



IN THE HIGH COURT OF SIKKIM: GANGTOK

(Civil Appellate Jurisdiction)

Heard on : 17.07.2017
Pronounced on: 25.07.2017

**Single Bench: HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN,
JUDGE**

F.A.O No. 02 of 2015

State of Sikkim
Through Secretary,
SNT Department,
Government of Sikkim

.... Appellant/Plaintiff.

versus

1. Keshab Pd. Pradhan
S/o Lt. Punya Pd. Pradhan
R/O Pradhan House,
189/325, Nevedita Road,
Pradhan Nagar, Siliguri (W.B)
2. Shri Pushpa Pd. Pradhan,
S/o Lt. Punya Pd. Pradhan
R/O Pradhan House,
189/325, Nevedita Road,
Pradhan Nagar, Siliguri (W.B)
3. Shri Dibya Pd. Pradhan,
S/o Lt. Punya Pd. Pradhan
R/O Pradhan House,
189/325, Nevedita Road,
Pradhan Nagar, Siliguri (W.B)
4. Shri Hirendra Pd. Pradhan,
S/o Lt. Punya Pd. Pradhan
R/O Pradhan House,
189/325, Nevedita Road,
Pradhan Nagar, Siliguri (W.B)

... Respondents/Defendants.



An Appeal under Order XLIII Rule 1(a) of the Civil
Procedure Code, 1908.

Appearance:

Mr. J.B Pradhan, Additional Advocate General with Ms. Pollin
Rai, Asstt. Government Advocate, for the Appellant/Plaintiff.

Mr. B. Sharma, Senior Advocate with Ms. Navtara Sarda,
Advocate for the Respondents/Defendants.

J U D G M E N T
25.07.2017

Bhaskar Raj Pradhan. J.

- 1.** On the rival submissions of the learned Senior Counsels appearing for the parties hereto and so well articulated, four important issues merits judicial determination in the present case. Primarily, the meaning of the words "*determination of any other right to or interest in immovable property*" in Section 16 (d) of the Code of Civil Procedure, 1908 (C.P.C). Secondly, whether counter-claim under Order VIII Rule 6A of C.P.C could be filed even if the subject matter of the counter-claim was beyond the territorial jurisdiction of the Court. Thirdly, the ambit and scope of Order VIII Rule 6C of C.P.C to exclude counter-claim if the Court was of the view that the claim ought to be raised in an independent suit? Finally and consequently, whether the Principal District Judge was right in returning the plaint under the provision of Order VII Rule 10 of C.P.C? All the above issues are taken together and sought to be determined by this Court.



- 2.** The Order dated 25.03.2015 (the impugned order) passed by the learned Principal District Judge, East Sikkim at Gangtok (the Learned Principal District Judge) in Money Suit no. 21 of 2014 (the said suit) filed by the Appellant, the State of Sikkim (the Plaintiff) against Respondent no. 1, Keshab Pd. Pradhan (the Defendant no. 1), Respondent no. 2, Pushpa Pd. Pradhan (the Defendant no. 2), Respondent no. 3, Dibya Pd. Pradhan (the Defendant no. 3) and Respondent no. 4, Hirendra Pd. Pradhan (the Defendant no. 4) is impugned in the present F.A.O No. 02 of 2015 (the present appeal).
- 3.** The impugned order while disposing of a petition under Order VIII Rule 6 (C) of the Civil Procedure Code, 1908 (C.P.C), filed by the Plaintiff for exclusion of the counter-claim put forth by the Defendants returned the plaint of the Plaintiff.
- 4.** The learned Principal District Judge held:-
- (a). the counter-claim filed by the Defendants seeking a decree declaring that the Plaintiff is in illegal occupation of the suit property; a declaration of eviction of the Plaintiff from the portion of the landed property covered by plot no. 291 and other reliefs are related to the immovable property situated in Pradhan Nagar, Siliguri, West Bengal and beyond the jurisdiction of the Court of the learned Principal District Judge and thus, barred by Section 16 (d) of the C.P.C.
- (b). The said suit filed by the Plaintiff on careful perusal of the pleadings and the issue framed for settlement revealed that there were unresolved questions with regard to title between the parties



and thus, it was not merely a suit for recovery of money but also for determination of the rights of the parties with regard to the suit land and thus, the said suit filed by the Plaintiff also fell under Section 16 (d) of the C.P.C. and beyond the territorial jurisdiction of the Court of the Learned Principal District Judge and thus, the plaint was liable to be returned.

