

ORDER

23/11/23

Plaintiff and defendant no. 1, 1(A), 2 to 6, 8 to 10, 12 to 15, 17 to 22 are represented.

Heard and perused the case record.

The present suit has been filed by the plaintiff seeking right, title, interest, recovery of possession, cancellation of sale deeds and permanent injunction. The suit has been valued at Rs. 3 lakhs. In the present suit defendant no. 1(A) filed Written Statement incorporating a counter claim which is valued at Rs. 20 lakhs. Vide order dated 09/10/23 learned Civil Judge (Jr. Div.) No. 2Kamrup(M), Guwahatiforwarded the case record to Hon'ble District Judge, Kamrup(M) on the ground of lack of pecuniary jurisdiction to try the matter as the counter claim was beyond the pecuniary jurisdiction of the Court. Eventually the suit along with the counter claim was transferred for disposal to this Court.

The legal issue before me is whether the pecuniary jurisdiction of a civil court is divested by the filing of a counter claim of a value which exceeds the pecuniary jurisdiction of the Court. While dealing with a similar issue the Hon'ble Supreme Court in ***Gurbachan Singh Vs. Bhag Singh reported in AIR 1996 SC 1087***, has observed as follows:

"3. 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 8219.14wp 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 it's 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."

The Hon'ble Apex Court in clear terms has observed that in view of the proviso to Rule 6A of Order 8 of Civil Procedure Code, if by filing counter claim, having valuation which ousts the jurisdiction of the Court from trying the suit, then such counter claim cannot be accepted. In other words, a counter claim beyond pecuniary jurisdiction of the Court cannot be entertained. These observations made by the Hon'ble Apex Court takes this Court to the only conclusion that such counter claim, which ousts the jurisdiction of the trial Court, which was trying the suit, is not tenable.

For the foregoing reasons I am of the considered opinion that the valuation of the counter claim does not invest this Court with the pecuniary jurisdiction to try the instant suit along with the counter claim. It is the Court of Civil Judge (Jr. Div.) which is vested with the pecuniary

IN THE COURT OF CIVIL JUDGE (SR. DIV.) NO. 3, KAMRUP (M), GUWAHATI
PRESENT: JAYASHREE BORA, AJS
TITLE SUIT NO. 461 OF 2023 (NEW)
TITLE SUIT NO. 71 OF 2013 (OLD)
ZOHRA JABEEN VS. MD. MATLEBUDDIN AHMED & ORS.

jurisdiction to try the suit as well as to deal with the counter claim in accordance with the observations of the Hon'ble Apex Court in ***Gurbachan Singh's case (supra)***.

Let the case record be sent to Hon'ble District Judge, Kamrup(M), Guwahati for necessary order.

Sherishtadar to do the needful.

IN THE COURT OF CIVIL JUDGE (SR. DIV.) NO. 3, KAMRUP (M), GUWAHATI

PRESENT: JAYASHREE BORA, AJS

TITLE SUIT NO. 461 OF 2023 (NEW)

TITLE SUIT NO. 71 OF 2013 (OLD)

ZOHRA JABEEN VS. MD. MATLEBUDDIN AHMED & ORS.

r the above mentioned reasons, both the Civil Revision Petitions are dismissed and the Principal District Munsif, Alandur, is directed to return the written statement along with counter claim and inform the revision petitioner/defendant to file the written statement with regard to the case alone.