

**P.V. Kamesh Kumar Vs. Thoti Muniyappa and Others**

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**Court :** Karnataka

**Decided On :** Feb-19-2013

**Judge :** Subhash B. Adi

**Appeal No. :** Regular First Appeal No. 776 of 2008 (INJ)

**Appellant :** P.V. Kamesh Kumar

**Respondent :** Thoti Muniyappa and Others

**Judgement :**

(This R.F.A is filed under section 96 of CPC against the judgment and decree dated 26.05.2008 passed in O.S.No.10771/1987 on the file of the XIII Addl.City Civil Judge, Mayohall Unit, Bangalore, dismissing the suit for permanent and mandatory injunction and decreeing the counter claim of defendant no.1 therein.)

This appeal is by the plaintiff against the judgment and decree dated 26th May 2008 in O.S No.10771/1987 on the file of the XIII Addl. City Civil Judge, Mayo Hall Unit, Bangalore.

2. Parties are referred to as per their rank in the trial Court.

3. The suit was one for injunction restraining the defendants or their agents or their representatives from causing any sort of interference to the peaceful possession and enjoyment of the plaint schedule premises by the plaintiff (by himself and on behalf of his co- owners) and for grant of mandatory injunction for removal of the

twin huts put up by the defendants in the plaint schedule land and on refusal of the defendants to remove them, the Hon`ble Court to effect removal of the said two sheds by such means as the Hon`ble Court deemed fit in the interest of justice.

4. The case of the plaintiff was that, the suit schedule property bearing Sy. No.56/3 measuring 26 guntas inclusive of 02 Guntas of phot kharab was previously an agricultural land belonging to Sri A. Narayana Reddy. The said Narayaana Reddy sold the same in favour of Chikkathayappa under the registered sale deed dated 13.05.1966. Chikkathayappa and his two sons executed sale deed on 16.12.1980 in favour of Gopichand, Ravindranath and Y. Nageshwara Rao in respect of land bearing Sy. No.56/7 measuring 28 guntas. Rectification deed was executed on 16.06.1981 correcting Sy. No. as 56/2 measuring 10 guntas. Another registered sale deed was executed on 16.12.1980 in favour of Y. Anuradha, Y. Nageswara Rao and the plaintiff in respect of the land in Sy. No.56/7 measuring 32 guntas and another rectification deed in was executed on 16.06.1981 correcting Sy. No. as 56/3 measuring 26 guntas.

5. The plaintiff and his co-owners were put in possession of the suit schedule lands as per the sale deeds and rectification deeds. The plaintiff and other co-owners applied to the Deputy Commissioner, Bangalore District and sought permission for conversion of the land for non-agricultural use. The said permission was granted by order dated 24.12.1981. Accordingly, conversion charges were paid and a residential layout was formed. Village Panchayat sanctioned the plan to the plaintiff to put up residential houses in one of the sites with plinth area of 1430 Sq. feet. The plaintiff and other co-owners are in lawful possession and enjoyment of the suit schedule property. The defendants have no right, title or interest over the suit schedule property. One Sharadamma, wife of Narayana Reddy had filed suit in O.S. No.4080/1997 against the defendant in respect of Sy. No.6 of Roopena Agrahara. The defendants, by taking advantage of the error in mentioning the survey number in the sale deeds, put up a hut in the suit schedule property with the support of local people.

6. Initially, the Court had granted temporary injunction against the defendants from interfering with the peaceful possession of the property by the plaintiff. Despite

having knowledge of the order of temporary injunction, the defendants have deliberately and hastily put up two huts in breach of the temporary injunction. These constructions have been made during the pendency of the suit and also after the service of the order of temporary injunction and hence, the said construction is illegal.

7. The case of the plaintiff was that, after filing the suit, he had obtained temporary injunction and in violation of the order of temporary injunction, the defendants had put up structures. As such, he got the plaint amended by adding paras 6(A) to 6(E) and prayed for the reliefs stated above.

8. The suit schedule property is described by the plaintiff as under:

#### "SCHEDULE

Lands situated in Bommanahalli, Begur Hobli, Bangalore South Taluk, bearing erstwhile Sy. No.56/2, 0 - 10 guntas and 56/3, 26 guntas (kharab 0 Acres 2 guntas) now converted into sites and private layout bounded as follows:-

East by : Private property and Nala

West by : Shirdi Saibaba Ashram and drain

North by : Shirdi Saibaba Ashram and property

South by : Kadripilla`s property and Narayana Reddy`s land."

