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GURBACHAN SINGH  
v.  
BHAG SINGH AND ORS.

NOVEMBER 24, 1995

B

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

*Code of Civil Procedure, 1908: Order 8 Rule 6(A)(1)*

C

*Suit—Defendant—Extent of permissibility to raise counter claim in written statement—Position before and after 1976 Amendment discussed—Held : In a suit for perpetual injunction counter claim for possession is permissible—Counter claim filed within two months from the date of the suit held not time barred.*

D

The petitioner and the 8th respondent (plaintiffs) filed a suit for perpetual injunction restraining the respondents 1 to 7 from dispossessing them from the suit land or part thereof. In their written Statement respondents 1 to 7 raised counter claim for possession on the ground that the plaintiffs have trespassed into their land and they were in unlawful possession. The Trial Court rejected the contention raised by the plaintiffs that in a suit for perpetual injunction the respondents could not lay any counter claim for possession under Order 8 Rule 6(A)(1) of the Code of Civil Procedure. Consequently the Trial Court dismissed the plaintiffs' suit and granted decree for possession to defendants of their portion of land. The decree of Trial Court was affirmed by the first appellate Court as well as the High Court.

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**Dismissing the plaintiffs' Special Leave Petition, this Court**

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**HELD : 1.1.** 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 Code of Civil Procedure, 1908. [684-D]

H

**1.2.** However, 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. [684-C]

CIVIL APPELLATE JURISDICTION: Special Leave Petition (C) A  
No. 27264 of 1995.

From the Judgment and Order dated 18.5.95 of the Punjab & Haryana High Court in R.S.A. No. 1190 of 1994.

Ujjagar Singh and Ms. Naresh Bakshi for the Petitioner. B

The following Order of the Court was delivered :

The petitioner and the 8th respondent had filed a suit for perpetual injunction restraining the respondents 1 to 7 from dispossessing them from the suit land or part thereof. Respondents/defendants filed the written statement contending that the petitioner and the 8th 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 biswas comprising survey numbers mentioned therein. On appeal, it was confirmed and the High Court confirmed it in R.S.A. No. 1190/94 on May 18, 1995. Thus this Special Leave Petition. C D

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 C.P.C., 1908 as amended in 1976 reads thus : E

"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 plaintiffs, 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 : F G

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

It is true that Rule 6A(a) was introduced by Amendment Act of 1976. Preceding the amendment, it was settled law that except in a money claim, H

- A 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 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 CPC.

It is sought to be contended that the counter-claim was not filed within the time given 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.

- E Under these circumstances, the special leave petition is dismissed.

T.N.A.

Petition dismissed.