A SATYENDER AND ORS.

v.

SAROJ AND ORS.

(Civil Appeal No. 4833 of 2022)

B AUGUST 17, 2022

[UDAY UMESH LALIT, S. RAVINDRA BHAT AND SUDHANSHU DHULIA, JJ.]

Code of Civil Procedure, 1908: Or.VIII, r.6A – Counter Claim C *– Plaintiffs (respondents) filed suit for declaration and possession on agricultural land claiming that defendant No. 2 was their tenant who had sub-let the land to his son (defendant No.1), without the consent of the plaintiffs and hence, liable to be evicted – Defendant No.2 filing a separate written statement denied that they were ever tenant of the plaintiffs – A counter claim was also set up by defendant* D *No. 2 claiming that in addition to the Khasra and Killa numbers given in the plaint, he was also in possession of two other Killa nos. i.e., 6//18 and 23 – Trial Court dismissed the suit but allowed the counter-claim – First appeal of plaintiff was also dismissed – High Court partly allowed the second appeal of the plaintiffs by allowing* E *the claim of the plaintiffs on two plots i.e., 21//3/2 and 7//13 for the reason that the claim on these plots by plaintiffs went uncontested – High Court also held that the counter claims set up by the defendant could not be decreed since the plaintiffs themselves had not set up any claim whatsoever for these two plots, and therefore under provisions of Or.VIII, r.6A, an independent counter claim having* F *nothing to do with the plaintiffs can never be allowed – Defendants filed instant appeal – Held: The finding of the High Court regarding two Killa Nos. 21//3/2 and 7//13 was erroneous as merely because the defendant did not raise a counter claim on this property it would not ipso facto mean that a decree ought to have been granted in* G *favour of the plaintiffs – The burden of proof was on the plaintiffs to prove their case, which they failed – The finding of High Court regarding the counter claim of the defendants on Killa Nos. 6//18 and 23 is correct and is based on right interpretation of Or.VIII, Rule 6A of CPC as plaintiffs never raised any claim on Killa No. 6/ /18 or Killa No. 23 – Counter claim can be set up only "against the* H *claim of the plaintiffs" – Since there was no claim of the plaintiffs*

regarding Killa No. 6//8 and 23, the defendants were barred to raise any counter claim on these Killa numbers in view of Or.VIII, r.6A of the CPC as it has nothing to do with the plaintiffs – Judgment and order passed by the High Court to the extent that it has decreed the claim of the plaintiffs on Killa Nos. 21//3/2 and 7//13 is set aside.

Code of Civil Procedure, 1908: s.100 – In the State of Haryana, a court in second appeal is not required to formulate a substantial question of law, as what is applicable in Haryana is s.41 of the Punjab Courts Act, 1918 and not s.100 of CPC – Punjab Courts Act, 1918 – s.41.

Disposing of the appeal, the Court

HELD: 1. Section 100 of the CPC as it stands today indeed mandates that a second appeal would lie before the High Court only on a substantial question of law, and a Second Appeal has to be heard on the substantial question of law, so formulated by the High Court. The provision of second appeal as it stands today was inserted in the CPC by Amendment Act No. 104 of 1976. Prior to the 1976 amendment, there was no requirement of substantial question of law. [Para 10][350-F-G]

2.1 Initially, it was held by this Court (in Kulwant Kaur v. Gurdial Singh Mann3) that after the 1976 Amendment, Section 100 of the CPC would be applicable in Punjab & Haryana and not Section 41 of the Punjab Courts Act, 1918 and a second appeal has to be decided only on a "substantial question of law". It was held that after the 1976 Amendment Act, Section 41 of the Punjab Courts Act, stood repealed. Additionally, it was also held that Section 41 of the Punjab Courts Act was repugnant to Section 100 CPC in view of Article 254 of the Constitution of India. However, in *Pankajakshi*, a Constitution Bench held that the reasoning given in Kulwant Kaur for holding that Section 41 of the Punjab Courts Act stood repealed was not correct. Section 97 of Amendment Act of 1976 provides that only such provisions would stand repealed which were inserted in the principal Act (i.e., Code of Civil Procedure, 1908), by a State Legislature or High Court before the commencement of this Act (i.e., 1976 Amendment Act). As Section 41 of the Punjab Courts Act was

neither an amendment in the principal Act nor a provision inserted in the principal Act therefore, it would not be covered by Section 97 of the Amendment Act of 1976, and there was hence no question of it being repealed under the provisions of Section 97 of the Amendment Act, 1976. [Paras 11, 12][352-A-B, E-F]

