
(2010) 06 GAU CK 0027

In the Gauhati High Court

Case No : Civ. Revision Petition No. 81 of 2010

Sabitri Nath and Others

APPELLANT

Vs

Smt. Sabitri Deb and Others

RESPONDENT

Date of Decision : 16-06-2010

Acts Referred:

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

Citation : AIR 2010 Guw 169 : (2010) 4 GLT 374

Hon'ble Judges : I.A. Ansari, J

Bench : Single Bench

Advocate : S. Senapati, Md. Aslam and D. Mazumdar, for the Appellant; A.K. Goswami, S. Banik and B. Sarma, for the Respondent

Final Decision : Dismissed

Judgement

I.A. Ansari, J.—By instituting a suit, which gave rise to Title Suit No. 21/2003, the present Petitioners' predecessor-in-interest sought for a declaration of his status as a tenant of the Defendant No. 1 in respect of the suit premises, for confirmation of his possession and also for permanent injunction restraining the Defendants from interfering with his (Plaintiff's) possession of the suit premises. The opposite party herein, who were the Defendants in the said suit, resisted the suit, wherein, apart from denying the existence of any relationship of landlord and tenant between the Petitioner and the Defendant No. 1, it was claimed that the Plaintiff was a licensee of the Defendant No. 1, Defendant Nos. 2 and 3 being tenants of Defendant No. 1. Defendant No. 1 also sought for eviction of the Plaintiff (the present Petitioners' pre-decessor-ininterest) from the suit premises. The suit and also the counter-claim, which was treated as cross-suit, were accordingly proceeded with.

2. In course of time, both the parties adduced their evidence. By judgment and order, dated 8-8-2006, the suit was dismissed by the learned Munsiff No. 1, Cachar, Silchar, but the counter-claim was decreed holding the Plaintiff (i.e. the

predecessor-in-interest of the present Petitioners) as a licensee of the Defendant No. 1 in respect of the suit premises and also for his eviction therefrom. Aggrieved by the dismissal of his suit, an appeal was preferred, which gave rise to Title Appeal No. 53/2006. By judgment and order, dated 25-11-2009, as the learned Civil Judge No. 1, Cachar, Silchar, has dismissed the appeal, the Petitioners have come to this Court seeking, with the help of this revision petition, appropriate order setting aside the judgment and order impugned in this revision.

3. I have heard Ms. S. Senapati, learned Counsel for the Plaintiff-Petitioners, and Mr. A.K. Goswami, learned Senior counsel, appearing on behalf of the Defendants-opposite party.

4. It has been contended by Ms. Senapati, learned Counsel for the Plaintiff-Petitioners, that in the case at hand, when the Plaintiff's suit was for declaration of his status as tenant of the Defendant No. 1, in respect of the suit premises, the counter-allegations, made by the Defendant No. 1, - that the Plaintiff was a licensee and not a tenant under the Defendant No. 1 and when the Defendant No. 1, had asked the Plaintiff to vacate the suit premises, the Plaintiff's licence stood terminated and the Plaintiff ought to have vacated the suit premises and as the Plaintiff had failed to vacate the suit premises, he was liable to be evicted therefrom - ought not to have been treated as a counterclaim in the suit inasmuch as the subject-matter of the suit and the subject-matter of the counter-claim, which the Defendant No. 1 had made, were wholly distinct and different from each other.

5. It is further submitted by Ms. Senapati, learned Counsel, that the finding reached by the learned Courts below, to the effect that the Defendant was a licensee and not a tenant, is perverse inasmuch as the evidence on record, apart from proving the case of the Plaintiff that he was a tenant, belies the Defendants' plea that the Plaintiff was a licensee and not a tenant.

6. Resisting the revision, Mr. A. K. Goswami, learned senior counsel, appearing on behalf of the Defendants-opposite party, submits that under the scheme of the CPC (in short "the Code"), a counter-claim, which Order VIII, Rule 6A introduces, need not necessarily remain confined to the subject-matter of the suit and that the subject-matter of a suit and the counterclaim, made therein, may be wholly distinct and different from each other, the only limitation being that the counter-claim must find its mention in the written statement and must be filed before the date for filing of the written statement expires. Support for the submission, so made, is sought to be derived by Mr. Goswami from the case of Gurbachan Singh Vs. Bhag Singh and others,

7. As regards Ms. Senapati's contention that the finding, as recorded by the learned Courts below, that the Plaintiff was not a tenant but a licensee, is perverse, Mr. Goswami submits that the finding, reached by the learned Courts below that the Plaintiff was a licensee and not a tenant, is supported by cogent,

convincing and unassailable evidence on record and, therefore, calls for no interference by this Court.