(c). In any event from the residential addresses of the Defendants furnished by the Plaintiff, it was clear that the Defendants are all residents of Pradhan Nagar, Siliguri.

(d). That the four cheques received in the name of the four Defendants were all received by the Defendant no. 3 at Turuk Kothi, Turuk, South Sikkim and thus the Court of the learned Principal District Judge had no territorial jurisdiction to try either the said suit or the counter-claim.

5. Mr. J.B. Pradhan, the learned Additional Advocate General for the State of Sikkim, the Plaintiff herein would argue that the plaint filed by the Plaintiff was purely a money suit and therefore, outside the purview of the Section 16 C.P.C and squarely falling under the purview of Section 20 in as much as it has been specifically pleaded in the plaint that the part of the cause of action i.e. payment of Rs. 34,50,000/-, having been received by the Defendants at Gangtok had arisen within the jurisdiction of the Court of the learned Principal District Judge. The learned Additional Advocate General would argue that, therefore, the impugned order to the extent that the learned Principal District Judge returned the plaint under the provision of Order VII Rule 10 of CPC is illegal. The learned Additional Advocate General would



also submit that the present case was a case in which the reliefs sought can be entirely obtained through the personal obedience of the Defendants. The learned Additional Advocate General would further contend that in so far as the impugned order allowing the Plaintiff's petition under Order VIII Rule 6C of CPC is concerned it is correct and the Plaintiff has no grievance. The learned Additional Advocate General would fairly concede, at the outset, that no formal application would be necessary for the Court to return the plaint under the provision of Order VII Rule 10 of C.P.C.

6. *In Contra*, Mr. B. Sharma, learned Senior Advocate appearing for the Defendants would argue that if this Court were to hold that the return of the plaint of the Plaintiff was not correct then in view of the provision of Order VIII Rule 6A of C.P.C the counter-claim filed by the Defendants was perfectly maintainable as he would argue that from the language of Order VIII Rule 6A of C.P.C it is clear that there is no restriction regarding territorial jurisdiction of the Court.

7. The Plaintiff, in the said suit preferred on 06.03.2016 for recovery of money amounting to Rs. 38,78,283 with interest and cost, made the following prayers:-

- "i. for a decree directing the defendants jointly and severally to pay to the plaintiff an amount of Rs. 38,78,283/- (Rupees Thirty eight lakhs seventy eight thousand two hundred and eighty three);*
- ii. for a decree directing the defendants jointly and severally to pay to the plaintiff pendente lite interest on the principal amount of Rs. 34,50,000/- (Rupees Thirty four lakhs fifty thousand);*
- iii. for a decree directing the defendants to pay to the plaintiff the entire cost of the suit.*



iv. for any other relief or reliefs which the plaintiff may be found entitled to in the facts and circumstances of the case. "

8. In re: Begam Sabiha Sultan v. Nawab Mohd. Mansur

Ali Khan¹ the Apex Court held:-

" Although at the stage of consideration of the return of the plaint under Order 7 Rule 10 of CPC, what is to be looked into is the plaint and the averments therein it is also necessary to read the plaint in a meaningful manner to find out the real intention behind the suit."

