

**05/12/2022**

Pltf by. RRS  
D1(b) by MG  
D1(d) by RGN  
D2, D4 by SBB  
D1(c)- Exparte  
D1(a) In person  
For Orders

**ORDER ON I.A NO.7**

The Plaintiff filed the suit for the relief of injunction against the Defendants.

**2.** The Plaintiff submitted that, the suit schedule property is the self acquired property of the Plaintiff and he is in peaceful possession and enjoyment of the same. At the Eastern side of the said land, the National Highway Authority has acquired. The suit schedule property is bifurcated by Survey boundaries. The Plaintiff is not residing in the suit schedule property. The Defendant No.2 to 4 taking the advantage of the absence of the Plaintiff, has encroached the suit schedule property and put up a fence, upon the Southern side of the suit schedule property and started to construct a building. The Defendant 2 to 4 constructed half portion of the building and they are interfering in the peaceful possession and enjoyment of the Plaintiff. Henceforth, the Plaintiff filed this suit for the relief of of injunction.

**3.** The Defendants appeared through their counsel and filed their written statement. After the death of the Defendant No.1 his legal heirs continued the suit. The Defendant No.1b, 1d filed a memo and submitted that, they adopt the written statement of the Defendant No.1 along with the counterclaim.

**4.** The Defendant No.1 filed written statement denying the Plaintiff averments. The Defendant No.1 filed counterclaim submitting that, the Defendant No.1 has been in possession of 00-16-05 of land. On 01/01/1992 the Defendant No.1 has encroached the said land. It was known to its erstwhile owner. The Defendant No.1 submitted that, said encroachment was within the knowledge of the Plaintiff and public at large. On 19/02/2015 Smt.Ameena Kom Mohidin, Mohammed Gouse Bin Mohidin Saheb Nighete, Bibi Noorjahan Kom Mohammed Pakki, Bibi Khairunnisa Kom Ruknuddin Ibrahim, Bibi Hajira Kim Mohidin Kola, Bibi Nafisa Kom Mohidin Saheb executed a Will nama and got mutated their name in the revenue records knowing that, the Defendant No.1 is in possession of said 00-16-05 of land. Thereafter, said 00-16-05 of land was bifurcated and the Defendant No.1 planted seven coconut trees, Banana plants and other fruits obtaining plants. The Defendant No.1

constructed a house on 01/02/1992-93 by paying tax to Belke panchayat by obtaining house building number as 7. On 05/01/2001, the Defendant No.1 constructed another house in the said land and said house was numbered by the Panchayat as House No.324 since 2001-02. The Defendant No.1 has been paying the house tax. On 03/04/2005 the Plaintiff purchased knowingly that, the Defendant No.1 had encroached 00-16-05 of land. The erstwhile owner of the said land and the later owners of the said land and the Plaintiffs are having the knowledge of the possession of the 00-16-05 of land by the Defendant No.1 since 01-02-1992. Hence, the Defendant No.1 acquired title by way of adverse possession. Thereby, the Defendant No.1 valued the suit U/Sec,35(2) of the Karnataka Court Fee and Suit Valuation Act and court fee of Rs.25/- and prayed before this court to declare that, the Defendant No.1 is the owner in 00-16-05 of land by way of adverse possession.

**5.** The Plaintiff filed this application praying before this court to exclude the counterclaim of the Defendant No.1 in para No.1, 2, 3, 4, 5 and 6 of counterclaim. The Plaintiff submitted that, the counterclaim is against to the nature of the suit. The suit filed by the Plaintiff is for the relief of injunction.

The Defendant No.1 filed written statement and counterclaim stating that, the Defendant no.1 shall be declared as owner of 00-16-05 of land by way of adverse possession. The Plaintiff submitted that, such counterclaim is against to the loan and the court fee paid for the relief of partition. The counterclaim schedule and the Plaintiff schedule are contradictory to each other. Henceforth, the counterclaim requires to be excluded.