8. In the light of the submission, made by Ms. Senapati, that the Plaintiff's case being that he is a tenant under the Defendant No. 1 and the said Defendant's case being that the Plaintiff was his licensee and not a tenant, not only the cause of action, but also the nature of reliefs, which the parties had sought for, were wholly distinct from, and unconnected with, each other and, hence, the plea of the Defendant No. 1 that the Plaintiff was not a tenant, but a licensee and that he was liable to be evicted from the suit premises, when he had been asked by the Defendant No. 1 to vacate the suit premises, it becomes clear that what is contended by Ms. Senapati is that a counter-claim must arise out of the cause of action, which gave rise to the Plaintiff's suit or must be traceable to the cause of action, which the Plaintiff claims to have had. Consequently, when the cause of action, which the Plaintiff pleads, is not same in nature as the cause of action, which the Defendants pleads, question of treating such a plea of the Defendant as a counter-claim does not arise at all.

9. The question, therefore, which arises for consideration is thus : whether the cause of action, in a counter-claim, must be traceable to the Plaintiff's cause of action and, secondly, whether the nature of the suit or the nature of reliefs claimed by the Plaintiff as well as the Defendant must be same in order to treat the plea of the Defendant as a counter-claim. To put it a little differently, the question is: whether cause of action of a counter-claim may be different from the cause of action of the Plaintiff's suit ?

10. While considering the question posed above, it needs to be pointed out that before Rule 6 of Order VIII underwent amendment by introducing Rules 6A to 6G, a counterclaim or set off could have been set up only in a suit for monetary claim. In order to avoid multiplicity of proceedings, the Law Commission of India recommended that the Defendants should be allowed to raise, in addition to the plea of set off, a counter-claim in the same suit irrespective of fact as to whether the cause of action for the counter-claim or set off had accrued to the Defendant before or after filing of the suit. The recommendation, having been accepted, Rule 6-A to Rule 6-G have been added introducing thereby provisions for making of counter-claim in suits, which may not be for recovery of money, the limitation being that the counterclaim or set off must be pleaded before the Defendant files his written statement or before time limit for delivery of the written statement expires irrespective of fact as to whether such counter-claim is in the nature of claim for damages or not. Further limitation is that the counter-claim shall not exceed the pecuniary limit of the jurisdiction of the Court, where the suit is instituted. In other words, the Court, where the suit is instituted, cannot be divested of its power to try the suit, which it had already entertained. No wonder, therefore, that in *Gurbachan Singh Vs. Bhag Singh and others*, which Mr. Goswami relies upon, the Supreme Court held that in the light of the provisions of Order VIII, Rule 6-A, in a suit for injunction, a counter-claim for possession

can also be entertained.

11. While considering the scope of Rule 6-A of Order VIII, it also needs to be borne in mind that the expression, "before the Defendant has delivered his defence or before the time limited for delivering his defence has expired", which appears in Rule 6A, necessarily implies that the counter-claim may relate to the cause of action, which had arisen before or after filing of the suit, but the counter-claim must be made by the Defendant before he has delivered his defence or before the time for delivering his defence, by way of written statement, has expired. This, in turn, means that while the Defendant's cause of action for a counterclaim may be different from the cause of action of the Plaintiff's suit and the cause of action for the counterclaim may arise after the Plaintiff's suit stood instituted or cause of action might have arisen before the Plaintiff's suit came to be instituted, what is required is that the counterclaim must be made before the written statement is filed or before the date for filing of written statement-expires.

12. While considering the above aspect of the matter, it is noteworthy that the Supreme Court in Jag Mohan Chawla and another Vs. Dera Radha Swami Satsang and others, observed thus, "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 of 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 protraction, the legislature intended to try both the suit and the 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 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.

