Vijay Prakash Jarath vs Tej Prakash Jarath on 1 March, 2016

Equivalent citations: AIR 2016 SUPREME COURT 1304, 2016 (11) SCC 800, 2016 (3) ALJ 230, 2016 (2) AJR 220, AIR 2016 SC (CIVIL) 1279, (2016) 2 CIVILCOURTC 293, (2016) 131 REVDEC 707, (2016) 2 RECCIVR 392, (2016) 121 CUT LT 1065, (2016) 1 WLC(SC)CVL 634, (2016) 115 ALL LR 865, (2016) 3 ANDHLD 114, (2016) 2 JCR 194 (SC), (2016) 1 ORISSA LR 1094, (2016) 160 ALLINDCAS 69 (SC), (2016) 1 CLR 661 (SC), (2016) 4 MAD LW 296, (2016) 3 RAJ LW 2314, (2016) 2 JLJR 337, (2016) 2 ICC 721, (2016) 1 ALL RENTCAS 836, (2016) 2 CURCC 27, (2016) 3 SCALE 211, (2016) 3 PAT LJR 1, 2016 (2) KCCR SN 106 (SC), (2016) 3 BOM CR 38

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Bench: C.Nagappan, Jagdish Singh Khehar

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos.2308-2309 OF 2016
(Arising out of SLP(C)Nos.8536-8537 of 2008)

VIJAY PRAKASH JARATH .....APPELLANT

VERSUS

TEJ PRAKASH JARATH .....RESPONDENT

WITH

CIVIL APPEAL No.2310 OF 2016
(Arising out of SLP(C)No.32118 of 2009)

J U D G M E N T

JAGDISH SINGH KHEHAR, J.

Civil Appeal Nos.2308-2309 of 2016 (Arising out of SLP(C)Nos.8536-8537 of 2008)

1. The respondent before this Court – Tej Prakash Jarath filed Suit No.608 of 1992 on 09.11.1992. In the aforesaid suit, defendants Nos.3 and 4 – Om Prakash Jarath (the father of the plaintiff in the suit) and Vijay Prakash Jarath (the elder brother of the plaintiff) respectively, filed written statements on 11.11.1992. Thereupon, issues came to be framed on 18.10.1993. After the framing of the issues, the petitioners before this Court (i.e. defendant Nos.3 and 4 in the original suit), filed a counter- claim on 17.06.1996 i.e. almost two and a half years after the framing of the issues.

2. The trial court, vide its order dated 28.10.1996, accepted the aforesaid counter-claim. The above order dated 28.10.1996, came to be assailed by the respondent-plaintiff-Tej Prakash Jarath through Civil Miscellaneous Writ Petition No.1266 of 2001, before the High Court of Uttarakhand at Nainital (hereinafter referred to as `the High Court'). The High Court relying upon the judgment of this Court in Rohit Singh & ors. vs. State of Bihar (Now State of Jharkhand) & Ors., (2006) 12 SCC 734, concluded, that the counter-claim filed by the petitioner-defendant Nos.3 and 4 before the trial court, was not legally acceptable. The order passed by the High Court dated 02.01.2008, recording the above conclusion, has been assailed through the instant special leave petitions.

3. Leave granted.

4. Before adverting to the merits of the controversy, we would first endeavour to deal with the issues as to whether the High Court correctly applied the judgment rendered by this Court in Rohit Singh' case (supra), to the controversy in hand. In order to appreciate the conclusions drawn by this Court in Rohit Singh's case (supra), the following observations (relating to the facts and conclusions) recorded therein need to be taken into consideration:

> "17. We shall first consider whether there was a counterclaim in the suit in terms of Order 8 Rule 6A of the Code in this case. The suit was filed against the Divisional Forest Officer and the State of Bihar as Defendants 1 and 2 on 26.2.1996 by Respondent No.6 herein. After the written statement was filed by the defendants, issues were framed and the suit went to trial. On 3.6.1996 and 6.6.1996 the evidence on the side of the plaintiff was concluded. On 14.6.1996 the evidence on the side of the defendants was completed. On 24.6.1996 arguments were concluded. Judgment was reserved. 25.6.1996 was fixed as the date for pronouncing the judgment. The judgment was not pronounced and it appears that the Judge was subsequently transferred. Therefore, on 20.8.1996 arguments were again heard by the successor Judge and judgment was reserved. 27.8.1996 was fixed as the date for judgment. Apparently, it was not pronounced. It is thereafter that Defendants 3 to 17 filed an application on 11.9.1996 for intervention in the suit. We have already referred to the allegations in that application for impleading filed. We only notice again that they claimed to be in possession of the property and that their presence before the court was necessary in order to enable the court to effectually and completely adjudicate

> upon and settle all the questions involved in the suit. On 19.9.1996 the application for intervention was allowed. On 30.9.1996 a written statement was filed by Defendants 3 to 12. We have already summarised the pleas raised therein.
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> 18. After this, the witnesses of the plaintiff were recalled and permitted to be cross-examined by these Defendants. That was on 5.10.1996.

