

Ramavtar Sharma Vs. Laxman Avtar Sharma

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Court : Rajasthan

Decided On : Nov-30-2000

Reported in : 2001(4)WLN11

Judge : Mohd. Yamin, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 10 - Order 8, Rule 6-A

Appeal No. : S.B. Civil Revisional Petition No. 264 of 1998

Appellant : Ramavtar Sharma

Respondent : Laxman Avtar Sharma

Advocate for Def. : B.L. Mandhana, Adv.

Advocate for Pet/Ap. : Ashok Gaur, Adv.

Disposition : Petition allowed

Judgement :

Yamin, J.

(1). This is a revision against the order of learned Additional Sessions Judge No. 3, Alwar dated 3.11.1997.

(2). I have heard learned counsel for both the parties in details.

(3). A suit for eviction and mesne profit of property situated at Swami Dayanand Marg, Alwar was filed by Dr. Laxman Avtar Sharma against defendants Ramavtar Sharma, Smt. Shobha Sharma, Sameer Sharma and Himanshu Sharma. A written statement was filed. The case of the plaintiff was that he received the property through a Will of his father which was a registered Will. It may be stated that defendant Sameer Sharma had filed a suit earlier to cancel the Will in which Ramavtar Sharma had filed a counter claim and, therefore, no counter claim could be filed in this suit as it was simply a suit for eviction and mesne profit.

(4). The defendant filed reply of the application to the effect that the Will was forged one and the suit was collusive and that the defendant was competent to file counter claim even in this suit, the trial court was of the view that counter claim could not be filed in this suit in view of decision in case of Jaswant Singh v. Smt. Darshan Kaur and Ors. (1) in which it was held that a counter claim could be filed under Order 8 Rule 6-A of the CPC only in money suits. Learned counsel for the respondent conceded that this view is not correct and the counter claim could be filed even in the other suits. He is right because a counter claim is substantially a cross action. The provision under Order 8 Rule 6-A of the CPC has been made in order to expeditious disposal of claim between the parties in one proceedings and there is a specific ruling in the decision in case of Gutam v. Gutam Ahmad and Ors. (2), in which it was held that in a suit for recovery of possession the defendant can set up a counter claim. A plain reading of Order 8 Rule 6-A of the CPC is very clear and it does not bar the counter claim to be filed in other suits. Therefore, the order of the learned Additional Sessions Judge is not legal and it appears that he has acted in exercise of his jurisdiction illegally and with material irregularity, therefore, the revision petition has to be accepted.

(5). Mr. Mandhana submitted that since in both the suits a similar point is involved and the Will is under challenge, the same may be consolidated in the interest of justice to which Mr. Ashok Gaur replied that an application Under Section 10 of the CPC was filed which has been dismissed, therefore, he would not be in a position to say anything about the consolidation of the suits. He of course agreed that in both the suits, the common question is whether the Will is genuine or not. The number of other suit is 97/96 which was also filed by Dr. Laxman Avtar Sharma.

On the other hand, no revision has been filed against the order rejecting application Under Section 10 of the CPC which is dated 8.8.97. In these circumstances, I leave it for parties to move to the court below to pray for consolidation. If such an application is submitted before the trial court, the same shall be decided on merits without any obsession of this order. However, this revision petition is hereby allowed. No order as to costs.

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