

SH. JAG MOHAN CHAWLA AND ANR.
v.
DERA RADHA SWAMI SATSANG AND ORS.

MAY 7, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

Code of Civil Procedure, 1908 : Order 8, Rules 6-A to 6-G.

Counter-claim by defendant—Maintainability of—Need not relate to original cause of action—But could be made on an independent and different cause of action—Even if it accrued after institution of suit—In a suit for injunction, counter-claim for injunction in respect of the same or a different property, maintainable.

The appellants-plaintiffs laid a suit for perpetual injunction to restrain the respondents from interfering with their possession of the property. The respondents pleaded in their written statement that they had purchased land situated in some other area and were in possession and enjoyment of the said land. They sought counter-claim of permanent injunction to restrain the appellants from interfering with their possession and enjoyment of the said land. The appellants had filed their replica, i.e., additional written statement contemplated under Order 8, Rule 6-E, Code of Civil procedure, 1908 disputing the averments made by the respondent in their counter-claim. They also pleaded that the counter-claim was not maintainable. An application filed by the appellant under Order 8, Rule 6-C and Section 151 CPC praying to exclude the counter-claim from the written statement was dismissed. The High Court also dismissed the revision petition with a direction to the trial Court to decide, as an issue, whether property in dispute was the same which was the subject matter of the counter-claim and to dispose of the suit after recording findings. Being aggrieved, the appellants preferred the present appeal.

On behalf of the appellants it was contended that in a suit for injunction counter-claim was not maintainable and that the direction issued by the High Court to identify the land to which the counter-claim related and was referable to the property in dispute was also not consistent.

Dismissing the appeal, this Court

A HELD : 1.1. It is true that in money suits, decree must be conformable
to Order 20, Rule 18, Code of Civil Procedure, 1908 but the object of amend-
ments introduced by Rules 6A to 6G are conferment of a statutory right to the
B defendant to set up a counter-claim independent of the claim on the basis of
which the plaintiff laid the suit, on his own cause of action. In sub-rule (1) of
Rule 6A, the language is so couched with words of wide width as to enable the
parties to bring his own independent cause of action in respect of any claim
that would be the subject matter of an independent suit. Thereby, it is no longer
confined to money claim or to cause of action of the same nature as original
C action of the plaintiff. It need not relate to or be connected with the original
cause of action or matter pleaded by the plaintiff. The words "any right or claim
in respect of cause of action accruing with the defendant" would show that the
cause of action from which the counter-claim arises need not necessarily arise
from or have any nexus with the cause of action of the plaintiff that occasioned
to lay the suit. The only limitation is that the cause of action should arise before
the expiry of the time fixed for filing the written statement. The defendant may
D set up a cause of action which has accrued to him even after the institution of
the suit. The counter-claim expressly is treated as a cross suit with all the
indicia of pleadings as a plaint including the duty to aver his cause of action
and also payment of requisite court fee thereon. Instead of relegating the
defendant to an independent suit, to avert multiplicity of the proceeding and
needless protraction, the legislature intended to try both the suit and the
E counter-claim in the same suit as suit and cross suit and have them disposed
of in the same trial. Thus, 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. [513-E-H; 514-A-C]

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1.2. Opportunity also has been provided under Rule 6-C to seek
deletion of the counter-claim. The trial Court had not found it necessary to
delete the counter-claim. The High Court directed to examine the identity
G of the property. Even otherwise, it being an independent cause of action,
though the identity of the property may be different, there arises no il-
legality warranting dismissal of counter claim. Nonetheless, in the same
suit, both the claim in the suit and the counter-claim could be tried and
decided and disposed of in the same suit. Hence, in a suit for injunction,
counter-claim for injunction in respect of the same or a different property
H is maintainable. [514-C-F]

Laxmidas Dahayabhai Kabarwala v. Nanabhai Chumilal Kabarwala & Ors., [1964] 2 SCC 567 and *Mahendra Kumar & Anr. v. State of Madhya Pradesh & Ors.*, [1987] 3 SCC 265, relied on. A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8275 of 1996. B

From the Judgment and Order dated 1.8.94 of the Punjab & Haryana High Court in C.R. No. 1272 of 1994.

Pramod Dayal for the appellants.

H.N. Salve N.D. Garg, Rajiv Kr. Garg for the Respondents. C

The Judgment of the Court was delivered by

K. RAMASWAMY, J. Leave granted.

Heard learned counsel on both sides. D

This appeal by special leave arises from the Judgment and order dated August 1, 1994 in Civil Revision No. 1272 of 1994 of the Punjab and Haryana High Court. The appellants-plaintiffs laid the suit No. 896/92 before the Sub-Judge, Amritsar for perpetual injunction to restrain the respondents from interfering with their possession of the property bearing E
Khasra No. 456, Purana Bazar, G.T. Road, Beas. On receipt of the summons in the suit, the respondent filed written statement pleading, inter alia, that they had purchased the lands in Khasra No. 103/1 situated at Budha Theh, Tehsil Baba Bakala, District Amritsar, Punjab and that they are in possession and enjoyment of 18 marlas of the said land. They sought F
counter-claim of permanent injunction to restrain the appellants from interfering with their possession and enjoyment of the said land. The appellants had filed their replica, i.e., additional written statement contemplated under Order 8, Rule 6E, CPC disputing the averments made by the respondent in their counter-claim. They also pleaded that the counter-claim is not maintainable. An application under Order 8, Rule 6C and G
Section 151 CPC was filed praying to exclude the counter-claim from the written statement. The Subordinate Judge by his order dated November 11, 1993 dismissed the application. The revision came to be dismissed by the High Court by the impugned order with direction to the trial Court to decide, as an issue, whether property in dispute is the same which is the H

- A subject matter of the counter-claim and to dispose of the suit after recording findings. Thus, this appeal by special leave.