**6.** The learned counsel for the Defendant No.1 filed objections and submitted that, the Plaintiff has filed the suit for the injunction by suppressing the possession of the Defendant No.1 over the suit schedule property. This Defendant is entitled for declaration of title by way of adverse possession with respect to the counterclaim schedule property. The Defendants submitted that, this application is frivolous application and is filed in order to drag the proceedings. Henceforth, the Defendant No.1 prayed to dismiss this application.

**7.** Heard both the sides. The learned counsel for the Defendants filed two citations reported in:

**1) 1996 (4) SCC 699**

**2) 1996 (1) SCC 770**

8. On perusal of materials available on record, following points arise for my consideration;

**Point No.1** : Whether the Applicant/Plaintiff has made out grounds to allow this application?

**Point No.2** : What Order?

9. On perusal of materials available on record my answer to above points are as under;

Point No.1 : **In the Affirmative**

Point No.2 : **As per final Order,  
for the following;**

### **REASONS**

10. **Point No.1** : The Plaintiff filed the suit for the relief of injunction against the Defendants. The Plaintiff submitted that, he is the owner of the suit schedule property and upon the instigation of the Defendant No.1, the Defendant No.2, 3 and 4 are disturbing the peaceful possession and enjoyment of the Plaintiff over the suit schedule property. The Plaintiff submitted that, the Defendant No.2, 3 and 4 are trying to put-up a fence upon the Southern side of the suit schedule property by encroaching and they were trying to put up a construction. Henceforth, the Plaintiff filed this suit praying before this court to pass

an order of permanent injunction against the Defendants.

**11.** The Defendants appeared and they filed their written statement. The Defendant No.1 filed counterclaim claim and prayed before this court to decree the counterclaim.

**12.** On perusal of the case papers, it is quiet evident that, the Plaintiff filed this suit for the relief of injunction against the Defendants. The Defendant No.1 filed written statement and counter claim praying before this Court to declare the counter claim schedule property as his property, as he attained title by way of adverse possession. On perusal of the schedule of the plaint, the plaintiff prayed for a order of injunction only with respect to 1-8-0 (A-G-A) of land. The Defendant No.1 prayed before this Court, to declare his title for 0-16-05(A-G-A) of land, in the said survey number. Thereafter, Defendant No.1 paid court fee by valuing the suit under Section 35(2) of the Karnataka Court Fees and Suit Valuation Act and paid court fee of Rs.25/-.

**13.** This Court framed six issues. The suit was posted for adducing evidence of the Plaintiff. The Plaintiff filed

this application and submitted that, the counter claim requires to be excluded. Because, it does not have any connection with the plaint averments.

**14.** The learned Counsel for the Plaintiff, argued upon this application and submitted that, the suit is filed for the relief of injunction. As per Order 8 Rule 6-C of the CPC, it is very clear that, the counter claim which does not have any nexus with the plaint averments requires to be excluded. He further submitted that, the counter claim raised by the Defendant No.1 cannot be disposed by way of counter claim. But it can be disposed as an independent suit. Henceforth, the Court may be pleased to exclude the counter claim of the Defendant No.1.

**15.** The Learned Counsel for the Defendant No.1(b), 1(d) submitted that, they are the legal heirs of the Defendant No.1. They submitted that, the contentions of the Plaintiff in this application are merit less. They are not maintainable either in law or in facts. The Plaintiff filed this suit for injunction by suppressing the possession of the Defendant No.1 over the suit schedule property and this Defendant has every right to claim adverse possession as prayed in the counter claim. He relied upon two citations:

- 1) (1996) 4 SCC 699.

2) (1996) 1 SCC 770.

Henceforth, he prayed to dismiss the application.

**16.** On perusal of materials available on record, it is quite evident that, the suit is filed for the relief of injunction but not for the relief of declaration of title. The counter claim filed by the Defendant No.1 makes it very clear that, the counter claim has been filed praying to declare the title of the Defendant No.1 by way of adverse possession.