Again the witnesses for defendants 1 and 2, were recalled and they were permitted to be cross-examined on behalf of these defendants. The evidence on the side of Defendants 3 to 17 was let in. It commenced on 24.2.1997 and was closed on 30.1.1997. Thereafter, arguments were heard again and the arguments on the side of the defendants including that of Defendants 3 to 17 were concluded on 4.3.1997. The suit was adjourned for arguments on the side of the plaintiff. On 5.3.1997, the suit was dismissed for default of the plaintiff. It was then restored on 29.5.1998. It was thereafter on 5.6.1998, that Defendants 3 to 17 filed an application for amending the written statement. The amendment was allowed on 20.7.1998. There was no order treating the amended written statement as a counter-claim or directing either the plaintiff or Defendants 1 and 2 to file a written statement or an answer thereto. Defendants 3 to 17 had questioned the pecuniary jurisdiction of the trial court in their written statement. That plea was permitted to be withdrawn on 4.2.1999. It is clear that after the evidence was closed, there was no occasion for impleading the interveners. Even assuming that they were properly impleaded, after they had filed their written statement, the suit had gone for further trial and further evidence including that of the interveners had been taken, the evidence again closed and even arguments on the side of the interveners had been concluded. The suit itself was dismissed for default only because on behalf of the plaintiff there was a failure to address arguments. But the suit was subsequently restored. At that stage no counter-claim could be entertained at the instance of the interveners. A counter-claim, no doubt, could be filed even after the written statement is filed, but that does not mean that a counter-claim can be raised after issues are framed and the evidence is closed. Therefore, the entertaining of the so-called counter-claim of Defendants 3 to 17 by the trial court, after the framing of issues for trial, was clearly illegal and without jurisdiction. On that short ground the so called counter-claim, filed by Defendants 3 to 17 has to be held to be not maintainable.

19. As can be seen, what Defendants 3 to 17 did, was to merely amend their written statement by adding a sentence to para 16 of the written statement they originally filed. In para 16 it was only pleaded that those defendants were claiming to be in peaceful possession of the suit lands ever since the time of their predecessors. They wanted to add that they had claimed acquisition of title based on long and uninterrupted possession and they crave leave to get their title declared in the suit for which a declaratory court fee is paid. It may be noted that not even a prayer was sought to be added seeking a declaration of their title as is the normal practice. It is, therefore, clear that on going through the original written statement and the amendment introduced, that there was no counter-claim in terms of Order 8 Rule 6A of the Code in the case on hand, which justifies a trial of that counter-claim even assuming that such a counter-claim was maintainable even if no relief was claimed against the plaintiff in the suit but it was directed only against the co-defendants in the suit. The counter-claim so called is liable to be rejected on that ground as well." (emphasis is ours)

5. The factual position in the relied upon judgment, is not similar to the factual position of the case in hand. In the present case, after the issues had been framed, the plaintiff's evidence had commenced to be recorded. Though the same had not yet been concluded. In Rohit Singh' case (supra), on the other hand, not only were issues framed, and the evidence of the rival parties, including the defendant recorded. Furthermore, on several occasions, arguments were heard for the ultimate disposal of the suit. And more than once, the judgment was also reserved, but then, on account of transfer of the Judge, and for other reasons, evident from the extract recorded hereinabove, judgment could not be pronounced. It is in the aforesaid situation, that the counter claim filed by the defendants, at such a belated stage, was considered to be, not sustainable in law. We are, therefore, satisfied in holding, that the judgment rendered in Rohit Singh's case is clearly not applicable to the facts and circumstances of this case.

6. Furthermore, learned counsel for the appellants had contended, on the basis of observations recorded in para 18 (extracted above) in Rohit Singh's case (supra), that counter claim would not be permissible after framing of the issues, and after the evidence is concluded. Even if the above parameter is applied to the facts of the present case, it is apparent, that the judgment rendered in Rohit Singh's case (supra) would not lead to the findings recorded by the High Court in the impugned order, for the simple reason, that in Rohit Singh's case, evidence from both sides was concluded, and even arguments had been heard, whereas, in the present case, even though evidence on behalf of the respondent-plaintiff has commenced, it has not yet concluded. The evidence on behalf of the defendants is yet to commence.

7. Despite the conclusions recorded by us hereinabove, it is relevant to record, that it was also the contention of the learned counsel for the respondent-plaintiff, that the decision rendered by this Court in Rohit Singh's case, has been reiterated in Bollepanda P. Poonacha & Anr vs. K.M.Madapa, (2008) 13 SCC 179, and a perusal of the above judgment, would lead to the conclusion, that in the factual analysis, the conclusions drawn by the High Court were justified. Our pointed attention was drawn to the conclusions recorded in paragraph 15 of the above judgment, which is extracted hereunder:

> "15. A belated counter claim must be discouraged by this Court. See Ramesh Chand Ardawatiya Vs. Anil Panjwani [(2003) 7 SCC 350]. We are, however, not unmindful of the decisions of this Court where a defendant has been allowed to amend his written statement so as to enable him to elaborate his defence or to take additional pleas in support of his case. The Court in such matters has a wide discretion. It must, however, subserve the ultimate cause of justice. It may be true that further litigation should be endeavoured to be avoided. It may also be true that joinder of several causes of action in a suit is permissible. The Court, must, however, exercise the discretionary jurisdiction in a judicious manner. While considering that subservance of justice is the ultimate goal, the statutory limitation shall not be overstepped. Grant of relief will depend upon the factual background involved in each case. The Court, while undoubtedly would take into consideration the questions of serious injustice or irreparable loss, but nevertheless should bear in mind that a provision for amendment of pleadings are not available as a matter of right under all

circumstances. One cause of action cannot be allowed to be substituted by another. Ordinarily, effect of an admission made in earlier pleadings shall not be permitted to be taken away. See State of A.P Vs. M/s. Pioneer Builders, A.P. [(2006) 9 SCALE 520] and Steel Authority of India Ltd. Vs. Union of India [2006 (9) SCALE 597] and Himmat Singh Vs. I.C.I. India Ltd. [2008 (2) SCALE 152]." (emphasis is ours) Having perused the conclusions drawn in paragraph 15, extracted above, we are satisfied, that the same are wholly inapplicable to the facts and circumstances of this case, and that, the decision of the High Court could not have been legitimately based on the conclusions recorded in paragraph 15, extracted above.

8. It is in these circumstances, that we advert to Order VIII Rule 6A of the Code of Civil Procedure, which is being reproduced below:

"6A. 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 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." A perusal of Sub-clause (1) of Section 6A of Order VIII, leaves no room for any doubt, that the cause of action in respect of which a counter claim can be filed, should accrue before the defendant has delivered his defence, namely, before the defendant has filed a written statement. The instant determination of ours is supported by the conclusions drawn in Bollepanda P. Poonacha & Anr vs. K.M.Madapa (supra), wherein this Court observed as under:

"11. The provision of Order 8 Rule 6-A must be considered having regard to the aforementioned provisions. A right to file counterclaim is an additional right. It may be filed in respect of any right or claim, the cause of action therefor, however, must accrue either before or after the filing of the suit but before the defendant has raised his defence. The respondent in his application for amendment of written statement

> categorically raised the plea that the appellants had tresspassed on the lands in question in the summer of 1998. Cause of action for filing the counterclaim inter alia was said to have arisen at that time. It was so explicitly stated in the said application. The said application, in our opinion, was, thus, clearly not maintainable. The decision of Ryaz Ahmed (supra) is based on the decision of this Court in Baldev Singh Vs. Manohar Singh [(2006) 6 SCC 498]." (emphasis is ours) It is not a matter of dispute in the present case, that cause of action for which the counter-claim was filed in the present case, arose before the respondent-plaintiff filed the suit (out of which these petitions/appeals have arisen). It is therefore apparent that the appellants before this Court were well within their right to file the counter-claim.

9. It is quite apparent from the factual position noticed hereinabove, that after the issues were framed on 18.10.1993, the counter claim was filed by the appellants before this Court (i.e. by defendant Nos.3 and 4 before the trial court) almost two and a half years after the framing of the issues. Having given our thoughtful consideration to the provisions relating to the filing of counter claim, we are satisfied, that there was no justification whatsoever for the High Court to have declined, the appellant before this Court from filing his counter claim on 17.06.1996, specially because, it is not a matter of dispute, that the cause of action, on the basis of which the counter claim was filed by defendant Nos.3 and 4, accrued before their written statement was filed on 11.11.1992. In the present case, the respondent-plaintiff's evidence was still being recorded by the trial court, when the counter-claim was filed. It has also not been shown to us, that any prejudice would be caused to the respondent-plaintiff before the trial court, if the counter-claim was to be adjudicated upon, along with the main suit. We are of the view, that no serious injustice or irreparable loss (as expressed in paragraph 15 of Bollepanda P.Pooncha's case), would be suffered by the respondent-plaintiff in this case.

10. For the reasons recorded hereinabove, we set aside the impugned order passed by the High Court dated 02.01.2008, and restore the order passed by the trial court dated 28.10.1996.

11. The appeals are allowed in the above terms.

12. Needless to mention, that it shall be open to the respondent- plaintiff to raise all pleas open to him through the written statement which is filed by the respondent-plaintiff, to the counter claim. Civil Appeal No.2310 of 2016 (Arising out of SLP(C)No.32118 of 2009)

13. Leave granted.

14. Learned counsel for the parties are agreed, that the controversy raised in the instant appeal, is akin to the one adjudicated upon by this Court in Vijay Prakash Jarath vs. Tej Prakash Jarath (Civil Appeal Nos.2308- 2309 of 2016, arising out of SLP(C)Nos.8536-8537 of 2008, decided by us on 01.03.2016. The instant appeal is accordingly allowed in terms of the decision rendered by this Court in Vijay Prakash Jarath vs. Tej Prakash Jarath decided on 01.03.2016.

.....J. (JAGDISH SINGH KHEHAR) .....J. (C.NAGAPPAN) NEW DELHI;

MARCH 1, 2016.