

Paban Kumar Sarma Vs Hiranya Kumar Bhuyan and Ors.

Court: Gauhati High Court

Date of Decision: July 18, 2007

Acts Referred: Civil Procedure Code, 1908 " Order 8 Rule 6A
Civil Procedure Code, 1908 (CPC) " Order 8 Rule 6A

Citation: (2008) 2 GLR 681

Hon'ble Judges: H.N.Sarma, J

Bench: Single Bench

Advocate: S.Roy, T.C.Khatri, Advocates appearing for Parties

Judgement

1. A short but commonly agitated problem in the matter dealing with a counter claim filed in a suit, has paused for adjudication in this revision

petition. Precisely the issue involved is as to whether in deciding the counter claim filed by the defendants in a suit which remains only to be

adjudicated after withdrawal of the main suit, whether the defendants can pray for impleading a party in a suit.

2. I have heard Mr. T.C. Khetri, learned senior Advocate for the petitioner.

3. To put in short the necessary facts for adjudication of this petition are as follows:

The defendants who are opposite parties herein instituted Title Suit No 31/04 against the petitioner praying for declaration of right, title and interest

in respect of the Suit land and also for consequential relief of permanent injunction to restrain the defendant from forcibly evicting them from the suit

land. Prior to the institution of the suit, the opposite parties initiated a proceeding under section 145, Cr.PC and obtained an order in his favour

declaring possession of the suit land in Case No. 22/145/97, the said order have been made the subject matter in CM No. 40(SA)/04 before the

learned Sessions Judge, Tezpur. The petitioner on being served with the summon contested the case by filing written statement and also counter

claim praying for declaring right, title and interest and for recovery of possession. The opposite parties resisted the counter claim. However, the

opposite parties after pursuing the case withdrew the same with liberty to institute a fresh one on the cause as pleaded in the plaint, if occasion

arises. The suit having transferred to the court of the learned Munsiff, Tezpur, renumbered as Title Suit No. 54/2006 and the plaintiffs intimated the

learned trial court that they had sold the suit land and delivered the possession to the another person and the suit was filed on wrong advice. On

such information about the sell of the suit land even before the institution of the suit, a prayer was made for dismissal of the suit as the plaintiff did

not have any right, title and interest over the suit land at the time of filing of the suit and consequentially the counter claim was also liable to be

dismissed. At that stage, the present opposite party Nos. 3 and 4 filed an application praying for impleading them in exercise of powers under

order 8, rule 6A(4), CPC, order 10(2) and section 151, CPC and also for dismissing the suit as well as the counter claim. The present petitioner

did not file written statement against the aforesaid prayer and Misc. Case No 9/2007 was registered. The learned trial court vide order dated

27.4.2007 allowed the application for impleading the opposite party Nos. 3 and 4 holding them to be defendants in the counter claim and the

petitioner as the plaintiff. The said order is impugned in this revision petition,

4. Mr. T.C. Khetri, learned senior counsel for the petitioner, challenging the impugned order submitted that the counter claim being in the nature of

cross case between the existing plaintiff and the defendants, the prayer of the opposite party Nos. 3 and 4 to implead them as defendants in that

proceeding is not maintainable and the learned trial court by misinterpreting the provisions of order 8, rule 6A, CPC, passed the impugned order

by illegal assumption of jurisdiction.

5. The undisputed fact is that TS No. 54/06 filed against the petitioner was withdrawn by the plaintiffs and the defendant having filed counter claim

in the suit, the suit proceeding on the basis of the counter claim so filed in the suit. On the fact situation of the case that the plaintiffs have already

sold the suit land in favour of the opposite party Nos. 3 and 4 and having delivered the possession of the suit land in their favour plaintiffs have no

interest in the suit land.

6. The provisions relating to counter claim was incorporated in the Statute by Civil Procedure Code (Amendment) Act (Act No 104) of 1976

incorporating rules 6A to 6E in order 8, CPC, after rule 6. Order 8, rule 6A(2), CPC, provides that 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. Order

8, rule 6A(4), CPC, provides that the counter claim shall be treated as a plaint and governed by the rules applicable to plaints. Order 8, rule 6D

provides that if in any case in which the defendant sets up a counter claim, the suit of the plaintiff is stayed, discontinued or dismissed, the counter

claim may nevertheless be proceeded with. Order 8, rule 6F, CPC, provides that where in any suit a set off or counter claim is established as a

defence against the plaintiffs claim and any balance is found due to the plaintiff or the defendant, as the case may be, the court may give judgment

to the party entitled to such balance.

7. Provisions of order 8, rule 6A(2) and (4) and rule 6D makes it abundantly clear that the rights to set up a counter claim is an independent right

of the defendant and is, to be independently decided along with the main suit and in the event of discontinuation of the main suit, the counter claim

remains and would be required to be adjudicated judicially. Further such counter claim is to be treated as a plaint and is governed by the rules

applicable to a plaint. If the rules of the pleadings are looked into it is seen that the provisions of order 1, rule 10(2), CPC, is a provision relating to

and applicable to a plaint in a suit. The aforesaid amended provisions of CPC incorporated by way of amendment in the year 1976 provides an

independent existence of a counter claim like that of a suit. This a statutory recommendation which was not existed prior to the amendment. The

rules of pleadings are also equally applicable to the counter claim. As because the plaintiff withdrew the suit, it cannot be said that such an

application for impleading the opposite party Nos. 3 and 4 would not be applicable after withdrawal of the suit by the plaintiff, inasmuch as, in spite

of such withdrawal, a counter claim will proceed like an independent suit treating the counter claim as a plaint. A counter claim is not a defence but

is an independent claim, like a cross suit. In the instant case, by virtue of the counter claim, the petitioner has prayed for declaration of right, title

and interest over the suit land in his favour. On the other hand, it also emerges from the facts that the original plaintiff has transferred the suit land in

favour of the opposite party Nos. 3 and 4. In such a situation, the opposite party Nos. 3 and 4 have got indefeasible right to get them impleaded in

the suit so as to enable them to defend their cause against, the claim of the defendant petitioner.

8. Provisions of order 8, rules 6A to 6G, CPC, make it abundantly clear that the opposite party Nos. 3 and 4 though were not originally

impleaded as party to the proceeding which now remains to be adjudicated on the basis of the counter claim as an independent suit are entitled for

a hearing in the suit. Similar view has been expressed by the Andhra Pradesh High Court in the case of Surges & Company (P.) Ltd. v. Hindustan

Machinery Tools Ltd., AIR 1994 AP 428. A counter claim is to be treated for all purposes for which justice required it to be so treated, as

independent action. In Amon v. Bobbet, 22 QBD 543, it has been inter alia held that

Now if a counter claim is to be treated as having no vitality except as a bar to the action, it becomes a defence and not a counter claim; but, as

was said in that case, it is more than a defence, it is in the nature of a proceeding in a crossaction and when necessary for the purposes of justice it

must be so treated. A counterclaim is therefore to be treated, for all purposes for which justice requires it to be so treated, as an independent

action and it is necessary for justice to be done under order LXV, rule 12, to consider it as not being part of the action, but as being disconnected

from it.

9. In view of the aforesaid discussions, it is found that the learned trial court committed no error, jurisdictional or otherwise in allowing impleadment

of opposite party Nos. 3 and 4 as party to the counter claim proceeding in the suit. Accordingly, this petition is without any merit and hence stands

dismissed. No costs.