**17.** I would like to extract the relevant portion of the citation relied by the Learned Counsel for the Defendant.

***1) (1996)4 SCC 699: Civil procedure Code-1908-Order 8 Rule 6-A to 6-G, Object of Counterclaim- Need not relate to the original cause of action but can be made on an independent and different cause of action, even on one which accrued to Defendant after institution of the suit. In a suit for injunction, counterclaim for injunction in respect of the same or a different property maintainable.***

***The question, therefore is whether in a suit for injunction, counterclaim for injunction in respect of the same or a different property is maintainable? Whether counterclaim can be made on different cause of action? It is true that preceding C.P.C., Amendment Act, 1976 Rule 6 of Order 8 limited the remedy to set-off or counterclaim laid in a written statement only in a money suit by C.P.C., Amendment Act-1976, 6-A to 6-G were brought on statute. Rule 6-A(1) 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 counterclaim against the claim of the Plaintiff, any right or claim in respect of 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 damage or not. A limit put in entertaining the counterclaim is as provided in the proviso to sub rule (1), namely, the counterclaim shall not exceed the pecuniary limits of the jurisdiction of the court. Sub-rule(2) amplifies that 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 so as to enable the court to pronounce a final judgment in the same suit, both on the original claim and on the Counterclaim. The Plaintiff shall be given liberty to file a written statement to answer the counterclaim of the Defendant within such period as may be fixed by the court. The counterclaim of the Defendant within such period as may be fixed by the court. The counterclaim is directed to be treated, by operation of Sub-rule(4) thereof, as a plaint governed by the rules of the pleadings of the Plaintiff.*

**2) (1996) 1 SCC 770: Civil Procedure Code-1908, Order 8 Rule 6-A(1), Counterclaim, In suit for injunction, counterclaim for possession can also be entertained.**

*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, 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.*

*Instead of relegating the defendant to an independent suit, to avert multiplicity of the proceeding and needless protection, the legislature intended to try both the suit and the counter- claim in the same suit as suit and cross suit and have them disposed of in the same trial. In other words, a defendant can claim any right by way of a counter-claim in the same suit as suit and cross suit and have them disposed of in the same trial. In other words, a defendant can claim any right by way of a counter-claim in respect of any cause of action that has accrued to him even though it is independent of the cause of action averred by the plaintiff and have the same cause of action adjudicated without relegating the defendant to file a separate suit.*

**18.** On perusal of the above citations. it is quiet evident that, the Cournter claim should have nexus with the facts of the suit. The counter claim cannot be beyond the pecuniary jurisdiction of the Court, in

which the suit has been filed. The counter claim claiming possession can be filed in suit for injunction.

**19.** Applying the facts of this suit, it is understandable that, the injunction has been prayed for 1-8-0 of land but the counter claim has been prayed for declaration of title only with respect 0-16-05 of land. Thereby, the schedule of the suit and the counter claim varies. The above citation relied by the Learned Counsel for the Defendant No.1 understands that, counter claim for possession in suit for injunction is entertainable. But there is no any whisper about the schedule of the plaint. In such circumstances, if suit is filed for relief of injunction with respect to 1-8-0 of land then the possession can be prayed. The prayer of the Defendant No.1 is not for possession. The prayer is for declaring the title. It is amounts to suits of declaration. Thereby, I am of the opinion that, the counter claim of the Defendant No.1 is nothing but an independent suit. Henceforth, **I answer Point No.1 Affirmatively.**

**20. Point No.2 :** In view of answering above point, I proceed to pass following;

**ORDER**

**The application filed by the plaintiff  
Under Order 8 Rule 6 of the C.P.C., as  
IA No.VII is hereby allowed.**

**The counter claim of the Defendant  
No.1 is hereby excluded.**

**No order as to cost.**

**Sd/-**

Addl. Civil Judge and  
J.M.F.C. Bhatkal.