- 9.** Thus, it is vital to appreciate the plaint set out by the Plaintiff in a meaningful manner to find out the real intention behind the suit. In so doing, the story of the Plaintiff as pleaded in the plaint is that vide a lease deed dated 21.07.1953 registered in the office of the District Sub-Registrar, Darjeeling the lessor Punya Pd. Pradhan, late father of the Defendants granted lease of 2 & 1/2 bighas and 23.33 kothas of land situated at Pradhan Nagar, Siliguri to the 'Sikkim Darbar', for a period of 51 years for a salami of Rs. 9415/- and rent @ Rs. 147 per annum. Sikkim became the 22nd State of India in April, 1975. By virtue of the adaptation of Sikkim Laws (No. 1) Order, 1975 on and from the 26th day of April, 1975 the expression 'Sikkim Darbar' in the said lease deed stood substituted by the expression 'State Government' and accordingly the State Government of Sikkim assumed the position of the owner in respect of the demised premises. After taking possession of the demised premises the Plaintiff constructed 3 RCC buildings over a portion of the demised premises. With the enforcement of West Bengal Estates Acquisition Act, 1953 in the State of West

¹ (2007) 4 SCC 343



Bengal the rights of the lessor had extinguished and as such, on and from the date from which the West Bengal Estate Acquisition Act, 1953 came into force in the State of West Bengal the lessor had no subsisting interest in the demised premises. The lessor, Punya Pd. Pradhan, expired leaving behind four sons, the Defendants in the said suit as legal heirs and successors. The implication of the West Bengal Estate Acquisition Act, 1953 on the rights of the lessor in respect of the demised premises having not been brought to its notice, the Plaintiff on the repeated insistence of the Defendants, expressed its desire to purchase the demised premises from the legal heirs and representatives of the deceased lessor. Negotiations were accordingly carried out and the Plaintiff agreed to purchase the demised premises for a consideration of Rs. 69,00,000/-. Towards the said consideration, an amount of Rs. 34,50,000/- was paid to the Defendants as advance vide four separate cheques on 09.09.2002. All the above cheques were received by Defendant no. 3 for self and on behalf of Defendant no. 1, 2 and 4 at Gangtok. The said cheques have been encashed by the respective payees. In view of the provisions of West Bengal Estate Acquisition Act, 1953, the rights of the intermediary had got extinguished and the lessor had no subsisting interest in the demised premises. Hence, the negotiation between the sons of the deceased lessor (i.e. the Defendants) is illegal, invalid and improper. The payment of Rs. 34,50,000/- made by the Plaintiff to the Defendants as 50% payment towards demised premises is also illegal and the said amount is liable to be recovered from



the Defendants. When the error of payment of the public money by the Plaintiff to the Defendants came to the knowledge of the Plaintiff on 27.05.2003 through the Accountant General, Sikkim, the Plaintiff requested the Defendants to refund the payment of Rs. 34,50,000/-. In response to the said request the Defendants vide an application dated 25.02.2005 admitted the mistake of receiving the amount from the Plaintiff and expressed their willingness to refund the entire amount, after which the Defendant no. 1 and 2 sought further time vide application dated 28.04.2005. Vide application dated 16.06.2005 addressed to the Transport Department, Government of Sikkim, Defendant no. 1 asserted the right of the Defendants on the demised premises. Thereafter, in spite of repeated reminders the Defendants failed to fulfil their commitment of refunding the amount and hence the said suit.

10. It is pleaded in the said plaint that the cause of action for the said suit arose on 16.06.2005 when the Defendants demurred to refund the amount received by them.

11. The Plaintiff further pleaded that the payment of Rs. 34,50,000/- having been received by the Defendants at Gangtok the Court of the District Judge, East Sikkim at Gangtok (the District Judge) had both pecuniary as well as territorial jurisdiction to try the said suit. It is on the basis of this averment and this averment alone that the learned Additional Advocate General would submit that part of the cause of action having



arisen in Gangtok, the Court of the Principal District Judge had territorial jurisdiction as contemplated under Section 20 of C.P.C.

