

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Revision No.1604/2012/TA/Ajmer :

1. Ugam Singh
2. Beeram Singh
Both are sons of Shri Ratna, by caste Rawat, residents of Harijan Basti, Hatundi Road, Makhupura, Tehsil & Distt. Ajmer.
3. Smt. Prem D/o Shri Ratna W/o Shri Man Singh, by caste Rawat, R/o Opp. J.P. Hotel, Ganaheda, Up Tehsil Pushkar.
4. Gom Singh
5. Bhom Singh
6. Laxman Singh
No. 4 to 6 are sons of Shri Hajari, by caste Rawat, residents of Harijan Basti, Hatundi Road, Makhupura, Tehsil & Distt. Ajmer.
7. Smt. Phuli D/o Shri Hajari W/o Shri Shyam Singh, by caste Rawat, R/o Opp. J.P. Hotel, Ganaheda, Up Tehsil Pushkar.

... Petitioners.

Versus

1. Pratap S/o Shri Gheesa, by caste Rawat, R/o Makhupura, Tehsil & District Ajmer.
2. Smt. Panchi Devi D/o Shri Gheesa, R/o Makhupura, Tehsil & District Ajmer.
Both through Power of Attorney Shri Ranjeet Singh S/o Shri Madan Singh, by caste Rawat, R/o Makhupura, Tehsil & District Ajmer.
3. Sub Registrar, Registration Department-I, Jaiapur.
4. State of Rajasthan, through Tehsildar Ajmer.

... Non-petitioners.

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S.B.

Shri Satish Chand Kaushik, Member

Present :

Shri Khadag Singh : counsel for the petitioners.
Shri S.P. Ojha : counsel for the Onon-petitioners.

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Dated : 04.8.2016

J U D G M E N T

This revision petition has been preferred under section 230 of the Rajasthan Tenancy Act, 1955 (in short to be referred "the Act") against the order of learned Sub Divisional Officer, Ajmer dated 17.02.2012.

2. Briefly stated, the facts are that vide order dated 17.02.2012, the learned S.D.O., Ajmer has allowed the application of withdrawal of suit of non-petitioners no.1 to 5 and also dismissed the suit as withdrawn. Along with that suit, the learned lower court also dismissed the counter-claim regarding issuance of permanent injunction filed by defendants no.2 to 8 with the liberty that defendants no.2 to 8 are free to file the new suit in respect of their counter-claim. Being aggrieved with the order of the learned S.D.O., this revision petition has been filed on the ground that order of the learned S.D.O. is against the established principle of law and liable to be set aside because when the plaintiff has withdrawn his suit, only the suit can be dismissed and counter-claim cannot be dismissed on the application of withdrawal of the suit. It is established law that counter-claim is a fresh suit and it has to be decided independently if the suit has been dismissed. The dismissal of suit cannot be the ground for dismissal of counter-claim. Counter-claim will be decreed in case of dismissal of the suit. In this matter, rights of the parties were not decided, the suit was dismissed on the ground of withdrawal under Order 23 of the Code of Civil Procedure, hence the order was not appealable because no decree was made out from the order and in such a circumstance, this revision petition was moved.

3. I have heard the learned counsel for the parties and perused the file.

4. The learned counsel for the petitioners argued that the order of the learned S.D.O., Ajmer is against the law and hence he requested for acceptance of the revision petition.

5. On the other hand, the learned counsel for non-petitioners argued that first of all when the suit has been dismissed, the only remedy lies in appeal and revision petition is not maintainable. Either it is deciding the suit on merits or otherwise, it is established principle that if any order has been made by which the matter has been disposed of finally, then it is an appealable order. The second objection of the learned counsel is that there was no counter-claim in the matter, though in its order sheet, the

learned S.D.O. mentioned that "प्रतिवादी संख्या 2 से 8 द्वारा प्रस्तुत काउन्टर-क्लेम जो कि मात्र स्थायी निषेधाज्ञा बाबत प्रस्तुत किया है, को भी निरस्त किया जाता है। प्रतिवादी संख्या 2 से 8 अपने काउन्टर-क्लेम बाबत नया वाद प्रस्तुत करने के लिये स्वतंत्र हैं।"