2.2 It was further held [in *Pankajakshi*] that the question of repugnancy and its application was also not correctly decided in *Kulwant Kaur* as Article 254 of the Constitution of India, was not applicable in that case. Section 254 would be applicable only to the laws made after the implementation of the Constitution of India and Section 41 of the Punjab Courts Act is of 1918 vintage and it was not made by a Legislature of the State after the Constitution of India had come into force. The Punjab Courts Act, 1918 was enacted under the provisions of the Government of India Act, 1935 and although by Article 395 of the Constitution of India, the Government of India Act, 1935 stood repealed yet by virtue of provisions of Article 372(1) of Constitution of India all the laws in force in the territory of India immediately before the commencement of the Constitution were to continue in force until altered or repealed or amended by a competent legislature or other competent authority. Since Section 41 of the Punjab Courts Act has not been altered, repealed or amended by State Legislature of Punjab or Haryana, it will continue to be in force. [Para 13][352-G-H; 353-A-C]

3. The laws as applicable in Punjab in the year 1918, were also applicable to the present territory of Haryana since it was then a part of the State of Punjab. Later on, the creation of the new State of Haryana, under the provision given in Section 88 of the Punjab Re-organization Act, 1966, the laws applicable in the erstwhile State of Punjab continued to be applicable in the new State of Haryana. Furthermore, State of Haryana formally adopted the laws of the erstwhile State of Punjab, under Section 89 of the Punjab Re-Organisation Act, 1966. Therefore, in the State of Haryana a court in second appeal is not required to formulate a substantial question of law, as what is applicable in Haryana is Section 41 of the Punjab Courts Act, 1918 and not Section 100 of CPC. Consequently, it was not necessary for the High Court to formulate a substantial question of law. [Para 14][353-C-E]

4. Be that as it may, though the requirement of formulation of a substantial question of law was not necessary, yet Section 41 of the Punjab Courts Act, requires that only such decisions are to be considered in second appeal which are contrary to law or to some custom or usage having the force of law or the court below have failed to determine some material issue of law or custom or usage having the force of law. Therefore, what is important is still a "question of law". In other words, second appeal is not a forum where court has to re-examine or re-appreciate questions of fact settled by the Trial Court and the Appellate Court. The plaintiffs had claimed right over certain agricultural land and their case was that they have the right to be declared the owner of this property and the possession be handed over to the them, for the reasons that on this particular property defendants and their predecessors-in-interest were the tenants of the plaintiffs. Their case was that defendant No. 2 was their tenant who had sub-let the property in favour of his son, that is defendant No. 1 and therefore, the property should be reverted back to the plaintiffs and they should be declared the owner and should be given the possession of the property as well. Both the Trial Court as well as the First Appellate Court had held after evaluating the evidence placed by the plaintiffs that defendant No. 2 and his brothers (who were not even made a party by the plaintiffs) were the tenants on the property and defendant No.2 had not sub-let the property in favour of his son that is defendant No. 1 and the revenue entries being made in this regard in the year 1978 are wrong and without any basis as there was no order of any revenue authority for making such an entry. In short, the plaintiffs had failed to prove their case as owner of the land in dispute. Hence their case of declaration and possession was dismissed. The Second Appellate Court however, quite erroneously, and without any justification, gave an entirely new finding regarding two Killa Nos. 21//3/2 and 7//13 on which the plaintiffs claimed relief of declaration and possession, on the same grounds as raised by them for the other Killa Nos. The pleadings also show that the defendants had made a general denial of the plaintiffs' claim for all the plots. Yet, the High Court held that since the defendants had not made any claim for plot nos. 21//3/2 and 7//13 and therefore by logic a decree of declaration of possession ought to have been

given to the plaintiffs for these plots! This reasoning of the second Appellate Court is erroneous for the simple reason that the burden of proof was on the plaintiffs to prove their case, which they had failed. They have not been able to prove to the satisfaction of the Trial Court as well as the First Appellate Court about their claim of any kind over this property. Merely because the defendant did not raise a counter claim on this property it would not ipso facto mean that a decree ought to have been granted in favour of the plaintiffs. Plaintiffs have to prove their case on the strength of their evidence. For this reason, the reasoning given by the Second Appellate Court for decreeing the claim of the plaintiff for plot nos. 21//3/2 and 7//13 is incorrect and to that extent is liable to be set aside. [Para 15][353-F; 354-A-H; 355-A]

