

IN THE BOARD OF REVENUE FOR RAJASTHAN AJMER

Revision/TA/2917/2002/Churu.

Banne Singh son of Goma Singh caste Rajput resident of Hadiyal Tehsil Taranagar Distt. Churu.

...Petitioner.

Versus

1. Anna Bai alias Banna Bai widow of Mangej Singh (deceased) through LRs:-
1/1 Nandkishore adopted son of Anna Bai
2. Adisal Singh son of Ram Singh
3. Mst. Ratan widow of Surajmal Singh (name deleted)
4. Padam Singh son of Surajmal Singh
5. Sardar Singh son of Bhagwan Singh(deceased) through LRs:-
5/1 Jai Singh) sons of Sardar Singh
5/2 Sawai Singh)
6. Bhopal Singh son of Bhagwant Singh
All by caste Rajput residents of village Hadiyal Tehsil Taranagar Distt. Churu.
7. State of Rajasthan.

....Non-petitioners.

S.B.

Dr. G.K. Tiwari, Member

Present:-

- Shri Yogendra Singh, counsel for the petitioner.
Shri Ajit Lodha, counsel for the L.R. of non-petitioner No.1.
Shri Ashok Agarwal, counsel for the non-petitioners No.2.
Shri Gajendra Singh, counsel for non-petitioners No. 4 to 6.

Date: 01.09.2011

J U D G M E N T

This revision petition, under section 230 of the Rajasthan Tenancy Act 1955 (in short 'the Act'), is directed against the impugned judgment dated 11.4.2002 of Assistant Collector (Headquarter) Churu who has allowed the application filed before him under Order 6 Rule 16 of the Civil Procedure Code (C.P.C.).

2. Briefly stated, the facts of the case are that the non-petitioner No.1-plaintiff filed a suit against the petitioner and rest of the non-petitioners-defendants for division of the suit lands under section 53 of the Act in the court of Assistant Collector Churu. The petitioner-defendant along with rest of the

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defendants submitted a written statement setting up a counter-claim on 9.9.1998. Thereafter a rejoinder to the counter-claim was also put up by the non-petitioner-plaintiff on 16.12.1998. Subsequently, issues were framed by the trial court on 3.6.1999. Evidence of the plaintiff was also recorded. When the case was posted for the evidence of the defendants, non-petitioner-plaintiff filed an application on 13.3.2002 under Order 6 Rule 16 of the C.P.C. praying for exclusion of the counter-claim. Assistant Collector allowed the application of Order 6 Rule 16 of the C.P.C. and excluded the counter-claim by the impugned judgment dated 11.4.2002 which is challenged in this court through the instant revision petition.

3. I have heard the learned counsels of both the parties.

4. The learned counsel for the petitioner Shri Yogendra Singh contended that the counter-claim along with the written statement submitted by the defendants on 9.9.1998; thereafter plaintiff filed rejoinder to the counter-claim. Taking into consideration the rival claims and counter-claims issues were framed on 3.6.1999. Not only this, evidence of the plaintiff was also concluded. Now four years after the institution of the suit and recording of evidence of the plaintiff, the plaintiff filed an application under Order 6 Rule 16 of the C.P.C. for exclusion of the counter-claim which has been illegally accepted by the trial court without application of the judicial mind. It was pleaded that the counter-claim could not be excluded under Order 6 Rule 16 of the C.P.C. when issues had already been framed. The claim of the petitioner and rest of the defendants is of one-fourth share in the disputed land which should be decided simultaneously with the claim of the plaintiff with regard to the same disputed land. There is no justification in filing two different suits claiming khatedari right and division in the same disputed land. The learned counsel also emphasized that under Order 6 Rule 16 of the C.P.C. a court can only strike out certain pleadings from the

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counter-claim; the counter-claim as a whole cannot be excluded. Thus, the impugned order of the trial court is illegal for which it should be set aside.

4. Opposing the contentions of the petitioner, Shri Ashok Agarwal the learned counsel for the non-petitioners pleaded that the disputed land belonged to Ram Singh (the deceased) who had five sons. One of the sons of the deceased Ram Singh, Ujjain Singh got his share separated. Of the remaining four sons, one named Goma Singh died issueless so the disputed land finally remained in the names of three sons. Plaintiff Anna Bai is widow of one of the three sons—Mangej Singh. She filed a suit for division of the land of co-tenancy claiming one-third share; but defendants through their counter-claim seek to disturb the settled position of the land vis-a-vis three remaining sons of Ram Singh. The counter-claim submitted by defendants No. 2 to 6 adversely affects defendant No. 2 Adisal Singh. Besides it, this counter-claim would increase complexity of the litigation and prolong adjudication of the case. Therefore, the trial court has correctly allowed the application of Order 6 Rule 16 of the C.P.C. and excluded the counter-claim by the impugned judgment which should not be interfered with in the revision.

5. Shri Ajit Lodha the learned counsel for the legal representative of non-petitioner No. 1 supported the contentions of the learned counsel Shri Ashok Agarwal and cited 1997 DNJ (Raj.) 731 in support of the impugned order.

