

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE**

HON'BLE SHRI JUSTICE VIVEK RUSIA

ON THE 18th OF JANUARY, 2024

MISC. PETITION No. 3541 of 2021

BETWEEN:-

**SHRI KRISHNA GINNING FACTORY THROUGH OMPRAKASH S/O
RADHAKISHAN OJHA, R/O 51, RANI LAXMI BAI MARG, NAGDA
(MADHYA PRADESH)**

.....PETITIONER

***(BY SHRI ASHOK KUMAR SETHI, SENIOR ADVOCATE ASSISTED BY SHRI
SAMEER ANANT ATHAWALE, ADVOCATE)***

AND

- 1. THE STATE OF MADHYA PRADESH THROUGH COLLECTOR KOTHI
PALACE UJJAIN (MADHYA PRADESH)**
- 2. SUB DIVISIONAL OFFICER NAGDA DIST UJJAIN (MADHYA
PRADESH)**
- 3. TEHSILDAR TEHSILDAR NAGDA DIST UJJAIN (MADHYA PRADESH)**
- 4. MUNICIPAL COUNCIL NAGDA THR CHIEF MUNICIPAL OFFICER
MUNICIPAL COUNCIL NAGDA DIST UJJAIN (MADHYA PRADESH)**

.....RESPONDENTS

(STATE BY SHRI PRADYUMNA KIBE, PANEL LAWYER)

(RESPONDENT NO.4 BY SHRI ROHIT KUMAR MANGAL, ADVOCATE)

*This petition coming on for admission this day, the court passed
the following:*

O R D E R

The petitioner / plaintiff has filed the present petition under Article 227 of the Constitution of India challenging the order dated 20.09.2021 passed by the Additional District Judge, Nagada, District – Ujjain, whereby the application filed under Section 151 of the Code of

Civil Procedure, 1908 has been dismissed.

02. Facts of the case in short are as under

2.1. The petitioner/plaintiff filed a suit for a decree of title, possession, declaration of proceedings initiated under Section 182 of the Madhya Pradesh Land Revenue Code, 1959 (in short MPLRC) and permanent injunction in respect of suit property i.e. land bearing Survey No.438 area 3.585 hectare situated at Village – Pandalyakala, Tehsil – Nagada. According to the plaintiff, on the suit land Shri Krishna Ginning Factory was established along with some houses and godown and the remaining land was left vacant. The plaintiff is an absolute owner and in possession of the suit land, on which the defendants have no right or title.

2.2. The defendants / State initiated proceedings under Section 182 of the MPLRC for cancellation of the lease of the suit land given to the predecessors of the plaintiff. The matter travelled up to the Board of Revenue and finally decided on 04.04.2016 which gave cause of action to the plaintiff to file a suit on 09.10.2017.

2.3. The defendants / State filed a written statement on 26.10.2018. Thereafter, the issues were framed on 03.01.2019 and the plaintiff filed an affidavit under Order XVIII Rule 4 of the CPC.

2.4. The plaintiff filed an application under Order VI Rule 17 of the CPC, the defendants were given time to file a reply and vide order dated 04.10.2019, application was allowed with the cost of Rs.800/-. Thereafter, vide order dated 14.10.2019, an application under Section 65 of the Indian Evidence Act, 1872 was also allowed and a certified copy of the sale deed dated 30.01.2019 was taken on record as secondary evidence. Thereafter, the plaintiff filed an application under Order XIV Rule 5 of the CPC and time was given to the defendants to file a reply.

Vide order dated 21.01.2020, the application was dismissed. By the same order, the applications filed under Order XVIII Rule 8 and Order XXVI Rule 9 by the defendants / State were also rejected. Now the plaintiff filed an affidavit of Om Prakash Ojha under Order XVIII Rule of the CPC on 04.02.2020.

2.5. Defendants / State filed a counterclaim on 07.08.2021 seeking a declaratory decree to the effect that the State Government is the owner of the suit land and the order dated 17.01.2018 passed by the Board of Revenue be declared void. The defendants also sought a decree of possession by way of counterclaim.

2.6. The plaintiff filed an application under Section 151 of the CPC stating that the counterclaim cannot be taken on record which is time barred because the cause of action arose on 17.01.2018. The defendants could have filed the counterclaim along with the written statement, hence, the order to that effect be passed that this counterclaim shall not be entertained.

2.7. Vide impugned order dated 20.09.2021, learned District Judge dismissed the application under Section 151 of the CPC, meaning thereby, counterclaim has been taken on record. Hence, the present petition is before this Court.