9. Defendant No.1 claimed that he is the owner of the land measuring 01 Acre 13 guntas in Sy. No.56/7 of Bommanahalli Village, Begur Hobli, Bangalore South Taluk. He was conferred with occupancy rights by the Land Tribunal, Bangalore South Taluk by order dated 24.09.1982. The said order of the Land Tribunal was confirmed by the Land Reforms Appellate Tribunal by order dated 09.10.1987 in L.r. appeal No.800/1986. In so far as the extent of 01 Acre 13 guntas of land in Sy. No.56/7 is concerned, it is the absolute property of the first defendant and the plaintiff has no right, title or interest in respect of the said land. The plaintiff has fraudulently and illegally created grave mischief by including the land belonging to the defendant in the schedule. The land in occupation of defendant No.1 bears Sy.

No.56/7 and it measures 01 Acre 13 guntas and it is still an agricultural land and is not converted for residential purpose. The suit filed by Sharadamma has nothing to do with Sy. No.56/7. The suit of Sharadamma was based on an independent cause of action and has no bearing whatsoever on the present suit. The plaintiff has not identified his property and is illegally claiming the property of the defendant.

10. Further, the defendant alleged that, the plaintiff is economically powerful and is having the support of antisocial and goonda elements and there is a threat to the peaceful possession and enjoyment of the property measuring 01 Acre 13 guntas in Sy. No.56/7 by the defendant. As such, he sought for counter claim for permanent injunction against the plaintiff restraining him and his agents from interfering with the peaceful possession and enjoyment of the schedule property bearing Sy. No.56/7 measuring 01 Acre 13 guntas as described in the schedule to the written statement.

11. Subsequently, defendant No.1 also filed additional written statement inter alia denying that, he has put up construction after the service of Court summons and passing of the order of temporary injunction. Further, additional written statement was filed as against the amendment of the plaint by denying that, the defendant and his two sons have entered into agreement of sale with others. In turn, defendant No.1 claimed that, the property in possession of the defendant has a concrete structure with asbestos roof. Further, it has electrical connection and portion of the same is let out on monthly rent.

12. Though the defendant No.1 sought for counter claim for decree for permanent injunction, no reply was filed by the plaintiff to the counter claim of defendant No.1. In turn, memo was filed for treating the plaint as a reply to the counter claim. However, the same was rejected by the trial Court.

13. The trial Court, on the basis of the said pleadings, has framed the following issues and additional issues:

"1. Whether the plaintiff proves that he is in possession of the suit schedule property?

2. Whether the plaintiff proves that the defendant interfered with his possession of the suit property?
3. Whether defendant proves that he is in possession of Sy.No.56/7, measuring 1 Acre 13 guntas situated in Bommanahalli, Begur Hobli, Bangalore South Taluk?
4. Whether the defendant proves that the plaintiff interfered with his possession of 1 Acre 13 guntas of land in Sy.No.56/7?
5. What relief the parties are entitled to?

ADDITIONAL ISSUES FRAMED ON 31.3.97:

1. Whether the defendant proves that he has been living in the huts which are in the suit schedule lands several years prior to the institution of the suit and/or that he is in actual possession of the suit property as contended in para No.1 of his additional written- statement?
2. Whether the defendant proves that he did not put up any huts during the pendency of the suit or after granting of the order of Temporary injunction?
3. Whether the plaintiff is entitled to a decree for Mandatory injunction for the removal of 2 huts put up the defendant in the suit property, as contended in para No.10 of his plaint?

ADDITIONAL ISSUES FRAMED ON 22.02.2000:

1. Whether the plaintiff proves that inspite of grant of injunction, the defendant in breach of the said order has put up 2 huts, as averred in para No.6(a) of the plaint?
2. Whether the plaintiff proves that the defendant along with his 2 sons have entered into an Agreement of Sale and that the defendant and his sons have issued GPAs in favour of Anjanappa and others as averred in para No.6(b) of the plaint ?

ADDITIONAL ISSUE FRAMED ON 23.2.2000:

1. Whether the plaintiff proves that there are 2 buildings as averred in para No.6(c) and (e) of amended plaint? "

14. Before the trial Court, the plaintiff got examined himself as PW.1 and examined six witnesses as PWs.2 to 7 and got marked Exs.P1 to P95 whereas the defendant No.1 got examined himself as DW.1 and examined defendant No.2 as DW.2. In their evidence, they got marked Exs.D1 to D40.

