

Gurbachan Singh

Vs

Bhag Singh and Others

SLP (C) No. 27264 of 1995

(K. Ramaswamy, B. L. Hansaria JJ)

24.11.1995

ORDER

1. The petitioner and the eighth respondent had filed a suit for perpetual injunction restraining Respondent 1 to 7 from dispossessing them from the suit land or part thereof. Respondent/defendants filed the written statement contending that the petitioner and the eighth respondent had trespassed into their land of an extent of 3 kanals and they are in unlawful possession. Thereby, they raised counter-claim, in the written statement, for possession. The trial court, while dismissing the suit of the petitioners, granted decree for possession of two kanals, two marlas and one biswa comprising survey numbers mentioned therein. On appeal, it was confirmed and the High Court confirmed it in RSA No. 1190 of 1994 on 18-5-1995. Thus this special leave petition.

2. The contention raised in the courts below was that in a suit for perpetual injunction, the respondents could not lay any counter-claim for possession. Order 8, Rule 6(A)(1) of the CPC, 1908 as amended in 1976 reads thus :

"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 had 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."

3. It is true that Rule 6-A(a) was introduced by the Amendment Act of 1976. Proceeding the amendment, it was settled law that except in a money claim, counter-claim or set-off cannot be set up in other suits. The Law Commission of India had recommended, to avoid multiplicity of the proceedings, right to the defendants to raise the plea of set-off in addition to a counter-claim in Rule 6 in the same suit irrespective of the fact whether the cause of action for counter-claim or set-off had accrued to the defendant either before or after the filing of the suit. The limitation was that the counter-claim or set-off must be pleaded by way of defence in the written statement before the defendant filed his written statement or before the time-limit for delivering the written statement has expired, whether such counter-claim is in the nature of a claim for damages or not. Further limitation was that the counter-claim should not exceed the pecuniary limits of the jurisdiction of the court. In other words, by laying the counter-claim, pecuniary jurisdiction of the court cannot be

divested and the power to try the suit already entertained cannot be taken away by accepting the counter-claim beyond its pecuniary jurisdiction. Thus considered, we hold that in a suit for injunction, the counter-claim for possession also could be entertained, by operation of Order 8, Rule 6(A)(1) of the CPC.

4. It is sought to be contended that the counter-claim was not filed within the time for laying the same. It would appear from the list of the dates given by the petitioner himself that the counter-claim was filed within two months from the date of the suit itself.

5. Under these circumstances, the special leave petition is dismissed.