03. Shri Sethi, learned Senior Counsel for the petitioner submits that the defendants had occasion to file a counterclaim along with the written statement that was filed on 09.10.2018, thereafter, the issues have been framed and the plaintiff has given evidence by way of an affidavit under Order XVIII Rule 4 of the CPC, therefore, now the counterclaim under Order VIII Rule 6-A cannot be taken on record. In support of his contention, learned Senior Counsel placed reliance upon a judgment delivered by the Apex Court in the case of *Ashok Kumar Kalra v/s*

Wing CDR. Surendra Agnihotri & Others reported in (2020) 2 SCC 394, in which it has been held that in any case counterclaim cannot be taken on record after framing the issues.

04. Shri Kibe, learned Panel Lawyer for the respondents / State submits that there is no much progress in the suit after framing the issues in the civil suit. The plaintiff's witness has not been cross-examined till date. The claim in respect of valuable land belonging to the State Government is being made by way of counterclaim, therefore, the State Government cannot be non-suited by rejecting the counterclaim. Even otherwise fresh suit is also maintainable but that will lead to multiple litigation, hence, all the issues are liable to be decided in one proceedings

05. Shri Rohit Mangal, learned counsel for respondent No.4 / Corporation, which is a formal party in this case, argued in support of the State by submitting that the time limit prescribed for submitting a counterclaim is based upon the accrual of the cause of action, however, in the present case cause of action was accrued on 17.01.2018. In the present case, counterclaim was filed based on the cause of action which was accrued on 17.01.2018 and at that time neither the defendants / State delivered their defence nor the time limit for delivering the defence was expired. It is further submitted in the case of *Ashok Kumar Kalra (supra)*, in paragraph – 21, the Apex Court observed that *lis* provided in the judgment is not exhaustive and it is illustrative, therefore, no interference is called for hence misc. petition is liable to be dismissed.

06. I have heard learned counsel for the parties at length and perused the record.

07. The plaintiff by way of a civil suit claiming a declaration of title

of the suit land. The defendants / State is also claiming title by way of counterclaim. The controversy started between the parties and the plaintiff is claiming ownership by virtue of Section 20 of Jagirdari Abolition Act, 1951 as the plaintiff and his predecessors were *Pakka Krishak*. The defendants came with a plea that the suit land was allotted by way of lease for the establishment of the Ginning Factory, therefore, the State Government has the right to cancel the lease under Section 182 of the MPLRC.

08. Litigation began when the notice was served by the defendants / State to the father of the plaintiff on 07.02.1982 followed by another notice dated 06.05.1989 and the matter travelled up to the Board of Revenue and in between, couple of writ petitions were filed before this Court. For the filing of a suit by the plaintiff, the cause of action arose on 06.04.2016 and for the defendants, the cause of action for filing the counterclaim accrued on 17.01.2018, when the Board of Revenue passed an order. The trial Court has already framed the issues for deciding the title of the plaintiff, therefore, simultaneously, by way of the same set of evidence, the title of the State Government can be decided, for which the State Government need not to file a separate suit. Therefore, in order to avoid the multiplicity of the suit and conflict of verdict, suit and counterclaim both are liable to be decided together.

09. So far as the contention of the plaintiff that limitation for filing a counterclaim had expired is concerned, the same can be examined by framing additional issues. In paragraph – 19 of the judgment delivered in the case of *Ashok Kumar Kalra (supra)*, the Apex Court has held that the "*discretion vested with the trial Court to ascertain the maintainability of the counterclaim is limited by various considerations based on facts and circumstances of each case and there cannot be a*

straitjacket formula, rather there are numerous factor which needs to be taken into consideration before admitting the counterclaim. The trial Court has to exercise the discretion judiciously and come to the conclusion that by allowing the counterclaim, no prejudice is caused to the opposite party, the process is not unduly delayed and the same is in the best interest of justice". The Apex Court, however, has opined that *"defendants cannot be permitted to file the counterclaim after the issues are framed and after the suit has proceeded substantially"*. Therefore, there are twin requirements (i) the issues have been framed and (ii) the suit has proceeded substantially.

11. In the present case, although the issues have been framed, but there is no substantial progress in the suit as only one witness of the plaintiff has filed an affidavit under Order XVIII Rule 4 of the CPC and cross-objection has not begun so far. Since the order passed by the trial Court neither suffers from illegality nor any infirmity, I do not find any reason to interfere with the same.

12. In view of the above, Miscellaneous Petition stands dismissed.

(VIVEK RUSIA)
J U D G E

Ravi