15. The trial Court held that, the plaintiff has failed to prove his possession of the suit schedule property and has also failed to prove that the defendants are interfering with his possession of the suit schedule property. The trial Court further held that defendant No.1 has proved his possession in respect of the land bearing Sy. 56/7 measuring 01 Acre 13 guntas in Bommanahalli, Begur Hobli, Bangalore South Taluk. It is also held that, the defendant has proved that the plaintiff is interfering with his possession of the suit property and allowed the counter claim.

16. Heard Sri Tarakaram, learned senior counsel for the plaintiff and Sri Sreevatsa, learned senior counsel for defendant No.1.

17. The learned senior counsel for the plaintiff submitted that, the plaintiff has proved his title and also possession by producing documents viz., Ex.P1, the sale deed dated 16.12.1980, the record of rights, index of land of Sy. No.56/3, conversion order, sanctioned plan by Bommanahalli Grama panchayat, Hissa survey record and Akarband. These documentary evidence not only prove the title of the plaintiff to the suit schedule property, but also proves the possession. The defendant has not proved his title to the suit schedule property nor has proved his possession. The plaintiff has specifically averred in the plaint as to the interference by the defendant with the possession of the suit schedule property by the plaintiff. Despite the order of temporary injunction granted in favour of the plaintiff, during the pendency of the suit and after the grant of temporary injunction, the defendants had put up huts and as such, the interference by the defendants and violation of the order of temporary injunction by the defendants is well established. He also submitted that, though Sy. No.56/3 measuring 26 Guntas is shown as the suit schedule property, the pleadings disclose that the possession of the plaintiff is inclusive of the possession of the co-owners as two registered sale deeds were

executed on 16.12.1980. The defendants taking advantage of the mistake in mentioning survey No. in the said sale deeds had tried to interfere with the possession of the plaintiff and his co-owners. Rectification deeds have been executed to correct the survey No. As such, though schedule property is shown as Sy. No.56/3, it is to be treated that the plaintiff is in possession of both the lands i.e., land of the plaintiff and that of his co-owners.

18. He further submitted that, Ex.P8 - sale deed, no doubt, stands in the name of Gopichand and Ravindranath, Sy. No.56/7 mentioned therein has been corrected as 56/2. Boundaries may resemble, but in the plaint, the plaintiff has stated that he and his co- owners have purchased two properties under the registered sale deeds. Hence, mentioning of the said boundaries may not have any adverse effect on the claim of the plaintiff

19. He further contended that, the counter claim filed by defendant No.1 is not tenable in law as there is no cause of action and submitted that, in a counter claim, there should be specific averment with regard to cause of action and the written statement does not refer to any cause of action that accrued to defendant No.1 before filing of the written statement or before settling of the issues. Hence, submitted that, the trial Court was not justified in dismissing the suit of the plaintiff and at the same time, in decreeing the counter claim filed by defendant No.1.

20. Sri Sreevatsa, learned senior counsel for defendant No.1 contended that as per the plaint averments, it is not in dispute that, the plaintiff has filed the suit in his individual capacity claiming to be the owner of the suit schedule property. The suit schedule property as described in the schedule bears Sy. No.56/2 measuring 10 guntas and 56/3 measuring 26 guntas. It is stated that, same was purchased by the plaintiff and his co-owners under the registered sale deed dated 16.12.1980. The sale deed shows Sy. No.56/7 measuring 28 guntas.

The same has been rectified by rectification deed dated 16.06.1981. The boundaries shown in the rectification deed are the same boundaries as shown in Ex.P8. The schedule property sold under Ex.P8 had the boundaries as under:

East by : Private property and Manda Bavi;

West by : Shirdi Sai Baba Ashram`s property;

South by : Kadripillai`s property.

North by : Shirdi Sai Baba Ashram`s property.

