

(2014) 04 GAU CK 0008

In the Gauhati High Court

Case No : Civil Revision Petition No. 150 and 159/2013

Sri Harendra Ojha

APPELLANT

Vs

Sri Suresh Choudhury and Others
 Sri Kaushal Singh
Vs Sri Suresh Choudhury

RESPONDENT

Date of Decision : 11-04-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, Order 8 Rule 6(A), Order 8 Rule 6A, Order 8 Rule 6B

Citation : AIR 2014 Guw 88 : (2014) 3 GLD 712 : (2014) 2 GLT 546

Hon'ble Judges : C.R. Sarma, J

Bench : Single Bench

Advocate : G.N. Sahewalla, Senior Advocate, Md. Aslam, Mr. J. Katakya and Mr. P. Deka, Advocate for the Appellant; G.P. Bhowmik, Mr. S.S. Roy and Mr. M. Mahanta, Advocate for the Respondent

Final Decision : Allowed

Judgement

C.R. Sarma, J.—The order, dated 11.02.2013, passed by the learned Munsiff, Margherita in Title Suit No. 17/2007 is in challenged in Civil Revision Petition No. 150/2013 aforesaid and the order, dated 11.02.2013, passed by the learned Munsiff, Margherita in Misc. (J.) Case No. 12/2010 (in TS No. 16/2007) is in challenged in Civil Revision Petition No. 159/2013.

2. By both the impugned orders aforesaid, the learned Munsiff refused to accept the counter claims filed by the respective defendants (present petitioners), in the said title suits.

3. I have heard Mr. G.N. Sahewalla, learned senior counsel, assisted by Md. Aslam, learned counsel, appearing for the petitioners/defendants in both the revision petitions. Also heard Mr. G.P. Bhowmik, learned counsel, appearing for the respondents/plaintiffs in both the cases.

4. By the impugned orders, aforesaid, the learned Munsiff, Margherita rejected

the prayers, made by the petitioners for accepting their counter claims in T.S. No. 16/2007 (Misc. (J.) Case No. 12/2010) and T.S. No. 17/2007 (Petition No. 593/2010).

5. As both the revision petitions, represented by the same set of lawyers, involve same question of law based on identical facts, for the sake of convenience and as agreed to by the leaned counsel, appearing for both the parties, I propose to dispose of both the revision petitions aforesaid by this common order.

6. The predecessor in interest of the respondents in both the cases instituted Title Suit No. 16/2007 against Shri Harendra Ojha (i.e. the petitioner in C.R.P. No. 150/2013) and Shri Kaushal Singh, (i.e. the petitioner in CRP No. 159/2013), seeking a decree for declaration of right, title, interest and for recovery of khas possession by removing the defendants aforesaid, in respect of the suit land, on the ground that the defendants forcefully occupied the same. Subsequently, the plaintiffs, by filing amendment petitions, amended the plaint in T.S. No. 16 of 2007 and the plaint in T.S. No. 17 of 2007 on 08.02.2010 and brought on record the challenge to the Sale Deeds No. 2192/1984 and No. 408 of 1979, alleged to be executed by the plaintiffs in respect of the suit land in favour of the defendants.

7. The defendants, by filing their respective written statements, denied the allegations, made by the plaintiffs. The defendants, in the said suits, claimed that they were possessing the suit land (for 35 years in T.S. No. 16/2007 and 20 years in T.S. No. 17/2007, by constructing residential house and raising vegetables and trees etc. thereon. The said defendants further averred that the plaintiff, being an influential person, illegally obtained the Patta in respect of the suit land also and that the defendants' predecessor-in-interest had purchased the suit land from the father of the plaintiff by registered Sale Deeds No. 2192/1984 and No. 408 of 1979 and thus they acquired title and right over the suit land.

8. The defendants further denied the plaintiff's allegations that they had forcefully and illegally occupied the suit land.

