and copy of the plaint of the suit filed by the Plaintiff in the year 1987 have come to know that the Plaintiff had collusively recorded his name in the Khatian of the suit land. In fact there had been no title or possession of the Plaintiff over the suit land. The

Plaintiff had collusively recorded his name in the khatian of the suit land and is thereby claiming title and possession over the suit land as against the Principal Defendant Nos. 1, 2, and 3 which is the cause of action for filing the counter claim and it had arisen within the jurisdiction of the court since the year 1987 A D when the Plaintiff of taking advantage of his name in the khatian of the suit land had claimed the suit land and when it had come to the knowledge of the answering Defendant Nos. 1,2, and 3 on dates subsequent thereto.

That for the purpose of jurisdiction and court fees for declaration that the names of the Plaintiff and his co-sharer had been recorded illegally in the khatian of the suit land and for declaration that it has been cancelled and a fixed court fee of Rs. 22/- is paid for declaratory relief

Thofore the answering Defendant No 1, 2 and 3 pray as follows:

(1) For declaration that the Plaintiff has not title over the suit land and for declaration of title of the defendant over the suit land.

(2) For declaration that the name of the Plaintiff has been included illegally and collusively in the khatian on the suit land and as such it is liable to be cancelled.

(3) For such further and other relief to which the answering Defendant No 1, 2, and 3 are entitled including cost and to pass a decree in favour of the Defendant No, 1, 2 and 3 are entitled including cost and to pass a decree in favour of the Defendant Nos 1, 2, and 3 of the bias counter claim filed by them.

3. An objection was filed by the Plaintiff which inter alia are as follows:

The application submitted by the Defendant is barred under Order 8 Rule 6(b) and is thofore barred under the provisions of order 6 of the Code of Civil Procedure.

That if the written statements is allowed to be amended in this way then it would be proved in the face of the record that the Defendant are avoiding to take risk of filing a fresh suit and are filing the counter claim on taking advantage of the suit filed by the Plaintiff without having paid the court fee for such relief.

That it is clear on the face of the application submitted by the Defendant that they are trying to ammend the written statement without resorting to the provisions of Order 8 Rule 6(B) of the CPC for inserting the counter claim in the written statements and as such the application being fradulent is liable to be dismissed with cost.

That the application submitted by the Defendant is not all for ammending the written statement but it is application to file additional written statement in the form of counter claim and thereby to create a new case other than the one set up by the Defendant earlier.

That the cases of action for filing the suit by the Plaintiff and the cause of action for filing the application for inserting counter claim in the written statement of

the Defendant are all together different. The Defendants is trying to substitute a new cause of action and a new nature of the case and thereby to cause injustice to the Plaintiff. Therefore the application submitted by the defendants for ammendment of the W/S after they had already submitted it and now by inserting a separate counter claim in it and thereby the Defendants are trying to create a new case and as such the application submitted by the Defendants is liable to be rejected.

That the averments made by the Defendant in their application to the effect that the Plaintiff has collusively recorded his name in the khatian of the suit land are all false and baseless. The statements made by the Defendant in their application to tfie effect that they have come to know about the name of the Plaintiff having recorded in the khatian of the receipt of the notice and the statements made in the Plaintiff and accordingly the filing of counter claim had become necessary are all false statement.

The name of the Plaintiff has been recorded in the land records of the suit land in the year 1969 in the final settlement and final khatian issued in respect of the suit land.

The Defendant Nos. 1, 2 and 3 have not perused the settlement records in respect of the suit land before their alleged claim of having purchased the suit land. The defendants accordingly have filed the present application on their imaginary beliefs and on the basis of the false statements in order cause, injustice to the Plaintiff.

4. The learned trial court found that the reliefs sought for in the counter claim is related to the matters involved in the suit filed and the matter can be easily decided along with the Plaintiffs suit and allowing counter claim shall cause no prejudice to the Plaintiff and accordingly allowed the prayer. Hence this Revision.

5. I have heard Shri N. Dhar, learned Advocate for the Petitioner and Shri H.R.A. Choudhury, learned Advocate for the Opposite parties.

6. A counter claim is substantially a cross suit It is really a weapon of offence and enables a Defendant to enforce a claim against the Plaintiff as effectively as in an independent action. It need not be an action for the same nature as the original action of even analogous thereto. In Black''s Law Dictionary it is defined as a claim presented by a Defendant in opposition to or deduction from the claim of the Plaintiff. If established such a claim will defeat or diminish the Plaintiff''s claim. A counter claim may be any cause of action in fevour of one or more Defendants or a person whom a Defendant represents against one or more Plaintiffs. In Halsbury''s Law of England regarding counter claim there is an illustration as follows: When A has a claim of anything against B, and brings an action to enforce such claim and B has a cross claim of any kind against A which by law he is entitled to raise and can be disposed of in an action brought by A, then B is said to have a right of counter claim. Earlier there a view that counter claim can be only by way of set off for other claims there must be a separate

suit, that has been set at rest by amendment to CPC in 1976 by inserting Order 8 Rule 6A to G and Order 8 Rule 7 Code of Civil Procedure.

7. Rule 6 of Order 8 specifically provides that it is to be filled before the Defendant has delivered his defence. This aspect of the matter came up for consideration in Mahendra Kumar and Another Vs. State of Madhya Pradesh and Others, where the Supreme Court in para 15 pointed out that a counter claim must be filed within 3 years from the date the right to sue accrues as provided in Article 113 of the Limitation Act. In this case before us the written statement was filed in 1987 and counter claim was filed in 1992. So, it is barred by Limitation. So, is the law laid down in (1997) 8 SCC 174 (Shanti Rani Das Dewanjee v. Dinesh Chandra Day).

8. That being the position the counter claim of defendant is prima facie barred by limitation. Accordingly, the impugned order dated 21.4.94 passed in Title suit No. 235/87 shall stand quashed and counter claim shall stand rejected. The Revision is allowed. No costs.