

12-02-2021

ORDERS ON IA No XX FILED UNDER ORDER
VIII RULE 6A SECTION 151 OF THE CODE OR
CIVIL PROCEDURE CODE

The applicant / Defendant has filed the present application seeking permission to file the counter claim of the defendant after condoning the delay in the ends of justice and equity.

Opposing the said application , the learned counsel for plaintiff has filed detailed objection statement.

Heard the learned respective counsels and perused the materials placed on record. The point that would arise for the consideration of the court is

“Whether defendant is permitted to file her counter claim subsequent to the framing of the issues?”

My answer to the above point is in the Affirmative for the following

REASONS

Plaintiff has filed this suit for declaration and permanent injunction. The defendant no1 by filing written statement has denied the case of the plaintiff in entirety.

On the basis of the rival pleadings this court has framed the issues and posted the case for plaintiffs evidence . It is at this stage, defendant no1 has come up with present application and sought permission to file the counter claim and through counter claim , she sought the relief of permanent injunction against the plaintiff from trespassing in to the A schedule property of the IA by forming or using for road except the road on the southern side of plaint A schedule property as shown in the sale deed dated 4-4-2007 and 3-12-1989 and not to alter road to the middle of A schedule property and not to encroach upon the property shown in A schedule of the written statement .

Opposing the maintainability of the counter claim filed by the defendant no1 it is vehemently submitted by the learned counsel for the plaintiff that defendant no1 is not entitled to claim any relief against the plaintiff as a counter claim as now sought because the suit is of the year 2016 . The defendant no1 has not filed her written statement in this suit so far and without filing the written statement no relief can be sought against the plaintiff by way of counter claim .

Coming to the main objection raised by the plaintiff with regard to not filing the written statement is concerned , it is against to the materials placed on record for the reason that defendant no1 has filed his written statement way back on 11/1/2017 and it is there after issues have been framed and number of interlocutory applications were moved from respective sides hence trial has not yet commenced . So far as delay in filing the counter claim is concerned , at the cost of repetition , defendant no 1 has filed the counter claim at the stage when case was set

down for evidence . The evidence of plaintiff has not yet been commenced.

The learned counsel for defendant no1 in support of the application has referred ruling reported in

1) AIR 1996 Supreme Court 2222

“In a suit for injunction, counter-claim for injunction in respect of the same or a different property is maintainable. 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. In sub-rule (1) of Rule 6A, the language is so couched with words of wide width as to enable the parties to bring his own independent cause of action in respect of any claim that would be the subject matter of an independent suit. Thereby, it is no longer confined to money claim or to cause of action on the same nature as original action of the plaintiff. It need not relate to or be connected with the original cause of action or matter pleaded by the plaintiff. The words “any

right or claim in respect of a cause of action accruing with the defendant” would show that the cause of action from which the counter-claim arises need not necessarily arise from or have any nexus with the cause of action of the plaintiff.”

2) AIR 1991 Karnataka 283

“O.8, R.6G – Suit – Counter claim – Time limit for setting up – Such claim has to be set up before recording of evidence commences.”

3) AIR 1996 Supreme Court 3985

“(A) Civil P.C. (5 of 1908) , O.8, R. 6-A, Counter claim – Application under O.8, R.6-A – Is not ex facie barred after filing of written statement”

Keeping in mind the observation made by the Hon’ble Apex court and Hon’ble High court of Karnataka it can be said that by receiving the counter claim no prejudice would be caused to the plaintiff and it would not cause any amount of delay and counter claim filed is within the limitation period . Considering the aforesaid aspect, this court finds it just to allow the application. Accordingly point no1 is

answered in the Affirmative and Proceeds to pass the following

ORDER

IA No XX filed by defendant No.1 under Order VIII Rule 6A and Section 151 C.P.C is allowed . The defendant No.1 is permitted to file her counter claim.

(ROOPASHRI)

Senior Civil Judge & ACJM, Karkala.