

K. Prabhakaran Vs. A.G. Krishnamoorthy

K. Prabhakaran Vs. A.G. Krishnamoorthy

SooperKanoon Citation : sooperkanoon.com/821965

Court : Chennai

Decided On : Apr-09-2002

Reported in : (2002)2MLJ226

Judge : P.D. Dinakaran, J.

Acts : Civil Provedure Code (Amendment) Act, 1976 - Order 8, Rule 6A - Order 20, Rule 19

Appeal No. : C.R.P.No.2983 of 2001

Appellant : K. Prabhakaran

Respondent : A.G. Krishnamoorthy

Advocate for Def. : J.G. Kanagaraj, Adv.

Advocate for Pet/Ap. : C. Thanaseelan, Adv.

Disposition : Revision allowed

Judgement :

ORDER

P.D. Dinakaran, J.

1. Aggrieved by an order dated 19.6.2001 made in I.A.No.4658 of 2001 in O.S.No.2764 of 2001 on the file of the learned XII Assistant Judge, City Civil

Court, Chennai, refusing to permit the revision petitioner/defendant to raise a counter claim by way of an additional written statement in the suit in O.S.No.2764 of 2001, laid by the respondent/plaintiff for a permanent injunction against the revision petitioner/defendant by restraining them from disturbing the possession and enjoyment of the suit property by the respondent/plaintiff, the defendant has preferred the above revision.

2. In brief, the respondent/plaintiff claims that he is the absolute owner of the suit property, which was said to have been purchased by him under a sale deed dated 10.7.1972, on which basis, he seeks a permanent injunction as prayed for.

3. But the suit was originally resisted by the revision petitioner/defendant, who filed the original written statement in February, 2001, contending that the suit property was purchased under the sale deed dated 10.7.1972 out of the income derived from the property allotted by the Government to the respondent/plaintiff and the revision petitioner/defendant, who are father and eldest son respectively, who are repatriates from Burma, settled at Chennai, and therefore, the revision petitioner/defendant is entitled to one-fourth share in the suit property.

4. Thereafter, the revision petitioner/defendant filed an additional written statement, raising a counter claim for declaration of one-fourth share and sought permission to file an additional written statement in I.A.No.4658 of 2001; but the same was resisted by the respondent/plaintiff, contending that the revision petitioner/defendant is not entitled to raise a counter claim in a suit for permanent injunction filed by the respondent/plaintiff.

5. The learned XII Assistant Judge, City Civil Court, Chennai, by decree and order dated 19.6.2001 made in I.A.No.4658 of 2001 in O.S.No.2764 of 2001, accepted the case of the respondent/plaintiff and refused to permit the revision petitioner/defendant to file an additional written statement for a counter claim, as referred to above. Hence, the above revision.

6. Mr. C. Thanaseelan, learned counsel for the revision petitioner/defendant, placing reliance on the decision of a Division Bench in RAMAN SUKUMARAN V. , contends that the revision petitioner/defendant is entitled to raise a counter claim

in the suit property on payment of sufficient Court fee, in the facts and circumstances of the case, to avoid multiplicity of litigation.

7. Per contra, Mr. J.G. Kanagaraj, placing reliance on the decision in JASHWANT SINGH V. , contends that the revision petitioner/ defendant is not entitled to raise a counter claim in a suit for permanent injunction, as the right under Order VIII Rule 6-A and Order XX Rule 19 is applicable only in a suit for money claim.

8. I have given careful consideration to the submissions of both sides.

9. In this regard, I am obliged to refer Order VIII Rule 6-A and Order XX Rule 19, which read as follows:

' Order VIII Rule 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, by way of counter-claim against the claim of the plaintiff, any right or claim in respect of a 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:

Provided that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the Court.

(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 the 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. '

' Order XX Rule 19:

Decree when set-off or counter-claim is allowed.-- (1) Where the defendant has been allowed a set-off or counterclaim against the claim of the plaintiff, the decree shall state what amount is due to the plaintiff and what amount is due to the defendant, and shall be for the recovery of any sum which appears to be due to either party.

(2) Appeal from decree relating to set-off or counter-claim.-- Any decree passed in a suit in which a set-off or counter-claim is claimed shall be subject to the same provisions in respect of appeal to which it would have been subject if no set-off or counter-claim had been claimed.

(3) The provisions of this rule shall apply whether the set-off is admissible under Rule 6 of Order VIII or otherwise.'

10. Order VIII Rule 6A was inserted by C.P.C. Amendment Act, 1976 and Order XX Rule 19 was amended by the C.P.C. Amendment Act, 1976, providing to pass a decree on a counter-claim also.

