

(2002) 08 P&H CK 0019

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 4547 of 2000

Sajjan Singh

APPELLANT

Vs

Kulwant Kaur and Others

RESPONDENT

Date of Decision: Aug. 16, 2002**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 8 Rule 6, 151

Hon'ble Judges: M.M. Kumar, J**Bench:** Single Bench**Advocate:** Malkiat Singh, for the Appellant; B.R. Mahajan, for the Respondent**Final Decision:** Dismissed

Judgement

M.M. Kumar, J.

This revision petition filed u/s 115 of the Code of Civil Procedure, 1908 (for brevity the Code) challenges the order dated 5.9.2000 passed by the Civil Judge (Junior Division), Tarn Taran allowing the application of the defendant-respondents in which a counter claim against petitioner as well as defendant-respondent No.3 has been allowed to be made. It has further been directed that reply to the counter claim be filed.

2. Brief facts of the case are that the plaintiff-petitioner has filed a suit for declaration that he is sole and exclusive owner in possession of the suit property and the two mortgage deeds dated 20.5.1999 and 21.5.1999 executed by his wife-defendant respondent No. 3 in favour of defendant-respondent Nos. 1 and 2 regarding the suit property are null and void. It has further been averred that the sale deed dated 30.12.1998 alleged to have been executed by the plaintiff-petitioner in favour of defendant-respondent No. 3 and the sale deed dated 31.5.1999 alleged to have been executed by defendant-respondent No. 3 in favour of the plaintiff-petitioner are also null and void. Prayer for consequential relief restraining defendant-respondents from alienating the suit property in any manner whatsoever

has also been made alongwith the prayer that defendant-respondents be restrained from interfering in the legal and peaceful possession of the plaintiff-petitioner. During the pendency of the suit, defendant-respondent Nos. 1 and 2 filed an application under Order 8 Rule 6A of the Code setting up counter claim and asserting that the mortgage deeds dated 20.5.1999 and 21.5.1999 were executed by defendant-respondent No. 3 in favour of defendant-respondent Nos. 1 and 2 for a valuable consideration and to the extent of half share each. It has further been claimed in the application that suit for perpetual injunction restraining plaintiff-petitioner and defendant-respondent No. 3 for ever from alienating, transferring, selling, mortgaging or doing anything else in respect of the suit property be granted. Further prayer for mesne profits has also been made. The plaintiff-petitioner filed an application under Order 8 Rule 6 C of the Code claiming that the counter claim set up by the defendant-respondent Nos. 1 and 2 ought to be disposed of by filing an independent suit because it was directed against defendant-respondent No. 3 as well. It was contended that no counter claim can be set up by defendant-respondent Nos. 1 and 2 against another defendant like defendant-respondent No. 3. The Civil Judge dismissed the application of the plaintiff-petitioner and allowed the retention of counter claim made by defendant-respondent No. 1. The order rejecting the contention of the plaintiff-petitioner passed by the Civil Judge reads as under:-

"After hearing the learned counsel for the parties and going through the record of this case carefully. I am of the view that in this suit for declaration, plaintiff is claiming himself to be exclusive owner in possession of suit land and that defendant No. 3 has filed written statement admitting the claim of the plaintiff whereas defendants No. 1 and 2 are claiming themselves to be aggrieved because they claim they have been dispossessed during the pendency of the suit and if they are dispossessed during the pendency of the suit, remedy available with them is to file suit for mandatory injunction and if the plaintiff in connivance with defendant No. 3 has done so defendant Nos. 1 and 2 are having every right to claim the relief by filing counter claim against the plaintiff and defendant No. 3. Provision contained in CPC under Order 8 CPC has gone to the extent that even if the defendants are having any claim against third party, even then he can claim same in a counter claim but for that purpose, notice has to be given to the third party. In this case when there is no third party involved, it can be said that defendant No. 1 and 2 are having every right to claim relief by filing counter claim against plaintiff and defendant No. 3. In this way multiplicity of the litigation would be avoided. Therefore, I dismiss the application and order the plaintiff and defendant No. 3 to file reply to the counter claim on 24.10.2000."

3. Shri Malkiat Singh, learned counsel for the plaintiff-petitioner has argued that under Order 8 Rule 6 A and under Order 8 Rule 6C of the Code counter claim could be set up only against the plaintiff-petitioner and no counter claim could be set up against defendant respondent No. 3. Therefore, he has urged that the Civil Judge

has committed grave illegality by allowing the setting up of counter claim against defendant-respondent No.3.