(Emphasis is supplied)

13. In the light of the law laid down in Gurbachan Singh (supra) and Jagmohan Chawla (supra) and the discussion held above, it no longer remains res integra

that the cause of action for a counter-claim may have arisen before a suit is instituted (wherein the Defendant seeks to file his written statement) and the cause of action for a counterclaim may arise after the suit has been instituted. In either case, making of a counter-claim is possible. The limitation, however, is that the cause of action must arise before the written statement is filed. A Defendant can claim any right by way of 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 such cause of action adjudicated without relegating the Defendant to file a separate suit. What may, however, be noted is that Order VIII, Rule 6C lays down that when a Defendant sets up a counter-claim and the Plaintiff contends that the claim, so raised, ought not to be disposed of by counter-claim, but by way of an independent suit, the Plaintiff may, at any time, but before the issues are settled in relation to the counter-claim, apply to the Court for an order that such counter-claim may be excluded and, upon hearing such an application, the Court may direct that the counter-claim be registered as independent suit. This indicates that when a counter-claim is made, the Court, in a given case, does have the power to direct that the counterclaim be tried as independent suit if the Plaintiff applies to the Court for an order in this regard.

14. Coming to the perversity of the findings, it needs to be noted that according to the findings, reached by the learned trial Court as well as by the learned appellate Court, the Petitioner was a licensee under the Defendant No. 1 and he is bound to vacate the suit premises on being asked by Defendant No. 1. Unless these findings can be said to be perverse and/or contrary to law, it would not be possible to interfere with such findings of fact.

15. With regard to the above, it needs to be noted that it has been the case of the Defendant No. 1, as correctly noted by the learned Courts below, that the Plaintiff runs a pan (i.e. betel-nut) shop at the verandah of the suit premises, which were under the occupation of the Defendant No. 3, as a tenant of the Defendant No. 1 and, when the Defendant No. 3 piled bricks in front of the said shop, the Plaintiff was forced to close the shop. Apart from the fact that the Plaintiff could not produce any documentary evidence to support his right of tenancy, what needs to be noted is that the Plaintiff's own case has been that he had been occupying a portion of the premises, which fell under the tenancy of the Defendant No. 3. In fact, it is not in dispute that Defendant No. 1 is the owner of the suit premises where the Defendant No. 3 is a tenant of Defendant No. 1 and that the Defendant No. 2 is another tenant of the Defendant No. 1. It is, thus, clear that the suit premises were held by the Defendant No. 3, as tenant, under Defendant No. 1.

16. Moreover, the evidence on record clearly discloses that the tenancy, in favour of the Defendant No. 3, has been in existence for the last more than twenty years. In such circumstances, the learned Courts below were not incorrect in taking the view that the Plaintiff had failed to prove, that he was a tenant under

Defendant No. 1 and not a licensee, as had been contended by the Defendant No. 1. In such a situation, when the Plaintiff was asked by the Defendant No 1 to vacate the suit premises, the Plaintiff ought to have vacated the suit premises. As the Plaintiff had failed to vacate the suit premises and, instead, instituted the suit seeking declaration of his status as tenant, the learned trial Court was wholly correct in turning down the prayer for declaration of status of the Plaintiff as a tenant of the Defendant No. 1 and in holding that the Plaintiff was a licensee, as mentioned hereinbefore, and was, therefore, liable to be evicted from the suit premises. These findings, in the considered view of this Court, have been legally and correctly arrived at by the learned trial Court and rightly upheld and affirmed by the learned appellate Court.

17. Situated thus, this Court finds no merit in this revision. This revision is, therefore, not admitted and shall accordingly stand dismissed.

18. In view, however, of the fact that neither the learned trial Court nor the learned appellate Court has allowed any time to the present Petitioners to vacate the suit premises, this Court is of the view that in the facts and attending circumstances of the present case, the learned Courts below ought to have allowed reasonable period of time to the Plaintiff-Petitioners to vacate the suit premises.

19. Considering, therefore, the matter in its entirety and in the interest of justice, the Plaintiffs-Petitioners are hereby directed to vacate the suit premises within a period of three months from today, failing which the Defendant No. 1-opposite party herein shall remain at liberty to execute the decree, which stands impugned in this revision petition.

20. With the above observations and directions, this revision petition shall stand disposed of.