12. The learned Additional Advocate General in support of his contention would rely upon a Judgment of the Delhi High Court in re: **Indira Rai v. Bir Singh**². The said case related to a suit for recovery of money. The facts set out in the said judgment reveals that an agreement to sale was signed between the plaintiff and the defendant therein and the plaintiff had paid a sum of money to the defendant as sale consideration for a land in Faridabad. The defendant therein in turn agreed to handover vacant possession of the land to the plaintiff therein by a specified date. A sale deed was thereafter executed but the defendants failed to handover possession of the said land. The plaintiff therein rescinded the agreement and asked for refund. The defendant therein having failed to refund the sale consideration the plaintiff sought the recovery of money by filing a suit. The defendant took out a preliminary objection that the Delhi Court has no territorial jurisdiction. The defendant also denied execution of the agreement to sale claiming it to be forged and further denied having received any amount from the plaintiff. The defendant also pleaded that he is not the owner of the said land. In replication the plaintiff did not dispute the averments of the defendants that he is not the owner of the said land.

13. The Delhi High Court while examining the issue regarding its territorial jurisdiction held that the agreement to

². 2010 scc Online Del 4095



sell set up the plaintiff therein purports to have been executed in Delhi. Hence, part of the “cause of the action” claimed by the plaintiff, arose in Delhi and consequently, the suit could be filed in Delhi. The Delhi High Court further held that the suit is not suit for specific performance of the Contract in respect of an immovable property. The Delhi High Court also held that it was not a suit for possession of an immovable property nor was it a suit for injunction in respect of immovable property and that it was a suit for refund of sale consideration alleged to have been paid by the plaintiff to the defendant on the ground that due to non-performance of the agreement by the defendant, plaintiff had rescinded the transaction and thus the suit was not covered in any of the clauses of Section 16 of C.P.C.

14. It is trite that the ratio of the case is to be deduced from the facts involved in the case. In re: **Indira Rai (supra)** was a case in which the agreement for sale was executed in Delhi. The cause of action for the said suit had arisen on the failure of the defendant therein to refund the sale consideration paid by the plaintiff therein on the ground that due to the non-performance of the agreement by the defendant the plaintiff had rescinded the transaction. On such facts the Delhi High Court had held that the suit was not covered in any of the clauses of Section 16 of C.P.C. This Court is of the view that this was not a case which involved “*determination of any other right to or interest in immovable property.*”

**15.** Section 16 (d) of C.P.C provides:-

"16. Suits to be instituted where subject-matter situate.-

subject to the pecuniary or other limitation prescribed by any law, suits, -

(a).....

(b).....

(c).....

(d). *for the determination of any other right to or interest in immovable property,*

(e).....

(f).....

shall be instituted in the Court within the local limits of whose jurisdiction the property is situate:

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries own business, or personally works for gain.

Explanation.- in this section "property" means property situate in India."

16. In **Harshad Chimanlal Modi v. D.L.F Universal Ltd.**³

the Apex Court held :-

"16. Section 16 thus recognises a well established principle that actions against res or property should be brought in the forum where such res is situate. A court within whose territorial jurisdiction the property is not situate has no power to deal with and decide the rights or interest in such property. In other words, a Court has no jurisdiction over a dispute in which it cannot give an effective judgment. The proviso to Section 16, no doubt, states that though the Court cannot, in case of immovable property situate beyond jurisdiction, grant a relief in rem still it can entertain a suit where relief sought can be obtained through the personal obedience of the defendant. The proviso is based on a well-known maxim "equity acts in personam", recognised by the Chancery Courts in England. The Equity Courts had jurisdiction to entertain certain suits respecting immovable properties situate abroad through personal obedience of

³. (2005) 7 SCC 791



the defendant. The principle on which the maxim was based was that the Courts could grant reliefs in suits respecting immovable property situate abroad by enforcing their judgments by process in personam i.e. by arrest of defendant or by attachment of his property."

"21. A plain reading of section 20 of the Code leaves no room for doubt that it is residuary provision and covers those cases not falling within the limitations of Section 15 to 19. The opening words of the section, "subjection to the limitation aforesaid" are significant and make it abundantly clear that the section takes within its sweep all personal actions. A suit falling under section 20 thus, may be instituted in a court within whose jurisdiction the defendant resides, or carries on business, a personally work for gain or cause of action wholly or partly arises."