4. Shri B.R. Mahajan, learned counsel appearing for defendant-respondent Nos. 1 and 2 has argued that the plaintiff-petitioner and defendant-respondent No. 3 are husband and wife and the four transactions have been made by them. The first transaction of executing the sale deed in favour of defendant-respondent No. 3 dated 30.12.1998 is by the plaintiff-petitioner. Second and third transaction is by defendant-respondent No. 3 in favour of defendant-respondent Nos. 1 and 2 and the fourth transaction of executing the sale deed in favour of plaintiff-petitioner is again by defendant-respondent No. 3 in favour of plaintiff petitioner. Therefore, according to the learned counsel no useful purpose would be served by separating the claim of defendant-respondents from the claim of the plaintiff-petitioner as the claim is in respect of the same property. He has further argued that u/s 115 of the Code, the revisional jurisdiction of this Court has further been restricted and even if the application of the plaintiff-petitioner is allowed it would not decide finally the suit. Therefore, he prays for dismissal of the revision petition.

5. I have thoughtfully considered the rival contentions raised by the learned counsel for the parties and am of the view that this revision petition is devoid of merit. The transactions under taken by the plaintiff-petitioner selling the same property in favour of defendant-respondent No. 3 on 30.12.1998 and by defendant-respondent No. 3 in favour of plaintiff-petitioner leaves no manner of doubt that there is no conflict of interest between the plaintiff-petitioner and defendant respondent No. 3. The basic aim and object of the civil suit is to get two transactions nullified which were entered into by defendant-respondent No. 3 in favour of defendant-respondent Nos. 1 and 2 on 20.5.1999 and 21.5.1999. These two transactions are after 30.12.1998 i.e., the first transaction and before the 4th transaction dated 31.5.1999 i.e., the alleged sale deed made by defendant-respondent No. 3 in favour of her husband plaintiff petitioner. Therefore in strict sense it cannot be claimed that the counter claim is directed against defendant-respondent No. 3 alone. In sum and substance the counter claim has been set up against the plaintiff-petitioner who is a subsequent vendee. Even otherwise there is no rule of law laying down that in no case counter claim could be set up against defendant even if the interests of the defendant plaintiff are common. In the present case, counter claim has been allowed to be set up rightly because not only the interest of defendant-respondent No. 3 and the plaintiff-petitioner are common but also the transactions disputed in the suit filed by the plaintiff-petitioner are in respect of the same property. It would be convenient and appropriate if the suit and the counter claim are decided in one suit rather than directing the defendant-respondent Nos. 1 and 2 to file an independent suit. In a number of judgments, the Supreme Court has held that the counter claim by the defendant is maintainable in cases where the relief claimed is common to the parties though ranged by either side. In [Laxmidas Dahyabhai Kabarwala Vs.](#)

[Nanabhai Chunilal Kabarwala and Others,](#) and [Mohinder Singh Jaggi Vs. Data Ram Jagannath,](#) this view has been taken. However, the amendment incorporated in 1976 by adding Order 8 Rules 6A to 6G in the Code made it absolutely clear about the cases counter claim would be competent. It is true that none of these provisions provides for setting up counter claim against a co-defendant but in a case like the present and defendant-respondent No. 3 is almost standing in the position of the plaintiff-petitioner. It is no where claimed that the interest of the plaintiff-petitioner are adverse to the interest of defendant-respondent No. 3 who are admittedly husband and wife.

6. Moreover, the revisional jurisdiction of this Court has been further restricted in as much as only in such cases, the revisional jurisdiction could be exercised where reversal of the order challenged in the revision petition would result into dismissal of the suit itself. In the present case, if the application filed by the plaintiff-petitioner under Order 8 Rule 6 C of the Code is allowed it would dispose of the claim of the defendant-respondent Nos. 1 and 2 leaving them with the remedy to file an independent suit. However, no suit itself would be disposed of nor it would result into finalisation of any other proceedings. In any case, the revisional jurisdiction of this Court cannot be exercised in every case especially when no prejudice is likely to result if the impugned order is allowed to stand. It is further clear that the plaintiff-petitioner would not suffer any irreparable loss or manifest injustice on account of entering of defence to the counter claim set up by the defendant-respondent Nos. 1 and 2. Therefore, I am not inclined to exercise revisional jurisdiction u/s 115 of the Code and the revision petition is liable to be dismissed.

7. In view of the above, the revision petition fails and the same is dismissed.