- B Shri Pramod Dayal, learned counsel for the appellant, contended that in a suit for injunction, cause of action is based upon the threat of dispossession and interference with peaceful possession and enjoyment of the suit property by the respondent. The counter-claim is referable only in relation to money suits. In other words, in a suit for injunction, the counter-claim is not maintainable. The trial Court, therefore, ought to have excluded the counter-claim from the written statement and allowed the petition. He also contended that the direction issued by the High Court to identify the land where the counter-claim relates to and is referable to the property in dispute, is also not consistent. The counsel for the respondent Shri Harish Salve resisted the contentions and argued that the object of the Amendment in Rule 6A to G is to avoid multiplicity of proceedings and all claims whether based on same or different cause of action between parties to the suit should be tried and decided in the same proceedings as delineated in Rule 6A etc.

- E The question, therefore is: whether in a suit for injunction, counter-claim for injunction in respect of the same or a different property is maintainable? Whether counter-claim can be made on different cause of action? It is true that preceding CPC Amendment Act, 1976, Rule 6 of Order 8 limited the remedy to set off or counter-claim laid in a written statement only in a money suit. By CPC Amendment Act, 1976, Rules 6A to 6G were brought on statute. Rule 6A(1) provides that 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 damage or not. A limitation put in entertaining the counter-claim is as provided in the proviso to sub-rule (1), namely, the counter-claim shall not exceed the pecuniary limits of the jurisdiction of the Court. Sub-rule (2) amplifies that 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. The plaintiff shall be given liberty to file a written statement to answer the counter-claim of the

defendant within such period as may be fixed by the Court. The counter-claim is directed to be treated, by operation of sub-rule (4) thereof, as a plaintiff governed by the rules of the pleadings of the plaintiff. Even before 1976 Act was brought on statute, this Court in *Laxmidas Dahyabhai Kabarwala v. Nanabhai Chunilal Kabarwala and Ors.*, [1964] 2 SCR 567, had come to consider the case of suit and cross suit by way of counter-claim. Therein, suit was filed for enforcement of an agreement to the effect that partnership between the parties had been dissolved and the partners had arrived at a specific amount to be paid to the appellant in full satisfaction of the share of one of the partners in the partnership, and there by decree for settlement of accounts was sought. Therein the legal representatives of the deceased partner contended in the written statement, not only denying the settlement of accounts but also made a counter-claim in the written statement for the rendition of accounts against the appellant and paid the court fee as plaintiff. They also sought a prayer to treat the counter-claim as a cross suit. The trial Court dismissed the suit and the counter-claim. On appeal, the learned Single Judge accepted the counter-claim on a plaintiff in a cross suit and remitted the suit for trial in accordance with law. On appeal, per majority, this Court had accepted the respondents' plea in the written statement to be a counter-claim for settlement of their claim and defence in written statement as a cross suit. The counter-claim could be treated as a cross suit and it could be decided in the same suit without relegating the parties to a fresh suit. It is true that in money suits, decree must be conformable to Order 20, Rule 18, CPC but the object of the amendments introduced by Rules 6A to 6G are conferment of a statutory right to the defendant to set up a counter-claim independent of the claim on the basis of which the plaintiff laid the suit, on his own cause of action. In sub-rule (1) of Rule 6A, the language is so couched with the words of wide width as to enable the parties to bring his own independent cause of action in respect of any claim that would be the subject matter of an independent suit. Thereby, it is no longer confined to money claim or to cause of action of the same nature as original action of the plaintiff. It need not relate to or be connected with the original cause of action or matter pleaded by the plaintiff. The words "any right or claim in respect of a cause of action accruing with the defendant" - would show that the cause of action from which the counter-claim arises need not necessarily arise from or have any nexus with the cause of action of the plaintiff that occasioned to lay the suit. The only limitation is that the cause

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- A of action should arise before the time fixed for filing the written statement expires. The defendant may set up a cause of action which has accrued to him even after the institution of the suit. The counter-claim expressly is treated as a cross suit with all the indicia of pleadings as a plaint including the duty to aver his cause of action and also payment of the requisite court fee thereon. Instead of relegating the defendant to an independent suit, to
- B avert multiplicity of the proceeding and needless protraction, the legislature intended to try both the suit and the counter-claim in the same suit as suit and cross suit and have them disposed of in the same trial. 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
- C cause of action adjudicated without relegating the defendant to file a separate suit. Acceptance of the contention of the appellant tends to defeat the purpose of amendment. Opportunity also has been provided under Rule 6-C to seek deletion of the counter-claim. It is seen that the trial
- D Court had not found it necessary to delete the counter-claim. The High Court directed to examine the identity of the property. Even otherwise, it being an independent cause of action, though the identity of the property may be different, there arises no illegality warranting dismissal of counter-claim. Nonetheless, in the same suit, both the claim in the suit and the counter-claim could be tried and decided and disposed of in the same suit.
- E In *Mahendra Kumar & Anr v. State of Madhya Pradesh & Ors.*, [1987] 3 SCC 265 where a Bench of two Judges of this Court was to consider the controversy, held that since the cause of action for the counter-claim had arisen before filing of the written statement, the counter-claim was maintainable. The question therein was of limitation with which we are not
- F concerned in this case. Thus considered we find that there is no merit in the appeal.

The appeal is accordingly dismissed. No costs.

V.S.S.

Appeal dismissed.