9. After filing the said written statement, on 04.05.2010 i.e. after amendment of the plaint, on 08.02.2010, the defendants, in both the suits, filed counter claims reiterating the claims made in their written statements and thus, by claiming that the suit land was possessed by them for 35 years (by the defendant in T.S. No. 16 of 2007) and 20 years by the defendant (in T.S. No. 17/2007), pleaded that they obtained title in respect of the suit land by virtue of purchase vide sale deeds and that the plaintiff, suppressing the fact regarding possession of the defendant and the sale of the suit land in favour of the defendants, had fraudulently obtained mutation in respect of the entire suit land.

10. In view of the above, the defendant, by way of counter claims, prayed for decree for declaration of their right, title and confirmation of possession, interest on the basis of the Sale Deed Nos. 2192/1984 and 408 of 1979 and long,

uninterrupted, open and notorious possession. The defendants also prayed for cancellation of the mutation of the plaintiffs in respect of the suit land and for issuing precept to the Revenue authority in this regard.

11. On the dates of filing the counter claims, the defendants, by filing application u/s 151 CPC, prayed for accepting the said counter claims and to defer the cross-examination of the PWs.

12. The said prayer for accepting counter claims, made by the defendants, was contested by the plaintiff on the ground that the said counter claim, brought by the defendants at the belated stage i.e. after tendering the plaintiff's evidence, cannot be accepted and that acceptance of the counter claim, at such stage, would cause delay in disposal of the suits aforesaid.

13. It was also contended, before the trial court, that the counter claims not being in conformity with the provisions of Order VIII, Rule 6(A) and Rule 9, the counter claim cannot be accepted.

14. After hearing both the parties, the learned Munsiff, by the impugned orders aforesaid, rejected the prayer made by the defendants. The operative parts of the impugned orders, which is common in both the suits, is as follows.

From the record of the present case, it appears that the defendant has not filed the counter claim in the written statement, neither it is preferred by way of amendment nor filed by way of a subsequent pleading under Rule 9. Hence in view of the decision of the Hon'ble Supreme Court in Ramesh Chand Ardawatiya Vs. Anil Panjwani, , the present petition for accepting the counter claim at the stage of plaintiff's evidence cannot be allowed.

Apart from this, in the present case the provision laid down by O. VIII R. 6B of the CPC is also not complied with as the petitioner has not mentioned about the counter claim in the written statement. Also as in this case issues already framed, acceptance of counter claim at this stage will revert back the case to an earlier stage which will cause unnecessary delay and prejudice to the plaintiff.

Hence, considering the O. VIII R. 6B of the C.P.C., the stage of the pendency and the principle laid down by the Supreme Court in Ramesh Chand Ardawatiya Vs. Anil Panjwani, the petition is dismissed.

The Misc. (J.) Case is dismissed on contest.

15. Aggrieved by the said orders, the defendants, as the petitioners, have come up with these two revision petitions.

16. While taking up CRP No. 150/2013 and CRP No. 159/2013 for disposal, a question was raised as to whether rejection of the petitioners' prayer for accepting the claims, amounted to a decree, requiring appeal to be filed against the said orders and if these revisions against the impugned orders, would be maintainable.

17. Having heard the learned counsel for both the parties, it appears that the petitioners i.e. the defendants by filing separate petitions prayed for accepting their counter claims. The petition filed in TS No. 16/2007 was registered as Misc. (J.) Case No. 12/2010 and the petition, filed in T.S. No. 17/2007 was registered as petition No. 593/2010 and both the petitions were rejected by the said impugned orders.

18. In fact, by the said petitions, the defendants, as the petitioners, prayed for leave of the court to file counter claim and their petitions were rejected. The counter claim, proposed to be filed by the defendants, were neither dismissed nor rejected. Therefore, in my considered opinion, the rejection of the petitions filed in Misc. (J.) Case No. 12/2010 and the Petition No. 593/2010 does not amount to a decree, requiring a regular appeal against such orders of rejection. Therefore the present petitions, filed by the respective petitioners are found to be maintainable.