6. I have given thoughtful consideration to the rival contentions, perused the impugned judgment and gone through the material on record.

7. Assistant Collector vide his impugned judgment dated 11.4.2002 has excluded the counter-claim and struck down issue No. 4 under Order 6 Rule 16 of the C.P.C. Perusal of the case file of the trial court shows that the non-petitioner No.1- plaintiff filed a suit under section 53 of the Act in the court of Assistant

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Collector Churu on 3.2.1998. The petitioner along with rest of the defendants submitted written statement setting up counter-claim on 9.9.1998. In response to the counter-claim plaintiff filed rejoinder on 16.12.1998. Based on the pleadings in the plaint, written statement, counter-claim and rejoinder to the counter-claim, five issues were framed by the trial court on 3.6.1999. Thereafter Assistant Collector recorded oral evidence of the plaintiff who concluded his evidence on 14.12.2000. Thereafter, the case was fixed for recording evidence of the defendants. But suddenly on 13.3.2002, the non-petitioner-plaintiff filed an application under Order 6 Rule 16 of the C.P.C. for exclusion of the counter-claim. This application has been accepted by the trial court with exclusion of the counter-claim and deletion of issue No.4. In this regard it is worthwhile to examine the impugned order in light of the provision of Order 6 Rule 16 of the C.P.C. which is reproduced as below:-

Order 6 Rule 16. Striking out pleadings - The court may at any stage of the proceedings order to be struck out or amended any matter in any pleadings,-

- (a) which may be unnecessary, scandalous, frivolous or vexatious, or
- (b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or
- (c) which is otherwise an abuse of the process of the court.

It is crystal clear from the very reading of the provision of Order 6 Rule 16 of the C.P.C. that a court can strike-out or amend any matter in the pleading which is unnecessary, scandalous or frivolous or vexatious or which tends to prejudice, embarrass or delay fair trial of the suit or is an abuse of process of court. This provision neither provides for exclusion of the counter-claim as a whole nor for the deletion of any issue

already framed, as is done by the Assistant Collector Churu in the impugned judgment.

8. The main reasons given by Assistant Collector for excluding the counter-claim is that it will adversely affect the interest of defendant No.2 Adisal Singh and counter-claim will delay adjudication. It is strange to observe here that this objection on behalf of the defendant Adisal Singh is taken up by the plaintiff and not by the defendant Adisal Singh himself. Secondly to say, after conclusion of the evidence of the plaintiff on 14.12.2000 and keeping the matter pending since then for evidence of the defendants, that counter-claim would prolong adjudication and delay final judgment is ludicrous logic.

9. It is also interesting to observe in the impugned judgment that, on one hand issue No. 4 which is about declaration of one-fourth share in the disputed land bearing khasra No. 825 in favour of defendant Banne Singh as khatedar is struck-out, on the other hand issue No. 2 and 3 which are also about declaration of one-fourth share in the tenancy right of defendants are retained. This apparently is anomalous and contradictory vis-a-vis plea of the plaintiff that their respective one-third shares in the suit lands, need no further adjudication. Accepting this premise of the plaintiff, Assistant Collector has struck-out issue No.4 but has retained issue No. 2 and 3 paradoxically.

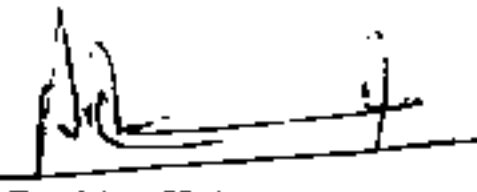
10. Under Order 6 Rule 16 of the C.P.C. an issue which is settled as per procedure and law cannot be struck-out. According to this, only unnecessary, scandalous, frivolous pleadings or such averments which may delay fair trial or abuse process of court can be deleted; but the plaintiff could not point out any such scandalous or frivolous pleading in the counter-claim. Nor could he establish any abuse of the process of court. Therefore, by excluding a counter-claim as a whole and striking-out an issue settled long back in consultation with rival parties, Assistant Collector has committed illegality and exceeded his jurisdiction.

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11. The learned counsel for the non-petitioner No. 1 has cited 1997 DNJ (Raj.) 731 in support of the impugned judgment. It is submitted with utmost regard to the said citation that the facts and circumstances of it are altogether different from the facts and circumstances of the matter under consideration. Firstly, the citation referred to is about Order 8 Rule 6-A of the C.P.C. pertaining to a civil suit in which a counter-claim was set up by defendant for eviction of the plaintiff who had instituted a suit of permanent injunction against the defendant as a licensee of the premises in question. Besides it, the matter before Hon'ble Civil Court was about striking-out of the pleadings in respect of the counter-claim and not counter-claim as a whole. Apparently, the facts and circumstances of this revision are quite distinguishable from the facts and circumstances of the citation referred.

12. In view of the foregoing discussion, the revision succeeds. The impugned judgment dated 11.4.2002 of Assistant Collector Churu is set aside.

Pronounced.


(Dr. G.K. Tiwari)
Member
1.9.2011