11. Even before insertion of Order VIII Rule 6A, in *LAXMIDAS V.*, wherein, in a suit by one partner against the heirs of a deceased partner for specific performance of an agreement by which the co-partner had agreed to convey his interest to the former, a counter-claim was made by the defendants for account of the dissolved firm and an objection was raised that the counter-claim was not maintainable, the Apex Court, while dealing the law on the point held as follows:

' The question has therefore to be considered on principle as to whether there is anything in law -- statutory or otherwise -- which precludes a Court from treating a counter-claim as a plaint in a cross-suit. We are unable to see any. No doubt, the Civil Procedure Code prescribes the contents of a plaint and it might very well be that a counter-claim which is to be treated as a cross suit might not conform to all these requirements but this by itself is not sufficient to deny to the Court the power and the jurisdiction to read and construe the pleadings in a reasonable manner If so much is conceded it would then become merely a matter of decree as to whether the counter-claim contains all the necessary requisites sufficient to be treated as a plaint making a claim for the relief sought and if it did it would seen

proper to hold that it would be open to a Court to convert or treat the counter-claim as a plaint in a cross-suit. To hold otherwise would be to erect what in substance is a mere defect in the form of pleading into an instrument for denying what justice manifestly demands. We need only add that it was not suggested that there was anything in O.VIII, R.6 or in any other position of the Code which laid an embargo on a Court adopting such a course. '

The Supreme Court has, in Laxmidas case, outlined the scope of a counter-claim, though not in a money suit.

12. Following the said ratio, a Division Bench of the Kerala High Court, in RAMAN SUKUMARAN V. , distinguishing the words employed in Order VIII Rule 6 and 6A, has held as follows:

' While Rule 6 opens with the words 'Where in a suit for the recovery of money the defendant claims' Rule 6-A opens with the words 'A defendant in a suit may'. The distinction is obvious and cannot escape notice. While Rule 6 deals with suits for money Rule 6-A deals with all the suits. The submission made by the petitioner's learned counsel on the words 'in addition to his right of pleading a set-off under Rule 6' can also be easily met. Rule 6-A enables a defendant in a suit for the recovery of money not only to plead a set-off but also set-up a counter-claim. That does not automatically lead to the inference that Rule 6-A was introduced only to safe-guard counter-claims in suits for recovery of money. The scheme of the new rule is to permit the defendants to set up counter-claims, which arise between the parties and which are cognisable by the Court where the suit is pending. '

13. Similarly, the the Calcutta High Court, in DAGA FILMS V. , being a case decided after the amendment introducing Rule 6-A, emphasises that Rule 6-A contemplates counter claims statement. In Daga Films case, the suit was filed for a declaration that the document dated 7.4.1970 was void or voidable and for a perpetual injunction restraining the defendants from enforcing the said document by realising any sum from the plaintiff and for a decree for Rs.1,00,000/- by way of damages. The defendants in that case put forward a counter-claim for damages. The suit was not pressed and it was contended that the suit not having been pressed, the counter-claim should go as it had no legs to stand. This plea was

repelled and a decree in favour of the defendants was passed.

14. No doubt, a Division Bench of the Patna High Court, in JASHWANT SINGH V. , has held that the right of the defendant to make a counter-claim against the plaintiff is limited only to the cases involving money claim. In other words, the provisions relating to the counter-claim can be made only in such suits in which there is a dispute in respect of money claim, and it cannot be held that in view of Order VIII Rule 6-A, C.P.C., the defendant is at liberty to raise a dispute in a suit of a plaintiff, irrespective of its nature, and hence, held that in a suit on behalf of the plaintiff for declaration that he was the licensee of the premises in question, and has a right to remain in possession thereof for the period mentioned in the plaint, it was not open to the defendant to make a prayer for eviction of the plaintiff by way of a counter-claim, and therefore, held that the Court in entertaining a counter-claim exercised the jurisdiction illegally and committed a material irregularity.

15. In my considered opinion, the counter-claim can be entertained under Order VIII Rule 6A in any suit, as held by the Calcutta High Court in DAGA FILMS V. by the Apex Court, as the right of the defendant to raise a counter-claim under Order VIII Rule 6A has not been restricted only to money suits. Any contrary view would only destroy the very object of Order VIII Rule 6A, the object being to reduce the pendency of cases, so that causes of action and cross-claims similar in nature would be clubbed together and disposed of by a common judgment. In the result, the submission that Rule 6-A can apply only to suits for recovery of money has to fail.

15. Hence, for all these reasons, I am of the considered opinion that the order dated 19.6.2001 made in I.A.No.4658 of 2001 in O.S.No.2764 of 2001, on the file of the learned XII Assistant Judge, City Civil Court, Chennai, refusing to permit the revision petitioner/defendant to raise a counter-claim by filing an additional written statement on payment of sufficient Court fee is illegal, and therefore the same is set aside and the revision is allowed, without prejudice to the right of either party viz., the respondent/plaintiff as well as the revision petitioner/ defendant to adduce evidence, if they are so advised, to prove their respective cases.

In the result, this revision is allowed. No costs. Consequently, C.M.P.No.15873 of 2001 is closed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com