
(1993) 04 GAU CK 0020
In the Gauhati High Court
Case No : Civil Revision No. 57 of 1989

Ranjit Das Purkayastha

APPELLANT

Vs

Smti Sandhya Rani Das Purkayastha and Another

RESPONDENT

Date of Decision : 01-04-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 6, Order 8 Rule 6(1), Order 8 Rule 6A, Order 8 Rule 6A(1), Order 8 Rule 6A(2)

Citation : (1993) 2 GLR 18

Hon'ble Judges : S.N. Phukan, J

Bench : Single Bench

Advocate : M.A. Laskar and S.K. Nor Mohammed, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

S.N. Phukan, J.—This application u/s 115 CPC is directed against the order dated 28.11.88 parsed by the learned Munsiff No. 1, Karimganj in Title Suit No. 198 of 1987. By this order, the learned Munsiff rejected the objection filed by the Plaintiff against the counter-claim filed by the Defendant.

2. The Plaintiff who is the Petitioner herein, filed the suit for declaration of right, title and recovery of khas possession and also for "injunction". In the written Statement the Defendant set up title over the suit land and accordingly said written statement was treated as a counter-claim. An objection was filed against the counter-claim which was rejected. According to learned trial court the counter-claim in Title Suit is maintainable in view of Section 6A Code of Civil Procedure.

3. Heard Mr. S.K. Noor Mohammed, learned Counsel for the Petitioner. None, appears for the Respondent-Defendant although notice was served.

4. First point raised by Mr. Noor Mohammed is that a counterclaim can be filed only in money suit and not in a title suit. Secondly, learned Counsel has urged

that even if counter-claim is maintainable, the learned court erred in law in rejecting the objection of the Plaintiff and should have treated it as a written statement which should be considered at the time of passing the final judgment.

5. I may quote below Sub-rule (1) of Rule 6 of Order VIII and also Sub-rules (1) & (2) of 6A. These rules runs as follows:

6. Particulars of set off to be given in written statement:

(1) Where in a suit for the recovery of money the Defendant claims to set-off against the Plaintiff's demand any ascertained sum of money legally recoverable by him from the Plaintiff, not exceeding the pecuniary limits of the jurisdiction of the Court, and both parties fill the same character as they fill in the Plaintiff's suit, the Defendant may, at the first hearing of the suit, but not afterwards unless permitted by the Court, present a written statement containing the particulars of the debt sought to be set-off.

6A. Counter claim by Defendant--(1) A Defendant in a suit may, in addition to his claim 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.

The Rule 6 is absolutely clear and there, cannot be any doubt that under this rule a counter claim can be filed only in a money suit. This Court is mainly concerned, in the present case with Rule 6A.

6. Rule 6 was amended and Rule 6A to Rule 6G were amended and substituted by the amending Act of 1976. These rules not confer a legal right on the Defendant to put up a counter claim. I may refer to two expressions in Rule 6A viz. "any right or claim in respect of a cause of action accruing to Defendant against the Plaintiff" and "a claim for damages or not". In this Rule 6A the opening words namely "a Defendant in a suit may" may also be noted. From these three expressions in Rule 6A, it is clear that Defendant may file a counter claim in any, suit in respect of any claim that could be the subject matter of an independent suit and such counter claim is no longer confined only to money claim after amendment of 1976. Under Rule 6A, the causes of action accruing to the Defendant may be even after filing of the suit by the Plaintiff. Further reading the entire Rule 6A, I am of the opinion that a counter claim of the Defendant need not arise or have any nexus with the cause of action pleaded by the Plaintiff e.g. against the claim founded on tort, a counter claim can be pleaded on the

basis of a contract. Defendant by the counter claim may also claim for reliefs such as declaration, injunction, accounts etc. In this connection I may refer to another expression used in Rule 6A namely "any right or claim in respect of a cause of action accruing to Defendant against the Plaintiff either before or after filing of the suit, but before the Defendant has delivered his defence". This expression has also widen the scope of counter claim, inasmuch as, it can be set up against a cause of action which might have accrued after the suit was filed as stated above. In view of Sub-rule (4) of Rule 6A such counter claim has to be treated as a plaint.

7. To sum up I hold that under Rule 6A of Order VIII CPC a Defendant may set up a counter claim in any suit and it need not be confined only to money suit. In respect of money suit Defendant can plead a set off under Rule 6A of Order VIII. In a counter claim under Rule 6A, Defendant may file the counter claim even in respect of causes of action which might have accrued after filing the suit, but before filling written statement and such counter claim shall be treated as a plaint and shall be governed by the rules of pleadings as contained in the Code of Civil Procedure.

8. In view of the above legal position acceptance of the counterclaim by the trial court cannot be faulted.

9. The impugned order is however bad to the extent of rejection of the objection filed by the Plaintiff. This objection should have been treated as a written statement as the counter claim is just like a separate suit. Therefore, the impugned order is modified to the extent that the objection filed by the Plaintiff shall be treated as written statement against the counter claim and the Plaintiff shall be given further liberty to file additional written statement.

In the result, the petition is allowed to the extent indicated above. The petition is disposed of. No costs.