

(2008) 08 P&H CK 0056

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Hari Singh Kapur

APPELLANT

Vs

Ajit Kumar Kapur and Others

RESPONDENT

Date of Decision: Aug. 14, 2008

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 151
- Constitution of India, 1950 - Article 227

Citation: (2008) 4 CivCC 812 : (2008) 152 PLR 269 : (2008) 4 RCR(Civil) 255 : (2008) 2 RCR(Rent) 291

Hon'ble Judges: Vinod K. Sharma, J

Bench: Single Bench

Judgement

Vinod K. Sharma, J.

This revision petition under Article 227 of the Constitution of India read with Section 151 CPC is directed against the order dated 23.2.2008 passed by the learned Civil Judge (Jr. Divn.) Kapurthala attached as Annexure P-5, whereby the counter claim filed by the petitioner has been held to be not maintainable.

2. The plaintiff-respondent No. 1 filed a suit against the petitioner for mandatory injunction directing the petitioner herein to deliver vacant possession of house No. 44 situated at Mohalla Kaimpura, Kapurthala fully detailed and described in the site plan attached with the plaint. In the suit the arrears of licence fee and damages for use and occupation were also claimed.

3. On notice having been given, the petitioner filed a detailed written statement and thereafter a counter claim was also filed seeking declaration that he was exclusive owner in possession of the superstructure raised over the land underneath the house bearing No. 55, situated in Mohalla Kaimpura, Kapurthala. In the alternative the petitioner claimed an amount of rupees five lakh, which is said to have been spent by him on construction, renovation, reconstruction of the house in dispute. In

the counter claim filed by the petitioner, beside the plaintiff he impleaded seven other persons as co-defendants.

4. The learned trial Court came to the conclusion that the reading of Order 8 Rule 6-A of the CPC would show that the counter claim can be filed only in respect of the cause of action accrued to the defendant against the plaintiff and, thus, the counter claim could be filed only qua the parties to the suit and the persons who were not party to the original suit cannot be added as defendants in the counter claim.

5. The learned trial Court further held that the petitioner was claiming a relief of rupees five lakh from the petitioner-plaintiff by way of mandatory injunction but advalorem Court Fee was not paid.

6. The petitioner claimed that by way of counter claim it was permissible to the defendant to claim any right in respect of any cause of action which had accrued to him even though it is independent of the cause, action as claimed by the plaintiff. For this purpose reliance was placed on the judgment of the Hon"ble Supreme Court in the case of Jagmohan Chawla and Anr. v. Dera Radha Swami Satsang and Ors. 1996 SCC 521 .

7. The learned court below came to the conclusion that as parties to the counterclaim are different from the original suit, the same was not maintainable and consequently the counter claim was dismissed.

8. Mr. Padam Jain, learned Counsel appearing on behalf of the petitioner by placing reliance on the judgment of the Hon"ble Bombay High Court in the case of Teofilo Barreto v. Sadas G. Nasnodkar and Ors. 2007 (4) R.C.R.(Civil) 275 contended that as the counter claim has to be treated as a separate suit and he could seek the relief in the suit filed by the plaintiff against him. The contention of the learned Counsel for the petitioner was that once it has to be treated as a separate suit in that even he was entitled to add the persons against whom he had claimed though they were not party to the original suit. However, this plea of the petitioner cannot be accepted. The Hon"ble Bombay High Court has nowhere laid down that by way of counter claim it is open to the defendant to seek claim against the persons who are not party to the suit filed by the plaintiff. Para 33 of the judgment of the Hon"ble Bombay High Court on which reliance was placed reads as under:

33. In this connection, it may also be noted that all the provisions of a plaint are made applicable to a counter-claim. In the decision reported in 1996 KLJ 722, Sarojini Amma v. Dakshyuni Amma, the question that came for consideration before the Kerala High Court was, whether in counter-claim, application for impleadment under Order 1 Rule 10, CPC could be filed. In that case, plaintiff had not impleaded certain persons. But the defendant, in a counter-claim suit, wanted to implead certain persons who were, according to the defendant, answerable to the counter-claim. In that case, the Court held that "under Order 1 Rule 10 Civil Procedure Code, at the instance of the defendant, additional parties could be

impleaded to the counter-claim". While considering the same, the learned judge held thus:

The main purpose of setting up a counter-claim is to prevent multiplicity of proceedings between the parties. As observed already, it has to be treated as a plaint and is governed by the rules applicable to it. It has to contain the particulars as in order VII, Rule 1 CPC among other requirements indeed, "Plaint" has not been statutorily defined. But it should contain necessary and relevant facts constituting the cause of action. The counter-claim need not necessarily be confined to the claim made against the plaintiff, and if for its effective adjudication-besides the plaintiff, other interested persons should be made parties, they should be impleaded, if the Court is satisfied that without them the adjudication will be incomplete. Order 8, Rule 6-A CPC does not say as to who shall be parties to the counter-claim. The provisions as to joinder of parties under Order 1, Rule 10 Civil Procedure Code, would also apply to counter-claim, no doubt, subject to the condition that persons impleaded are necessary and proper parties for an effective adjudication of the question involved. The submission that Order VIII, Rule 6-A, does not enable the participation of persons who are not already parties to the suit as difficult to accept.