If we see the written statement filed by the petitioners i.e. defendants no. 2 to 8, no court fees as required for counter-claim has been filed. It is the admitted position that along with counter-claim, the court fees to be filed and if there is no court fees affixed with the written statement, then it cannot be treated as counter-claim. In this case also, no court fees on counter-claim has been affixed and as such there was no counter-claim at all. Otherwise also, for the sake of arguments, if it is assumed for a moment that there was court fees paid on the counter-claim, then also the counter-claim was not maintainable because counter-claim is only in respect of injunction. In counter-claim, the defendant-petitioners only asked for permanent injunction and no other relief was asked and it is established principle that merely a suit for injunction is not maintainable. As such, there is no illegality in the order of the learned S.D.O., Ajmer, and there is no occasion to file this petition. Therefore, the learned counsel asked for dismissal of the petition.

6. Now the question for consideration before this court is that (1) Whether in case of withdrawal of a suit, if there is a written statement along with counter-claim, the counter-claim can be dismissed? (2) If the written statement was filed with mention of counter-claim but no court fees has been paid, then what will be the position?

7. After hearing the arguments of both the learned counsel and after perusal of the record and original files, the view of the Board as enumerated in the provision for withdrawal of suit under Order 23 Rule 1 of the Code of Civil Procedure is as under :-

"1. Withdrawal of suit or abandonment of part of claim -

(1) At any time after the institution of a suit, the plaintiff may, as against all or any of the defendants abandon his suit or abandon a part of his claim :

Provided that where the plaintiff is a minor or other person to whom the provisions contained in Rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the court.

(2) An application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other person.

(3) Whether the Court is satisfied -

(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim,

it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.

(4) Where the plaintiff -

(a) abandons any suit or part of claim under sub-rule(1), or

(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3),

he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(5) Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (1) or to withdraw, under sub-rule (3), any suit or part of a claim, without the consent of the other plaintiffs."

8. So far the counter-claim is concerned, Order 8 Rule 6A deals with the counter-claim by defendant as under :-

"6-A. 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."

9. If counter-claim is there and suit is being dismissed, then what will be the position, it is enumerated in Order 8 Rule 6D as under :-

"6-D. Effect of discontinuance of suit - If in any case in which the defendant sets up a counter-claim, the suit of the plaintiff is stayed, discontinued or dismissed, the counter-claim, may nevertheless be proceeded with."

10. As such, it is clear that if there is any counter-claim, *"the counter-claim shall be treated as a plaint and governed by the rules applicable to plaints"*. And if the suit fails by any reason, then also the counter-claim may be proceeded with. As such, it is clear that the dismissal of suit will not dismiss the counter-claim automatically and counter-claim will be proceeded even after dismissal of the suit.

11. The second point for consideration is that when no court fee has been paid on counter-claim, then what will be the effect? To my mind, when it has been specifically mentioned that *"the counter-claim shall be treated as a plaint and governed by the rules applicable to plaints"*, then it is clear that all the rules governing to a suit shall be applicable to the counter-claim. And it is mandatory provision that if any suit or claim is being filed, the court fee provided as per law must be paid. In this case, it is admitted position that no court fee was paid on the counter-claim till the withdrawal of the suit and when there was no court fee paid, the relief asked cannot be granted. It was the duty of the defendant to deposit the required court fee, if he is asking for any relief in form of a counter-claim. If no court fee has been paid on counter-claim, then counter-claim will be treated only as a simple written statement and that is not a counter-claim in the eyes of law.

12. In result thereof, when the suit was dismissed as withdrawn and the learned court also dismissed the counter-claim of defendants no. 2

to 8, which is not counter-claim in the eyes of law because of lack of required court fee, then there is no illegality found in the order of the learned lower court.

13. As discussed above, I am of the considered opinion that in the facts and circumstances of the matter, this revision petition is having no merits, it is liable to be dismissed; hence dismissed. There is no order as to costs. Both the parties have to bear on their own costs.

Pronounced in open court.

(SATISH CHAND KAUSHIK)
Member

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