19. Mr. G.N. Sahewalla, learned Senior Counsel, appearing for the petitioners has submitted that, in both the suits, the respective defendants, in their written statements, filed after submission of the amended plaint, reiterated, in the counter claims, the averments already made in their written statements. It has also been submitted that as the plaintiff, after submission of the amended plaint, was required to file rectified evidence, acceptance of counter claim would not have caused any prejudice to the plaintiff. It is also submitted that, in order to avoid multiplicity of litigation and for ends of justice, the learned Munsiff ought to have accepted the counter claims and adjudicate the dispute raised by the defendants, instead of compelling the defendants to bring any fresh suit. It is also submitted that, in view of filling of the written statements, at appropriate time, by incorporating all the pleadings, made in the counter claim, there is sufficient compliance of the Order VIII Rules 6-A, 6-B and Rule 9, CPC. It is also submitted that, by filling separate applications, the defendant prayed for accepting the counter claims and thus complied with the requirement, as prescribed by Order VIII Rule 9. Therefore it is submitted that the findings of the trial court that there was no compliance of the Order VIII Rule 9 and Order VIII Rule 6-B CPC is not correct. It is also submitted that, in view of fixing the suit for filing of rectified evidence by the plaintiffs, the findings that acceptance of the counter claim would amount to reverting back the case to an earlier stage, causing prejudice to the plaintiff is not reasonable, but arbitrary.

In support of his contention, the learned senior counsel has relied on the case of Ramesh Chand Ardawatiya Vs. Anil Panjwani, . The learned senior counsel, appearing for the petitioners, has submitted that this is a fit case, requiring interference with direction to accept the counter claims and proceed with the trial.

20. Refuting the said argument, Mr. G.P. Bhowmik, learned counsel appearing for the respondents, has submitted that the respondents, at the time of filing their written statements, could have filed counter claims also without any delay and that filing of the counter claim, after tendering of the evidence of the plaintiff, is

not acceptable and that the acceptance of the counter claims would amount to opening the proceeding afresh from the earlier stage, causing much prejudice to the plaintiffs and resulting delay in disposal of the matter. The learned counsel for the respondents has further submitted that the defendants failed to comply with the requirement, prescribed by Order VIII and 6B and Rule 9 CPC, and as such, the learned trial court committed no error by rejecting the prayer for accepting the counter claim. The learned counsel for the respondent, in support of his contention, has relied on the case of Bollepanda P. Poonacha and Another Vs. K.M. Madapa, .

21. Having heard the leaned counsel, appearing for both the parties and considering entire aspect of the matter, I have carefully perused the impugned orders, the written statements, filed by the respective defendants, the petitions filed u/s 151 CPC, seeking acceptance of the counter claims and the proposed counter claims.

22. Carefully perusing the written statements, already filed by the respective defendants, it is found that both the defendants, in their respective written statements categorically averred that they were adversely possessing the suit land since long by raising their residential houses and growing trees etc. and that they purchased the suit land by registered sale deeds from the plaintiff. They have also pleaded that the plaintiff, suppressing the fact regarding possession of the defendants and transfer the suit land, fraudulently obtained mutation in respect of the entire suit land.

23. By the proposed counter claims, the defendants, while reiterating their earlier pleadings, made in their written statements aforesaid, have sought a decree declaring their right, title and interest in respect of the suit land on the basis of their possession and the sale deeds alleged to be executed by the plaintiffs. The defendants also prayed for cancellation of the mutation, obtained by the plaintiffs, in respect of the suit land and for confirmation of their possession. It is found that the facts stated and the claims made in their written statements have been reproduced in the counter claims also.

24. As provided by Order VIII Rule 6-A CPC, the contesting defendant, who files written statement may bring counter claim against the claim of the plaintiff, claiming right in respect of the cause of action occurring to the defendant against the plaintiff after or before filing of the suit, but before the defendant has delivered his defence or before the time limited for delivering his defence has expired. This is the limitation prescribed for bringing counter claim.