17. In view of the clear provision of Section 16 of C.P.C and the Judgment rendered by the Apex Court in re: **Harshad Chimanlal Modi (supra)** it has become imperative to examine whether the said suit filed by the Plaintiff would fall within the parameters of Section 16 (d) of C.P.C, or rather, whether the said suit entails "*determination of any other right to or interest in immovable property.*" It is only if the said suit does not fall under the parameter of Section 16 of C.P.C can the question of examining if the plaintiff be entitled to file the suit as per the provisions of Section 20 of C.P.C would arise.

18. It is well settled that the nature of the suit and its purpose must be determined by reading the plaint as a whole. In **Moolji Jitha and Co. V. Khandesh Spg. and Wvg. Mills Co. Ltd.** ⁴ the Federal Court held (AIR p.92, para 25):-

"the inclusion or absence of a prayer is not decisive of the true nature of the suit, nor is the order in which the prayers are arrayed in the plaint. The substance or object of the suit has to be gathered from the averments made in the plaint on which reliefs asked in the prayers are based."

⁴. AIR 1950 FC 83



19. The Apex Court in **Sumer Builders Pvt. Ltd. V. Narendra Gorani⁵** also examined the assertions made in the application along with the relief clause, "*read in entirety and appreciated in a holistic manner*" and came to the conclusion that the core dispute pertains to possession of land.

20. Section 16 of C.P.C does not use the words 'cause of action' which is integral to Section 20 of C.P.C. A suit would not survive without a cause of action. In a money suit the cause of action sufficient to justify the plaintiff to sue to obtain the money decree must be pleaded and proved. Any transaction pleaded must be an integral part of the cause of action sufficient to clothe the Court with jurisdiction to entertain the suit. As is well settled a cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendants. Although, the expression 'cause of action' has not been defined in the C.P.C, the Apex Court has in a number of decisions held that it is a bundle of essential facts necessary for the plaintiff to prove before he can succeed. Failure to prove such facts would give the defendant a right to Judgment in his favour. 'Cause of action' thus, gives occasion for and forms the foundation of the suit. If therefore there is no 'cause of action' the plaint has to be dismissed. (Vide **State of Rajasthan V. Swaika Properties⁶**; **ABC Laminarts (P) Ltd. and Another v. A.P Agencies, Salem⁷**; **Alchemist Ltd. & Anr. V. State of Sikkim⁸**).

⁵. (2016) 2 SCC 582

⁶. (1985) 3 SCC 217

⁷. (1989) 2 SCC 163

⁸. (2007) 11 SCC 335



- 21.** From a reading of the plaint the following essential facts pleaded by the Plaintiff would be required to be proved before the Plaintiff can obtain the money decree as prayed for:-
- (i.) Rs. 34,50,000/- was paid by the Plaintiff to the Defendants which was received at Gangtok by Defendant No. 3 for the purchase of the immovable property situated at Pradhan Nagar, Siliguri, West Bengal.
 - (ii.) The said money sought to be realised by the Plaintiff is the 50% payment paid towards the purchase of the said immovable property.
 - (iii.) The said money sought to be realised was money paid by mistake by the Plaintiff to the Defendants as the implications of and enforcement of the West Bengal Estate Acquisition Act, 1953 on the rights of the lessor to the lease deed dated 21.07.1953 not been brought to the notice of the Plaintiff the negotiation between the Plaintiff and Defendants were illegal, invalid and improper in the eyes of the law.
 - (iv.) As a result of the enforcement of the West Bengal Estate Acquisition Act, 1953, the rights of the lessor of the lease deed dated 21.07.1953 had extinguished and had no subsisting interest in the demised premises and consequently the Defendants as the sons and legal heirs of the lessor also did not have any rights in the said immovable property.



