



IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE HIRDESH

ON THE 2nd OF SEPTEMBER, 2025

MISC. PETITION No. 1647 of 2025

SMT. AMITA VERMA AND OTHERS

Versus

NEELAM VERMA AND OTHERS

Appearance:

Shri Yogesh Chaturvedi - learned Counsel for petitioners- defendants.

Shri N. K. Gupta- learned Senior Counsel assisted by Shri Shatru Daman
Singh Bhadouriya- learned Counsel for respondent No.1- plaintiff.

ORDER

The instant misc. petition under Article 227 of the Constitution of India has been filed at the instance of petitioners- defendants assailing the orders dated 19th of February, 2025 and 3rd of March, 2025 passed by the Court of Third Civil Judge, Sr. Division, Guna in RCSA No.107 of 2021, whereby application filed by petitioners- defendants No.1 and 2 under Order 8 Rule 6-A of CPC for taking their counter-claim and application filed under Order 8 Rule 1(3) of CPC for taking documents on record, have been rejected.

2. Facts giving rise to present petition, in short, are that respondent No.1 filed a civil suit for possession and grant of mesne profit against the defendants therein alleging that she is the wife of Dr. Rakesh Verma and defendant No.1 is wife of late Shri Rajeev Verma and defendant No.2 is son of defendant No.1. Her husband and husband of defendant No.1 are real brothers and sons of Late Shri Pyarelal Verma and Smt. Sarla Verma. Her mother-in-law Smt. Sarla Verma had purchased a house situated at Punjabi Mohalla vide a registered sale deed dated 01-



12-1964 with her own money and thereafter another floor was constructed in the year 1984. Smt.Sarla Verma was being owner of the house in question, had executed a "Will" and got it registered on 9th of July, 2013 and after her death on 27th of March, 2015, the "Will" became ineffective and as per the said "Will", plaintiff became absolute owner of property. Another son of Smt. Sarla Verma had died earlier, therefore, defendants no. 1 and 2 were living at the ground floor of the house and occupied by them. Therefore, plaintiff has filed suit for possession and mesne profit. Defendants filed their written statement and denied the plaint averments with pleadings that the house in dispute has not been purchased by earning of Smt. Sarla Verma. Late Shri Pyarelal Verma had purchased the house in the name of Smt. Sarla Verma and the house in question is the property of Joint Hindu Family Property and the "Will" is not in accordance with law because Smt. Sarla Verma had no right to execute the "Will" and prayed for dismissal of suit. Another suit was filed by husband of plaintiff on 02-01-2017 against the defendants and the same was dismissed vide judgment dated 25-01-2025 in which, the subject matter of present suit was also involved. Therefore, defendants filed a counter-claim under Order 8 Rule 6-A of CPC against which, plaintiff filed her objection. The trial Court vide impugned order dated 19th of February, 2025 rejected counter-claim of defendants, against which defendants filed an application under Order 47 Rule 1 of CPC, which was too dismissed by the trial Court vide order dated 4th of March, 2025. Defendants also filed an application under Order 8 Rule 1(3) of CPC r/w Section 151 of CPC for taking documents i.e. written statement. The trial Court vide impugned order dated 3rd of March, 2025 rejected the application of defendants. Hence, this petition.

3. It is contended on behalf of petitioners- defendants that the trial Court has committed an error in passing the impugned orders by misunderstanding the scope



and provisions of Order 8 Rule 6-A of CPC although the defendants have legal right to file counter-claim in addition to their right of pleadings against the plaintiff. The defendants had filed application under Order 8 Rule 6-A of CPC along with application under Order 6 Rule 17 of CPC to incorporate the essential pleadings in written statement by supporting of counter-claim but the Trial Court has committed a jurisdictional error while rejecting the application of defendants vide order dated 19th of February, 2025, holding that plaintiff has not made any amendment , therefore, the counter-claim is not maintainable. Defendants filed another application under Order 8 Rule 1(3) of CPC for taking documents as another suit in which the same property in question is under adjudication and the documents are required for proper and just adjudication of present suit but the trial Court rejected the application of defendants vide impugned order dated 3rd of March, 2025 whereby the right of defendants for defending their case has been infringed. Relying on the judgment of coordinate Bench (Principal Seat) of this Court in the case of *Manoj Kumar Gupta vs. Santosh Kumar Gupta (MP No. 5606 of 2024 decided on 27th of November, 2024)*, it is contended that counter-claim may be permitted to be filed after a written statement till the stage of commencement of recording of evidence of plaintiff. No prejudice would be caused to the party if counter-claim is allowed. Hence, prayed for setting aside the impugned orders.

4. Placing reliance on the decision of this Court in the case of *Methu vs. Leemchand reported in 2022(4) MPLJ 307 and the decision of Hon'ble Apex Court in the case of Ashok Kumar Kalra vs. Surendra Agnihotri reported in (2020) 2 SCC 394*, on the other hand, learned Counsel for respondent No.1- plaintiff by supporting the impugned orders, opposed the contentions of petitioners-defendants



and submitted that the defendants had filed their counter-claim after framing of issues and the trial Court cannot entertain belated counter-claim filed after submission of written statement. Counter-claim is based on cause of action which arose much after filing of suit and submission of written statement. Hence, prayed for dismissal of this petition.