25. Admittedly, in the present case, the cause of action to the defendants, to bring the claims, accrued before filing of the suits as well as the written statements inasmuch as their claim was that they were possessing the suit land for more than 20/35 years and that they purchased the suit land in 1984 (in T.S. No. 16/2007) and in 1979 (in T.S. No. 17/2007). There is no dispute regarding pecuniary jurisdiction of the court. Therefore, it is found that the provision

prescribed by Rule 6A of Order--VIII has been complied with.

26. In the case of Bollepanda P. Poonacha and another (Supra), the respondent filed a written statement on 21.03.1997 and contended that he had purchased the suit property. The suit was filed on 19.02.1997 and the counter claim was filed on 04.01.2006. It was held that the counter claim, being made at belated stage, was not maintainable. The respondent in his application for amendment of the written statement alleged that the appellant trespassed on the land in question in the summer of 1998. As the respondents had filed their written statement in the summer of 1998, the court held that the counter claim was not maintainable. In the said case, the Supreme Court observed that the court must exercise discretionary jurisdiction in judicious manner and the ground of relief would depend upon the factual background involved in each cases.

27. In the case of Ramesh Chand Ardawatiya (Supra), the Supreme Court observed that under the scheme of Order VIII CPC, there are three modes of pleading or setting up a counter-claim in a civil suit. Firstly, the written statement filed under Rule 1 may itself contain a counter claim under Rule 6-A. Secondly, the defendant may bring counter claim by way of amendment in respect of the written statement already filed, subject to leave of the court. Thirdly, the counter claim may be filed by way of subsequent pleading under Rule 9 of Order VIII CPC.

28. As observed by the Supreme Court in the later two cases, counter claim, though referable to Rule 6-A, cannot be brought on record as of right but with the leave of the court either by amendment of the pleading i.e. under Order VI Rule 17 or under Order VIII Rule 9 CPC by bringing subsequent pleading with the leave of the court. The Supreme Court further observed that the purpose of the provision, allowing filing of counter claim, is to avoid multiplicity of litigation and save the court's precious time and also to exclude the inconvenience caused to the parties. The Supreme Court observed that "Generally speaking, a counter claim not contained in the original written statement may be refused to be taken on record, if the issues have already been framed and the case set down for trial, and more so when the trial has already commenced".

29. Admittedly, in the present case, no counter claim was made in the original written statement. The issues in the said suits have already been framed and the case proceeded for trial. From the record, it appears that the plaintiff, after tendering his evidence, amended the plaint and the suit is pending for rectified evidence of the plaintiff.

30. In view of the above, the suits are at the early stage of trial. Refusal to entertain the counter claims will compel the defendants to file fresh suits, based on cause of actions already narrated in the written statements, filed by them. As the subject matter of the said suits and the proposed counter claims are same and the defendants being in possession of the suit land, filing of suits by the defendants will certainly prolong the adjudication of the dispute between the

parties. It is not a case that the defendant has brought new pleadings by the proposed counter claim, rather the averments, made in their earlier written statements, have been reiterated in the form of counter claims. In view of amending the plaint in 2010 and filing of the counter claims in the same year itself, it can't be concluded that the defendants, with an ulterior motive, attempted to prolong the proceedings. Rather acceptance of the counter claims, for adjudication with the present suits, will facilitate to resolve the dispute raised by the parties in the same proceeding.

31. In view of the above, in my considered opinion, the learned Munsiff ought to have allowed the petitions seeking permission to file counter claims and accept the counter claim for adjudication, subject to cost etc.

Therefore, I find sufficient merit in these revision petitions and accordingly, the revision petitions are allowed. The impugned orders are set aside. The learned Munsiff shall accept the counter claim, filed by the defendants, subject to the payment of cost of Rs. 1,000/- (Rupees one thousand) only, in each of the suits, by the respective defendants in favour of the plaintiffs.

32. No cost.