22. From the pleadings in the plaint it is absolutely clear that the Plaintiff would not be entitled to a money decree of Rs. 38,78,283/- and the interest and cost as prayed for in the said suit without examining any other right to or interest of the Defendants in the immovable property, admittedly situated outside the jurisdiction of the Courts in Sikkim in the State of West Bengal. A perusal of the plaint makes it evident that the Plaintiff has not pleaded as to where the negotiations and agreement to purchase the said immovable property for a consideration value of Rs. 69,00,000/- took place. In fact, the only averment in the plaint by which the Plaintiff seeks to invoke the jurisdiction of the Court of the District Judge, is that the cheques referred to in paragraph 10 of the plaint were received by Defendant no. 3 at Gangtok, for and on behalf of the Defendant no. 1, 2 and 4.

23. This Court is of the view, reading the plaint as a whole, that although the prayers prayed for by the Plaintiff is for money decree, the essential, integral and germane facts without which the money decree cannot be passed by the Court is the determination of the right to or interest of the Defendants in the immovable property situated at Pradhan Nagar, Siliguri, West Bengal and beyond the territorial jurisdiction of the Courts in Sikkim. As such, Section 20 of C.P.C which starts with the words "*subject to the limitation aforesaid*" and thus a residuary provision to Sections 15 to 19 of C.P.C has no application in the present case. Thus, the said suit ought to have been filed by the Plaintiff as per the provision of Section 16 (d) of C.P.C in the



Court within the local limits of whose jurisdiction the immovable property is situate as the said suit clearly involved "*the determination of any other right to or interest in immovable property.*"

24. The learned Additional Advocate General would also submit that the present case was a case in which the relief sought can be entirely obtained through the personal obedience of the Defendants. The proviso to section 16 of C.P.C makes it abundantly clear that even where the relief sought can be entirely obtained through the defendants personal obedience in a suit to obtain relief respecting, or compensation for wrong to, immovable property held by and on behalf of the defendant, the suit could be instituted either in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain. As per the plaint the Defendants are all residents of Pradhan Nagar, Siliguri, West Bengal. Material pleadings essential to determine where the Defendants carries on business, or personally works for gain is missing from the plaint. Thus, even the proviso to Section 16 of C.P.C does not further the case of the Plaintiff.

25. The learned Additional Advocate General would then argue that even if some of the prayers were not maintainable being outside the territorial jurisdiction of the Court of the District Judge, those prayers within the jurisdiction ought to have been entertained and those outside the jurisdiction struck out. Reliance was placed on the judgment of a Division Bench of



the Calcutta High Court in re: **Smt. Sheela Adhikari v. Rabindra Nath Adhikari**⁹. The present case is not a case where some of the cause of actions united in the plaint are arising within the territorial jurisdiction of the Court of the District Judge where the suit has been filed, while other causes of action joined therein are not triable by it for want of such jurisdiction as in the Calcutta case. However, it is pertinent to note that the Division Bench of the Calcutta High Court has clearly held that the Rules in First Schedule of CPC cannot override or outweigh the Sections in the body of CPC and further :-

"the result, therefore, is that though under the provisions of Order 2, Rule 3 any number of causes of action may be united in one suit against the same defendant, yet because of the provisions of Section 16-20 of the Code, the Court in which suit is filed must have territorial jurisdiction in respect of all such causes of action."

26. The Plaintiff having filed the said suit before the Court of the District Judge on 06.03.2006, the Defendant no.1 filed his written statement on 20.07.2006; the Defendant no. 3 and 4 on 22.07.2006 and Defendant No.2 on 25.11.2006. The Court of the District Judge framed 5 issues on 14.02.2007. On 02.09.2008 the Defendant no. 3 and 4 preferred an application under Order VI Rule 17 r/w Section 151 of C.P.C. for amendment of their joint written statement. This was objected to by the Plaintiff vide written objection dated 27.11.2008. On 30.07.2009, the Court of the District Judge rejected the prayer of the Defendant No. 3 and 4 to amend their written statement. The order dated 30.07.2009 of the District Judge was assailed before this Court. This Court vide Judgement and order dated 12.08.2010 set aside the order

