

(2010) 07 CAL CK 0101
In the Calcutta High Court
Case No : C.O. No. 1056 of 2010

Sisir Kumar Dutt

APPELLANT

Vs

Pratima Dutt and Others

RESPONDENT

Date of Decision : 09-07-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 6, Order 8 Rule 6A, Order 8 Rule 8, Order 8 Rule 9, 151

Citation : (2010) 07 CAL CK 0101

Hon'ble Judges : Jyotirmay Bhattacharya, J

Bench : Single Bench

Advocate : Sabyasachi Bhattacharya, S.T. Mina and Krishanu Chatterjee, for the Appellant; Probal Kumar Mukherjee and Debasree Chatterjee, for the Respondent

Final Decision : Dismissed

Judgement

Jyotirmay Bhattacharya, J.—The defendant/petitioner has filed the instant application under Article 227 of the Constitution of India challenging the propriety of an order dated 18th February, 2010 passed by the learned Civil Judge, Senior Division, Fourth Court at Alipore, in Title Suit No. 114 of 2008 by which the defendant's prayer for grant of leave to file additional written statement for raising counter claim under Order 8 Rules 6 and 6A read with Section 151 of the Code of Civil Procedure, was rejected on contest without cost.

2. Heard the learned Advocate of the parties. Considered the materials on record including the order impugned.

3. Let me consider as to how far the learned Trial Judge was justified in passing the impugned order in the facts of the instance case.

4. The plaintiff filed a suit for partition claiming 2/5th share in the suit properties as mentioned in the schedule of the plaint. In fact, partition was initially sought for in respect of only one property being premises No. 21/A Gurusaday Road, Police Station Ballygunge, Calcutta 700019 subsequently two more flats being

No. 3C and 4C of premises No. 86Q Monohar Pukur Road, Kol700029 were included in the hotchpotch of the partition suit by amendment of plaint. The defendant is contesting the said suit by filing written statement denying the allegations made out by the plaintiff in the plaint. The defendant Nos. 2 and 3 filed the written statement in the said suit on 28th September, 2005. The defendant No. 1 filed separate written statement in the said suit on 20th September, 2007. Incidentally it may be mentioned herein that the said suit was filed on 15th June, 2005.

5. Long thereafter, on about 29th February, 2009 the defendant Nos. 1 filed an application seeking leave of the Court under Order 8 Rule 9 of the CPC for allowing him to raise a counter claim in the said suit for realization of certain amount as per the statement of accounts mentioned in the schedule of the said application, from the plaintiff. In fact, the monetary claim which was sought to be introduced by the defendant by way of a counter claim in the said suit was divided in three parts viz. (i) rent realised by the predecessor-in-interest of the defendant being the karta of the Hindu undivided family from various tenants of the said premises at Gurusaday Dutta Road during the period from 1st June, 1981 till 31st July, 2000; (ii) though municipal tax was collected by the said karta of the Hindu undivided family from one of the tenants of the suit premises but not deposited with the municipal authority for the period from 1st July 1981 to 31st July, 2000 and (iii) share of the defendant realised out of the sale proceeds of the joint property which was kept in the custody of the said karta of the Hindu undivided family. The monetary claim in respect of the aforesaid three items of claims, as mentioned in the schedule, are ascertained sum.

6. The defendant stated in the proposed counter claim that the cause of action for such counter claim arose on 5th December, 2007 when the plaintiffs allegedly claimed certain amount of money from the defendants towards the arrears taxes of the premises No. 21A Gurusoday Road, Kolkata-700019 after commencement of trial of the suit and the said cause of action, which arose within the jurisdiction of the said Court, is a continuing one.

7. The learned Trial Judge rejected the defendant's prayer for grant of such leave by holding inter alia that since the cause of action of the counter claim arose subsequent to the filing of the written statement, leave as sought for by the said defendant, cannot be granted in view of the provision contained in Order 8 Rule 6A of the CPC which provides that a defendant in a suit may, in addition to his right to 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 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.

8. The date of filing of the suit and the date of filing of the written statement by the respective defendants therein, have already been mentioned above. If those

dates are taken into consideration, then this Court has no hesitation to hold that since admittedly the cause of action for the counter claim arose subsequent to the filing of the written statement by the defendant in the said suit, leave cannot be granted to the defendant to raise counter claim in the said suit, in view of the provision contained in order 8 Rule 6A of the CPC as aforesaid.

9. Mr. Bhattacharya, learned Advocate, appearing for the petitioner, submits that the cause of action has not been defined in the Civil Procedure Code. He submits that the cause of action is a bundle of facts and as such the entire facts pleaded in the proposed counter claim, are required to be taken note of for ascertaining as to whether the facts pleaded therein, in its entirety, constituted cause of action for the counter claim or not? Mr. Bhattacharya thus submits that if the entire pleadings of the defendants in the proposed counter claim is considered minutely, it will appear that the said claim, in fact, accrued in favour of the defendant even prior to the institution of the said suit. He submitted that such ascertainment cannot be made by reading only one paragraph of the defendant's pleading in the proposed counter claim. As such, he submitted that the learned Trial Judge was not justified in holding that cause of action for the counter claim arose on 5th December, 2007 by reading only one paragraph from the proposed counter claim.

10. Apparently this Court finds substance in such submission of Mr. Bhattacharya, as it is rightly pointed out by him that for ascertaining the cause of action of the suit and/or counter claim, the Court is required to consider the entire chain of events pleaded therein. In fact, such chain is complete when entire chain of event constitutes a cause of action for the suit and/or the counter claim. Though, it is true that the defendant has pleaded that his right to realise the monetary claim as mentioned in the schedule of the proposed counter claim, accrued on different dates and even on some occasions before the filing of the suit and/or during the pendency of the suit, but fact remains that this chain of events was completed only when following the demand made by the plaintiff from the defendants towards corporation taxes of the suit premises as aforesaid the defendants exerted their right to realise such claim from the plaintiff but the plaintiff refused to honour the defendant's such claim. Thus the cause of action for the counter claim, in fact, matured when the said defendants exerted their right to realise such ascertained claim, following the demand towards corporation tax made by plaintiff from the defendant on 5th December, 2007 as aforesaid but became unsuccessful in realizing its claimed amount as the plaintiff refused to honour the defendant's claim. As such this Court agrees with the findings of the learned Trial Judge that cause of action for the said counter claim, in fact, matured on 5th December, 2007, after filing of written statement by the defendants in the said suit.

11. Under these circumstances, this Court does not find any illegality in the impugned order. The revisional application thus stands rejected.

12. Urgent xerox certified copy of this order, if applied for, be given to the parties

as expeditiously as possible.