5. Heard learned counsel for the parties. Perused the impugned orders and documents available on record.

6. In the case of **Ashok Kumar Kalra (supra)**, the Hon'ble Apex Court in Para 21 has held as under:-

"21. We sum up our findings, that Order VIII Rule 6A of the CPC does not put an embargo on filing the counter-claim after filing the written statement, rather the restriction is only with respect to the accrual of the cause of action. Having said so, this does not give absolute right to the defendant to file the counter-claim with substantive delay, even if the limitation period prescribed has not elapsed. The court has to take into consideration the outer limit for filing the counter-claim, which is pegged till the issues are framed. The court in such cases have the discretion to entertain filing of the counter-claim, after taking into consideration and evaluating inclusive factors provided below which are only illustrative, though not exhaustive:

- i. Period of delay.
- ii. Prescribed limitation period for the cause of action pleaded.
- iii. Reason for the delay.
- iv. Defendant's assertion of his right.
- v. Similarity of cause of action between the main suit and the counter-claim.
- vi. Cost of fresh litigation.
- vii. Injustice and abuse of process.
- viii. Prejudice to the opposite party.
- ix. and facts and circumstances of each case.
- x. In any case, not after framing of the issues."

7. In the case of **Methu (supra)**, the coordinate Bench of this Court (Indore Bench) in Para 11 and 12 has held as under:-

"11. The Order 8 Rule 6-A(1) of CPC 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 damages or not:

Provided that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the Court."

12. As per provision of Order 8 Rule 6-A(1), any right or claim of which cause of action accrues to defendant against the plaintiff, before or after filing of suit, but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, a counter claim can be filed by the defendant. Undisputedly, in the case in hand, the counter claim was filed on the cause of action which arose on 14.01.2021, on the stage of plaintiff's evidence. Therefore, it is clear that the counter claim filed by the respondent Nos.1 to 10 is based on the cause of action which arose on 14.01.2021, which are much after the filing of suit and submission of written statement by original defendant No.1- Late Shri Leemchand."

8. Order 8 Rule 6 CPC specifies the particulars of setoff to be given in written statement and the same reads as under:

Order VIII Rule 6:

6. Particulars of setoff to be given in written statement: (1) Where in a suit for the recovery of money the defendant claims to setoff against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff, not exceeding the pecuniary limits of the jurisdiction of the Court, and both parties fill the same character as they fill in the plaintiff's suit, the defendant may, at the first hearing of the suit, but not afterwards unless permitted by the Court, present a written statement containing the particulars of the debt sought to be setoff.

(2) *Effect of setoff:* The written statement shall have the same effect as a plaint in a cross suit so as to enable the Court to pronounce a final judgment in respect both of the original claim and of the setoff; but this shall not affect the lien, upon the amount decreed, of any pleader in respect of the costs payable to him under the decree.

(3) The rules relating to a written statement by a defendant apply to a written statement in answer to a claim of setoff.

Order 8 Rule 6A, which pertains to the counterclaim, reads as under:

Order 8 Rule 6A:

6A. Counterclaim by Defendant(1) A defendant in a suit may, in addition to his right of pleading a setoff under rule 6, set up, by way of counterclaim 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 counterclaim is in the nature of a claim for damages or not:

Provided that such counterclaim shall not exceed the pecuniary limits of the jurisdiction of the court.

(2) Such counterclaim 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 counterclaim.

(3) The plaintiff shall be at liberty to file a written statement in answer to the counterclaim of the defendant within such period as may be fixed



by the Court.

(4) The counterclaim shall be treated as a plaint and governed by the rules applicable to plaints.

6-C. Exclusion of counter-claim. Where a defendant sets up a counterclaim and the plaintiff contends that the claim thereby raised ought not to be disposed of by way of counterclaim but in an independent suit, the plaintiff may, at any time before issues are settled in relation to the counterclaim, apply to the court for an order that such counterclaim may be excluded, and the court may, on the hearing of such application make such order as it thinks fit."

9. As per provision of Order 8, Rule 6-A(1), any right or claim of which cause of action accrues to defendants against the plaintiffs, before or after filing of suit, but the defendants have delivered their defence or before the time limited for delivering their defence has expired, a counter-claim can be filed by defendants.

10. In the present case, the plaintiff filed a civil suit for recovery of possession and *mesne* profit. Defendants filed their written statements. After framing of issues the case was fixed for plaintiff evidence, and when the plaintiff's evidence is yet to be started, on 21-03-2025 defendants filed application under Order 6 Rule 17 & under 8 Rule 6-A of CPC for taking their counter-claim in which it is pleaded that they have a continuous cause of action and owner of disputed property is not only the plaintiff and property has been created from the earnings of father-in-law of defendant No.1 and on the basis of dismissal of suit filed by plaintiff's husband i.e. Civil Suit No.4-A of 2017 by Civil Judge, Class-I, Guna on 25th of January, 2025 declaring the defendants as co-owners of property, the cause of action has arisen. Therefore, it is clear that counter-claim filed by defendants on the cause of action which arose after passing of judgment and decree by Civil Judge, Class-I, Guna, which is much after filing of suit and submission of written statements. Therefore, the learned Trial Court has not committed any error in rejecting application of defendants No.1 and 2 under Order 8 Rule 6-A of CPC



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for taking their counter-claim as well as application filed under Order 8 Rule 1(3) of CPC for taking documents on record.

11. In the result, the instant misc. petition fails and is hereby **dismissed**. The impugned orders passed by the Trial Court is hereby affirmed. No order as to costs.

(HIRDESH)
JUDGE

MKB