5. The other finding of Second Appellate Court regarding the counter claim of the defendants on Killa Nos. 6//18 and 23 is, however, correct and is based on right interpretation of Order VIII, Rule 6A of CPC. From the pleadings of the plaintiffs, it is clear that they had never raised any claim on Killa No. 6//18 or Killa No. 23. The defendants in their written statement while denying the rights of the plaintiffs on the land of which particulars had been given by the plaintiffs, quite ingeniously inserted the two Killa Nos.6//18 and 23, setting a counter-claim on these plots. The Trial Court and the First Appellate Court while dismissing the plaintiffs' suit had allowed this claim for without assigning any reasons. In fact, this counter claim which was raised by the defendant is barred under Order VIII, Rule 6A of the CPC. A counter claim can be set up only "against the claim of the plaintiffs". Since there was no claim of the plaintiffs regarding Killa No. 6//8 and 23, the defendants were barred to raise any counter claim on these Killa numbers in view of Order VIII, Rule 6A of the CPC as it has nothing to do with the plaintiffs. It is true that a counter claim can be made by the defendant, even on a separate or independent cause of action. The Legislature permits the institution of a counter claim, in order to avoid multiplicity of litigation. But then it has certain limitations such as that the counter claim cannot exceed the pecuniary limits of the jurisdiction of the court, and that such counter claim must be instituted before the defendant has delivered his defence or

before the time limit for delivering his defence has expired. More importantly, such a counter claim must be against the plaintiff. Evidently, in the present case the counter claim was not against the plaintiffs. Moreover, as the plaintiffs had not claimed any right over the property and the Killa Nos. 6//8 and 23 are not even a part of the suit property described in the plaint by the plaintiffs. Despite the same, such a claim has been allowed against the plaintiffs. In fact, we do not find on record any reply submitted by the plaintiffs against the counter claim. Such a counter claim should have been excluded in terms of Order VIII, Rule 6C of the CPC. The counter claim set up by the defendants has been rightly rejected by the High Court. [Para 16][355-B-C, H]

Pankajakshi & Ors. v. Chandrika & Ors. **(2016) 6 SCC 157 : [2016] 3 SCR 1018 – followed.**

Kirodi v. Ram Parkash & Ors. **(2019) 11 SCC 317 : [2019] 7 SCR 968;** *Jag Mohan Chawla & Anr. v. Dera Radha Swami Satsang & Ors.* **(1996) 4 SCC 699 : [1996] 2 Suppl. SCR 509 – relied on.**

Kulwant Kaur v. Gurdial Singh Mann **(2001) 4 SCC 262 : [2001] 2 SCR 525 – referred to.**

Case Law Reference

[2016] 3 SCR 1018	**followed**	**Para 9**
[2019] 7 SCR 968	**relied on**	**Para 9**
[2001] 2 SCR 525	**referred to**	**Para 11**
[1996] 2 Suppl. SCR 509	**relied on**	**Para 16**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4833 of 2022.

From the Judgment and Order dated 19.07.2017 of the High Court of Punjab and Haryana at Chandigarh in RSA No. 140 of 2009.

Ajay Tewari, Sr. Adv., Abhimanyu Tewari, Ms. Eliza Bar, Dilmrig Nayani, Advs. for the Appellants.

Sushil Sardana, Ms. Rekha Sardana, Shafik Ahmed, Ram Kishor Singh Yadav, Advs. for the Respondents.

A The Judgment of the Court was delivered by

SUDHANSHU DHULIA, J.

1. This appeal is against judgment dated 19.07.2017 of the High Court of Punjab & Haryana given in a Second Appeal (No. 140 of 2009) which was partly allowed by the High Court.