9. The Hon"ble Bombay High Court has taken note of the judgment of the Kerala High Court in coming to the conclusion that the counter claim is suit for all intents and purposes. However, it has nowhere been laid down that the persons who are not party to the original suit can also be impleaded, as is sought to be projected.

10. The contention raised by the learned Counsel for the petitioner is otherwise contrary to the provisions of order VIII Rule 6-A, which reads as under:

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

(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.

(3) The plaintiff shall be at liberty to file a written statement in answer to the counter-claim of defendant within such period as may be fixed by the Court.

(4) The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints.

11. The bare reading of provisions of Order VIII Rule 6-A C.P.C. leaves no manner of doubt that by way of counter-claim it is permissible to raise a claim only against the

plaintiff or who are party to the suit and not against stranger, as is sought to be contended.

12. Thus, the learned Counsel below was right in coming to the conclusion that the counter-claim, as framed, was not maintainable.

13. Faced with this situation, the learned Counsel for the petitioner contended that the impugned order cannot be sustained as it was incumbent upon the learned trial Court to have given opportunity to the petitioner to remove the defects in the suit/counterclaim and it was only in case the said defects were not removed then counter claim could be dismissed. In support of this contention the learned Counsel for the petitioner placed reliance on the judgment of the Division Bench of this Court in the case of [D.A.V. College, Hoshiarpur Society Vs. Sarvada Nand Anglo Sanskrit Higher Secondary School, Managing Committee](#), wherein this Court by relying upon the judgment of the Hon'ble Supreme Court in the case of [Mst. Rukhmabai Vs. Lala Laxminarayan and Others](#), and [S. Bhagat Singh Vs. Satnam Transport Co. Ltd. and Others](#), has been pleased to held as under:

(6) The learned Counsel for the appellant finally urged that the learned Additional District Judge should have not dismissed the suit after coming to the conclusion that it was not maintainable in the present form but should have remanded the same to the trial Court with a direction that the plaintiff should be given an opportunity to amend the plaint so as to bring it in the proper form. In this connection, he relied on the cases of [Mst. Rukhmabai Vs. Lala Laxminarayan and Others](#), and [S. Bhagat Singh Vs. Satnam Transport Co. Ltd. and Others](#), which no doubt support his view point. The learned Counsel for the respondent had nothing to urge against this part of his prayer. I also feel that the learned Additional District Judge instead of dismissing the plaintiff's suit straightway should have remanded it to the trial Judge with the necessary direction.

14. The reliance was also placed on the judgment of this Court in the case of Bali Ram v. Harinderpal Singh and Ors. (1982) 84 P.L.R. 740 wherein this Court was pleased to hold as under:

The short point involved in this appeal is. whether the lower appellate Court was justified in granting an opportunity to the plaintiff to amend the suit so as to include a further prayer for a decree for possession of the land in dispute in a suit which was originally filed only for permanent injunction when admittedly the plaintiff was in possession of the land in dispute at that time and was dispossessed during the pendency of the suit. It has been ruled in [S. Bhagat Singh Vs. Satnam Transport Co. Ltd. and Others](#), and [Union of India \(UOI\), Ministry of Food and Agriculture \(Dept. of Food\), New Delhi Vs. Pearl Hosiery Mills and Others](#), that if a suit for declaration is brought, whereas the plaintiff was entitled to a consequential relief also, then an opportunity should be given to the plaintiff to amend the plaint and if after opportunity also, the plaintiff does not amend the then the suit can be dismissed on

the ground that the form of the suit is not correct. The facts of the present case are much better as compared to the two decided cases referred to above. Here, the plaintiff was admittedly in possession when the suit was filed and he was dispossessed only, during the pendency of the suit. In this situation, the lower appellate Court was perfectly justified in granting permission to the plaintiff to amend the plaint to claim relief of possession as well.

2. For the reasons recorded above, this appeal is dismissed with no orders as to costs. The parties, through their counsel, are directed to appear before the trial Court on 20.9.1982.

15. There is force in this contention raised by the learned Counsel for the petitioner. Consequently, while holding the counter-claim was not competent against the person who was not party to the main suit and also that the counter-claim has not been properly stamped for the purpose of Court fee and thus, not maintainable in the present form.

16. However, it is held that it was incumbent upon the learned trial Court to have given an opportunity to the petitioner to pay Court fee as well as amend the counter claim by deleting the persons who could not be arrayed as party in the counter claim. Consequently, the impugned order is set aside. The case is remanded back to the learned trial Court to give an opportunity to the petitioner herein for making good the Court Fee on the amount claimed and also to delete the unnecessary party so as to bring counter claim in consonance with the provisions of Order V11I Rule 6-A of the CPC.

17. Parties through their counsel are directed to appear before the learned trial Court on 15.9.2008 or on the date fixed before the learned trial Court, if the same is earlier than 15.9.2008.