This schedule property is part of Sy. No.56 now shown as Sy. No.56/2 in the rectification deed. Ex.P8 produced by the plaintiff itself shows that the property is not purchased by him, but it is purchased by Gopichand and Ravindranath. Plaintiff is neither co-owner nor there is any authority for the plaintiff to seek injunction in respect of the property, for which he has no title. The suit of the plaintiff is based on title deed. The plaintiff has not claimed that he is in lawful possession of the property belonging to Gopichand and Ravindranath. In turn, defendants have produced documents to show that the property bearing Sy. No.56/7 measuring 01 Acre 13 guntas was granted to him by the Land Tribunal and the said grant was confirmed by the Land Reforms Appellate Tribunal. The suit schedule property does not bear Sy. No.56/7. Even according to the plaintiff, the suit schedule property is shown as Sy. No.56/3. Though the said deed in respect of the suit schedule property shows Sy. No. as 56/7, but the same was rectified as Sy. No.56/3. Thus, the property claimed by the defendant is not the property claimed or stated in the plaint. The suit is misconceived and is untenable for want of cause of action against the defendant.

21. Defendant No.1, in his counter claim, has averred that, the plaintiff is trying to interfere with his possession and has sought for counter claim for permanent injunction against the plaintiff. Neither on the basis of the documents produced by the plaintiff nor on the basis of the averments made in the plaint, the plaintiff can maintain a suit in respect of Sy. No.56/3 against the defendants. The plaintiff in his evidence has admitted that, he is not sure of the property. Hence, the suit being misconceived, the trial Court on proper appreciation of the evidence on record, has dismissed the suit and decreed the counter claim.

22. In the light of the above rival contentions, the points that arise for consideration are:

1. Whether the suit property as described in the schedule to the plaint belongs to the plaintiff as claimed by him in the pleadings?
2. Whether the suit schedule property is the property as shown in the written statement filed by defendant No.1 ?
3. Whether the counter claim of defendant No.1 is barred for want of proper averment as to the cause of action ?

23. It may not be necessary to go into the details of the evidence of the parties. It is suffice to refer to the pleadings as pleaded in the plaint itself. The plaintiff has not disputed that, the land in Sy. No.56/7 measuring 28 guntas was purchased under the registered sale deed dated 16.12.1980. It is also averred that, the said sale deed was rectified by rectification deed dated 16.06.1981 and Sy. No. was corrected as 56/2 measuring 10 guntas. The admitted case of the plaintiff is that, he is the owner of land in Sy. No.56/3 along with his co-owners. The co-owners stated by the plaintiff is one Y. Anuradha, Y. Nageswara Rao. The plaintiff was the power of attorney for them. However, the boundaries of the suit schedule property given in the schedule to the plaint is as under

East by : Private property and Nala

West by : Shirdi Saibaba Ashram and drain

North by : Shirdi Saibaba Ashram and property

South by : Kadripilla`s property and Narayana Reddy`s land.

It is not in dispute that these are all the properties originally carved out of Sy. No.56. The boundaries of the schedule property shown in Ex.P8 - sale deed are as under:

East by : Private property and Manda Bavi;

West by : Shirdi Sai Baba Ashram`s property;

South by : Kadripillai`s property.

North by : Shirdi Sai Baba Ashram`s property.

24. Admittedly, the boundaries of the property under the sale deed - Ex.P8 and the boundaries of the schedule property shown in the plaint are one and the same. According to the plaintiff, as per the rectification deed, the survey No. 56/7 is corrected as 56/3. However, Ex.P8 shows that, Sy. No.56/7 is corrected as 56/2. Nevertheless, the boundaries therein and the boundaries of the suit schedule property are one and the same. They tally, however the fact remains that, the sale deed - Ex.P8 is not the sale deed executed in favour of the plaintiff nor in favour of Y. Anuradha or Y. Nageswara Rao, but it is in favour of Gopichand and Ravindranath. The said Gopichand and Ravindranath are neither parties to the suit nor the plaintiff is authorized by them to file the suit. When, even according to the plaint documents, the suit property does not belong to the plaintiff, the plaintiff cannot maintain the suit for permanent injunction on the basis of somebody`s title deed. It is clear from Ex.P8 that the property described in the schedule to the plaint is not the property belonging to the plaintiff. Hence, the suit filed by the plaintiff in respect of the said property belonging to another person is misconceived.

25. Defendant No.1 has not claimed any right, title or interest in respect of the land in Sy. No.56/3. His case is that, he is the owner in possession of Sy. No.56/7. Nowhere in the plaint, the plaintiff has claimed that he has any right, title or interest over Sy. No.56/7, which measures 01 Acre 13 guntas. The boundaries of the property as described by defendant No.1 are not the same boundaries as shown in the schedule to the plaint. The defendant has not claimed any interest over the suit schedule property. But, his claim is specific in respect of land in Sy. No.56/7 measuring 01 Acre 13 guntas. Hence, injunction sought for by the plaintiff has nothing to do with the property claimed by defendant No.1. On this ground also, the suit has to fail as there is no cause of action in so far as Sy. No.56/7 is concerned.