B

2. The case arises out of the proceedings initiated by the plaintiffs (respondents herein) for declaration and possession on an agricultural land. Suit was filed by the plaintiffs, claiming to be owners of the property, which in total measured 80 Kanals, 19 Marlas. The property is in the revenue village Gagarwas, Tehsil Loharu, District Bhiwani (Haryana).
C Their case was that defendant No. 2 was their tenant who had sub-let the land to his son (defendant No.1), without the consent of the plaintiffs/ landlords and hence, the two defendants were liable to be evicted and the possession of the land was to be handed over to the plaintiffs. The plaintiffs additionally had built their case on an assertion that the land
D was earlier in possession of one Ram Kaur on which Ganpat Rai, the father of defendant No. 2 was the tenant. Ganpat Rai surrendered his tenancy of the disputed land to Ram Kaur in the year 1976. Later in the year 1994, the plaintiffs had won a suit against Ms. Ram Kaur and the land which is the subject matter of the present dispute now belongs to them, hence they have stepped into the shoes of Ms. Ram Kaur and are
E now the owners of the property.

3. Defendant No. 1 (Satyender) is the son of defendant No.2 (Ishwar Singh). The stand taken by defendant No.1 was that he had no concern with the land in question. The defence set up by him was that he was born in the year 1966 and hence, he was only twelve years of
F age in the year 1978 when the sub-tenancy is alleged to have been created in his favour, as per the revenue records. He never cultivated the land and the cultivation was done by his father and his two uncles, and the entries made in the revenue record showing him to be a tenant or a sub-tenant are wrong and have been made by the plaintiffs, in
G collusion with the revenue officials.

4. Defendant No.2 filed a separate written statement. According to defendant No. 2, one Indraj was the original owner of the property, who had given this land in tenancy to defendant No. 2's father Ganpat Rai. Indraj died in the year 1976 and was succeeded by Ms. Ram Kaur. Meanwhile, the father of the defendant No. 2, Ganpat Rai died in the
H

year 1978 and consequently he and his two other brothers namely, Sombit and Om Prakash had jointly inherited the tenancy. Thereafter, all the three brothers became tenants under Ms. Ram Kaur and they continued to be in possession of the suit property. They denied that they were ever tenant of the plaintiffs.

5. In addition to their written statement, a counter claim was also set up by defendant No. 2. The defendant No.2 claimed in his written statement that in addition to the Khasra and Killa numbers given in the plaint, he was also in possession of two other Killa nos. i.e., 6//18 and 23. In other words, their counter claim on the above two mentioned plot numbers was in addition to the claim on the plots as mentioned by the plaintiffs. The suit was ultimately dismissed by the Trial Court on the findings that the plaintiffs could neither prove their right on the property, nor could they prove the fact that the defendant No.2 had created a sub-tenancy in favour of his son, i.e., defendant No.1. The counter claim set up by the defendant No. 2 was decreed.

6. The first appeal filed by the plaintiffs was also dismissed by the Appellate Court. The Appellate Court too held that there was a heavy burden on the appellants to prove that the tenancy of Ganpat Rai had come to an end in the year 1976 by surrendering the possession of the disputed land. This could not be proved by the plaintiffs. It was also the finding by the Lower Appellate Court that after the death of Ganpat Rai, tenancy was inherited by his three sons namely, Sombir, Ishwar and Om Prakash. Therefore, all of them should have been impleaded as party in the case because the outcome of the suit would affect them as well. Since they have not been impleaded as a party therefore, the suit is bad for non-joinder of the necessary parties. Regarding the counter claim, it was held by the First Appellate Court that as a natural consequence of dismissal of the suit, the counter claim of the defendants qua Killa No. 6//18 and 23 was rightly decreed.

7. The matter was taken in second appeal by the plaintiffs. The second appeal of the plaintiffs was partly allowed. Though the High Court in the second appeal upheld the findings of the two Courts on the sub-letting and tenancy and upheld the findings of the lower courts in favour of the defendants as there was no sub-letting of the land, yet in the same breath the High Court has allowed the claim of the plaintiffs on the two plots i.e., 21//3/2 and 7//13 for the reasons that for these two plots though the plaintiffs had raised their claim and the defendants had

not raised any counter claim on these plot numbers, which went uncontested.

8. In addition, it was also held by the High Court that the counter claims set up by the defendant (on plot Nos. 6//18 and 23) could not be decreed since the plaintiffs themselves had not set up any claim whatsoever for these two plots, i.e., Killa No. 6//18 and 23 and therefore under provisions of Order VIII, Rule 6A of the Code of Civil Procedure 1908 (hereinafter referred to as "CPC"), an independent counter claim having nothing to do with the plaintiffs can never be allowed.

9. The defendants are now before this Court. The first ground raised by the counsel for the appellant/defendant before this Court is that the High Court while deciding a second appeal did not formulate any substantial question of law, which was an essential requirement under Section 100 of the CPC. The learned counsel would argue that a second appeal can only be admitted and heard on a substantial question of law and since no substantial question of law was formulated nor any arguments advanced by the parties before the Second Appellate Court (High Court) as mandated by Section 100 of the CPC, the order of the High Court is liable to be set aside on this ground alone. This seemingly attractive argument, however, does not hold any good in the present case as the subject matter of the present dispute is from Haryana where the governing provision would be Section 41 of the Punjab Courts Act, 1918 and not Section 100 of CPC. This was held by a Constitution Bench of this Court in **Pankajakshi & Ors.** v. **Chandrika & Ors**.[1] which was later followed in **Kirodi** v. **Ram Parkash & Ors.**[2]

10. Section 100 of the CPC as it stands today indeed mandates that a second appeal would lie before the High Court only on a substantial question of law, and a Second Appeal has to be heard on the substantial question of law, so formulated by the High Court. The provision of second appeal as it stands today was inserted in the CPC by Amendment Act No. 104 of 1976. Prior to the 1976 amendment, there was no requirement of substantial question of law. The earlier, i.e., unamended position read as under: -

> "100. **Second appeal** – (1) "Save where otherwise expressly provided in the body of this Code or by any other law for the time

[1] (2016) 6 SCC 157

[2] (2019) 11 SCC 317

being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to a High Court on any of the following grounds, namely:

(a) the decision being contrary to law or to some usage having the force of law;

(b) the decision having failed to determine some material issue of law or usage having the force of law;

(c) a substantial error or defect in the procedure provided by this Code or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon the merits.

(2) An appeal may lie under this section from an appellate decree passed ex parte."

Under the Punjab Courts Act, 1918, a similar provision is given as regards a second appeal. This is in Section 41 of the Act which is in *pari materia* to the unamended Section 100 of the CPC and reads as follows:-

"41. **Second appeal**— (1) An appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court on any of the following grounds, namely:

(a) the decision being contrary to law or to some custom or usage having the force of law:

(b) the decision having failed to determine some material issue of law or custom or usage having the force of law,

(c) a substantial error or defect in the procedure provided by the Code of Civil Procedure 1908 [V of 1908], or by any other law for the time being in force which may possibly have produced error or defect in the decision of the case upon the merits;

[Explanation. - A question relating to the existence or validity of a custom or usage shall be deemed to be a question of law within the meaning of this Section]

(2) An appeal may lie under this section from an appellate decree passed ex parte."

A 11. Initially, it was held by this Court (in **Kulwant Kaur** v. **Gurdial Singh Mann**[3]**)** that after the 1976 Amendment, Section 100 of the CPC would be applicable in Punjab & Haryana and not Section 41 of the Punjab Courts Act, 1918 and a second appeal has to be decided only on a "substantial question of law". It was held that after the 1976 Amendment Act, Section 41 of the Punjab Courts Act, stood repealed. Additionally, it B was also held that Section 41 of the Punjab Courts Act was repugnant to Section 100 CPC in view of Article 254 of the Constitution of India.

12. As referred above, the present Section of the 100 CPC was inserted in the CPC by the Amendment Act of 1976. Section 97 of the Amendment Act of 1976 which was relied upon by this Court in **Kulwant** C **Kaur** reads as under: -

> "97. Repeal and savings. — (1) Any amendment made, or any provision inserted in the principal Act by a State Legislature or a High Court before the commencement of this Act shall, except insofar as such amendment or provision is consistent with the D provisions of the principal Act as amended by this Act, stand repealed."