26. It was seriously argued by the learned senior counsel for the plaintiff that a counter claim made by defendant No.1 in respect of Sy. No.56/7 is not based on any cause of action. He submitted that, Order VIII Rule 6A of the CPC., requires

that the defendant must aver a specific cause of action in his counter claim. The specific cause of action is not averred in the counter claim and as such, the counter claim filed by defendant No.1 is not sustainable in law.

27. In this regard, it is proper to refer to Order VIII Rule 6A of CPC. Order VIII Rule 6A-(1) of CPC., reads as under: "6A-(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 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."

28. The reading of Order 8 Rule 6A-(1) makes it clear that the defendant, in addition to his right of pleading set-off, may make counter claim of any right in respect of cause of action accruing to the defendant against the plaintiff. However, such cause of action must be before the filing of the written statement or before settling of the issues. The provisions of Order 8 Rule 6A to 6E fell for consideration before the Apex Court in a judgment reported in (1996) 4 SCC 699 in the case of 'JAG MOHAN CHAWLA and ANR. v. DERA RADHA SWAMI SATSANG and ORS. and the Apex Court has observed as under:

"In other words, a defendant can claim any right by way of a counter-claim in respect of any cause of action that has accrued to him even though it is independent of the cause of action averred by the plaintiff and have the same cause of action adjudicated without relegating the defendant to file a separate suit"

29. The Apex Court has held that the defendant, even for independent cause of action in respect of any claim that may not be the subject matter of an independent suit, nevertheless can bring a counter claim. The cause of action from which the counter claim arises need not necessarily arise from having any nexus with the cause of action of the plaintiff that occasioned to lay the suit. The only limitation for

counter claim is that the cause of action should arise before the time fixed for filing of the written statement expires.

30. The defendant's case in the written statement is that he is the owner in possession of the schedule property mentioned in the written statement. He has alleged that the plaintiff is economically powerful and is having the support of anti-social and goonda elements. The defendant is in possession of the schedule property bearing Sy.No.56/7 measuring 1 acre 13 guntas as described in the schedule to the written statement. There is a threat by the plaintiff to the defendant's peaceful possession and enjoyment of the schedule property.

31. No doubt the defendant has not stated the date on which the cause of action accrued to him, however, the cause of action for counter claim has to be before the last date fixed for filing of the written statement. It is nobody's case that the written statement was filed after the due date. It is also nobody's case that the cause of action for the defendant fell after the date fixed for filing of the written statement. Though there are no specific averments, but the defendant has stated that the plaintiff is interfering with the possession of the defendant. It is also not in dispute that the plaintiff has a right to exclude the counter claim by making an application under Order VIII Rule 6C of CPC. Even if there was no cause, the plaintiff could have sought for the exclusion of the counter claim, but for the reasons best known to him, he did not choose to seek for exclusion of counter claim and further, the plaintiff did not even choose to file a reply to the counter claim. Order VIII Rule 6E confers power on the Court in case of default by the plaintiff to file a reply to the counter claim to decree the counter claim or pass such order as the Court deems fit and proper.

32. No doubt the counter claim may not automatically be decreed or order could be passed, however, defendant in support of the counter claim has produced the order passed by the Land Tribunal and Appellate Authority to show that he is the owner of the property. Further, the record of rights and the document shows that he was in possession. Further the schedule property shown in counter claim is not even claimed by the plaintiff. Having regard to this evidence, it is clear that the defendant is the owner in possession of the schedule property as mentioned in the

written statement.

33. When the counter claim is not challenged by the plaintiff by filing the reply and when the defendant has proved his title and possession in respect of the schedule land shown in the written statement and averment in the counter claim is to the effect that the plaintiff is interfering with the possession of the schedule land by defendant No.1, I find that, the cause of action as shown in the counter claim is sufficient to decree the counter claim, more so, when the same is not denied.

34. Hence, in my opinion, the judgment and decree of the Trial Court dismissing the suit and decreeing the counter claim, does not call for interference.

Hence, appeal fails and same is dismissed.

In view of dismissal of the appeal, Misc.Cvl.Nos.5660/2010, 5661/2010, 13813/2010 and IA No.4/2010 do not survive for consideration and are disposed of accordingly.

However, there shall be no order as to costs.

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