In **Pankajakshi** (supra) a Constitution Bench held that the reasoning given in **Kulwant Kaur** (supra) for holding that Section 41 of the Punjab Courts Act stood repealed was not correct. Section 97 of E Amendment Act of 1976 provides that only such provisions would stand repealed which were inserted in the principal Act (i.e., Code of Civil Procedure, 1908), by a State Legislature or High Court before the commencement of this Act (i.e., 1976 Amendment Act). As Section 41 of the Punjab Courts Act was neither an amendment in the principal Act F nor a provision inserted in the principal Act therefore, it would not be covered by Section 97 of the Amendment Act of 1976, and there was hence no question of it being repealed under the provisions of Section 97 of the Amendment Act, 1976.

13. It was further held [in **Pankajakshi**] that the question of G repugnancy and its application was also not correctly decided in **Kulwant Kaur** as Article 254 of the Constitution of India, was not applicable in that case. Section 254 would be applicable only to the laws made after the implementation of the Constitution of India and Section 41 of the Punjab Courts Act is of 1918 vintage and it was not made by a Legislature

H [3] (2001) 4 SCC 262

of the State after the Constitution of India had come into force. The Punjab Courts Act, 1918 was enacted under the provisions of the Government of India Act, 1935 and although by Article 395[4] of the Constitution of India, the Government of India Act, 1935 stood repealed yet by virtue of provisions of Article 372(1)[5] of Constitution of India all the laws in force in the territory of India immediately before the commencement of the Constitution were to continue in force until altered or repealed or amended by a competent legislature or other competent authority. Since Section 41 of the Punjab Courts Act has not been altered, repealed or amended by State Legislature of Punjab or Haryana, it will continue to be in force.

14. We may also add here that we are presently concerned with the laws in the State of Haryana. All the same, the laws as applicable in Punjab in the year 1918, were also applicable to the present territory of Haryana since it was then a part of the State of Punjab. Later on, the creation of the new State of Haryana, under the provision given in Section 88 of the Punjab Re-organization Act, 1966, the laws applicable in the erstwhile State of Punjab continued to be applicable in the new State of Haryana. Furthermore, State of Haryana formally adopted the laws of the erstwhile State of Punjab, under Section 89 of the Punjab Re-Organisation Act, 1966. Therefore, in the State of Haryana a court in second appeal is not required to formulate a substantial question of law, as what is applicable in Haryana is Section 41 of the Punjab Courts Act, 1918 and not Section 100 of CPC. Consequently, it was not necessary for the High Court to formulate a substantial question of law.

15. Be that as it may, though the requirement of formulation of a substantial question of law was not necessary, yet Section 41 of the Punjab Courts Act, requires that only such decisions are to be considered in second appeal which are contrary to law or to some custom or usage having the force of law or the court below have failed to determine

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[4] **Article 395-Repeals The Indian Independence Act, 1947, and the Government of India Act, 1935, together with all enactments amending or supplementing the latter Act, but not including the Abolition of Privy Council Jurisdiction Act, 1949, are hereby repealed.**

[5] **372(1) Notwithstanding the repeal by this Constitution of the enactments referred to in Article 395 but subject to the other provisions of this Constitution, all the laws in force in the territory of India immediately before the commencement of this Constitution, shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority.**

A some material issue of law or custom or usage having the force of law. Therefore, what is important is still a "question of law". In other words, second appeal is not a forum where court has to re-examine or re-appreciate questions of fact settled by the Trial Court and the Appellate Court. The plaintiffs had claimed right over certain agricultural land and their case was that they have the right to be declared the owner of this B property and the possession be handed over to the them, for the reasons that on this particular property defendants and their predecessors-in-interest were the tenants of the plaintiffs. Their case was that defendant No. 2 was their tenant who had sub-let the property in favour of his son, that is defendant No. 1 and therefore, the property should be reverted C back to the plaintiffs and they should be declared the owner and should be given the possession of the property as well. Both the Trial Court as well as the First Appellate Court had held after evaluating the evidence placed by the plaintiffs that the defendant No. 2 and his brothers (who were not even made a party by the plaintiffs) were the tenants on the property and defendant No.2 had not sub-let the property in favour of D his son that is defendant No. 1 and the revenue entries being made in this regard in the year 1978 are wrong and without any basis as there was no order of any revenue authority for making such an entry. In short, the plaintiffs had failed to prove their case as owner of the land in dispute. Hence their case of declaration and possession was dismissed. E The Second Appellate Court however, quite erroneously, and without any justification, gave an entirely new finding regarding two Killa Nos. 21//3/2 and 7//13 on which the plaintiffs claimed relief of declaration and possession, on the same grounds as raised by them for the other Killa Nos. The pleadings also show that the defendants had made a general F denial of the plaintiffs' claim for all the plots. Yet, the High Court held that since the defendants had not made any claim for plot nos. 21//3/2 and 7//13 and therefore by logic a decree of declaration of possession ought to have been given to the plaintiffs for these plots! This reasoning of the second Appellate Court is erroneous for the simple reason that the burden of proof was on the plaintiffs to prove their case, which they G had failed. They have not been able to prove to the satisfaction of the Trial Court as well as the First Appellate Court about their claim of any kind over this property. Merely because the defendant did not raise a counter claim on this property it would not *ipso facto* mean that a decree ought to have been granted in favour of the plaintiffs. Plaintiffs have to prove their case on the strength of their evidence. For this reason, the H

reasoning given by the Second Appellate Court for decreeing the claim of the plaintiff for plot nos. 21//3/2 and 7//13 is incorrect and to that extent is liable to be set aside.

16. The other finding of Second Appellate Court regarding the counter claim of the defendants on Killa Nos. 6//18 and 23 is, however, correct and is based on right interpretation of Order VIII, Rule 6A of CPC. From the pleadings of the plaintiffs, it is clear that they had never raised any claim on Killa No. 6//18 or Killa No. 23. The defendants in their written statement while denying the rights of the plaintiffs on the land of which particulars had been given by the plaintiffs, quite ingeniously inserted the two Killa Nos.6//18 and 23, setting a counter-claim on these plots. The Trial Court and the First Appellate Court while dismissing the plaintiffs' suit had allowed this claim for without assigning any reasons. In fact, this counter claim which was raised by the defendant is barred under Order VIII, Rule 6A of the CPC. Order VIII, Rule 6A reads as under:-

> [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 counter claim can be set up only "against the claim of the plaintiffs". Since there was no claim of the plaintiffs regarding Killa No.

A 6//8 and 23, the defendants were barred to raise any counter claim on these Killa numbers in view of Order VIII, Rule 6A of the CPC as it has nothing to do with the plaintiffs. It is true that a counter claim can be made by the defendant, even on a separate or independent cause of action (**Jag Mohan Chawla & Anr.** v. **Dera Radha Swami Satsang & Ors.**[6]).

B

The Legislature permits the institution of a counter claim, in order to avoid multiplicity of litigation. But then it has certain limitations such as that the counter claim cannot exceed the pecuniary limits of the jurisdiction of the court, and that such counter claim must be instituted before the defendant has delivered his defence or before the time limit

C for delivering his defence has expired. More importantly, such a counter claim must be against the plaintiff! Evidently, in the present case the counter claim was not against the plaintiffs. Moreover, as the plaintiffs had not claimed any right over the property and the Killa Nos. 6//8 and 23 are not even a part of the suit property described in the plaint by the

D plaintiffs. Despite the same, such a claim has been allowed against the plaintiffs. In fact, we do not find on record any reply submitted by the plaintiffs against the counter claim. To be fair, such a counter claim should have been excluded in terms of Order VIII, Rule 6C of the CPC. Suffice it to state here that the counter claim set up by the defendants has been rightly rejected by the High Court.

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17. The judgment and order dated 19.07.2017 passed by the High Court to the extent that it has decreed the claim of the plaintiffs on Killa Nos. 21//3/2 and 7//13 is hereby set aside. This appeal hence stands disposed of on the aforesaid terms.

Devika Gujral Appeal disposed of.
(Assisted by : Deepak Panwar, LCRA)

[6] (1996) 4 SCC 699