⁹ AIR 1988 Cal 273



dated 30.07.2009 of the District Judge and allowed the Defendant No. 3 and 4 to amend their written statement. Consequently, on 06.10.2010 amended written statement was filed on behalf of the Defendant no. 3 and 4. The said amended written statement filed by Defendant No. 3 and 4 on 06.10.2010 also made the following counter-claims against the Plaintiff:-

"28-F. The Defendants therefore claim the following reliefs by way of counter claim-

(i). a decree declaring that the Plaintiff is in occupation of the suit property illegally;

(ii). a decree declaring that the Defendants are entitled for declaration for the eviction of the Plaintiff from the portion of landed property covered by Plot No. 291;

(iii). a decree declaring that the Defendants are entitled to a sum of Rs. 2,500/- per day as mesne profits since 20th June 2004; and

(iv). any other relief or reliefs for which the Defendants are entitled to under the law."

27. The Plaintiff filed its written statement dated 28.12.2010 to the counter-claim filed by the Defendant no. 3 and 4. In the said written statement the Plaintiff also pleaded that this Hon'ble Court lacks the territorial jurisdiction to entertain the counter-claim setup by the Defendants.

28. Ex facie, the reliefs sought for in the counter-claim filed by the Defendant no. 3 and 4 are beyond the territorial jurisdiction of the Court of the District Judge as barred by Section 16 of C.P.C. Nevertheless, Mr. B Sharma, learned Senior Advocate for the Defendants would submit that in view of the provision of Order VIII Rule 6A of C.P.C, the only limitation being pecuniary, the counter-claim filed with the afore quoted reliefs even if beyond the territorial jurisdiction of the Court of the



District Judge is entertainable by the said Court as the said suit having been filed before the Court of the District Judge.

29. Order VIII Rule 6A of C.P.C provides:-

"6A. Counter-claim by defendant.- (1) *A defendant in a suit may, in addition to his right of pleadings a set-off under rule 6, set up, by way of counter-claim against the claim of the plaintiff, 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:*

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

(2) *Such counter-claim shall have the same effect as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and on the counter-claim.*

(3) *The plaintiff shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the Court.*

(4) *The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints."*

30. Mr. B. Sharma, learned Senior Advocate in support of his aforesaid submission would cite in re: **Jag Mohan Chawla v. Dera Radha Swami Satsang¹⁰** ; and **Barthels & Luders Gambh v. M.V. Dominique¹¹**.

31. In **Jag Mohan Chawla (Supra)**, the Apex Court while answering the question "*whether in a suit for injunction, counter-claim for injunction in respect of the same or a different property is maintainable? Whether counter-claim can be made on different cause of action?*" held:-

¹⁰. (1996) 4 SCC 699

¹¹ 1988 Mh. L.J. 728: AIR 1988 Bombay 380.



"5..... 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 counter-claim against the claim of the plaintiff, 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 damage or not. A limitation put in entertaining the counter-claim is as provided in the proviso to sub-rule (1), namely, the counter-claim shall not exceed the pecuniary limits of the jurisdiction of the court. Sub-rule (2) amplifies that such counter-claim shall have the same effect as a cross-suit so as to enable the court to pronounce a final judgment in the same suit, both on the original claim and on the counter-claim. The plaintiff shall be given liberty to file a written statement to answer the counter-claim of the defendant within such period as may be fixed by the court. The counter-claim is directed to be treated, by operation of sub-rule (4) thereof, as a plaint governed by the rules of the pleadings of the plaint.

..... In sub-rule (1) of Rule 6-A, 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 of 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 that occasioned to lay the suit. The only limitation is that the cause of action should arise before the time fixed for filing the written statement expires. The defendant may set up a cause of action which has accrued to him even after the institution of the suit. The counter-claim expressly is treated as a cross-suit with all the indicia of pleadings as a plaint including the duty to aver his cause of action and also payment of the requisite court fee thereon. Instead of relegating the defendant to an independent suit, to avert multiplicity of the proceeding and needless protection (sic protraction), 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 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....."

32. The Apex Court in re: **Jag Mohan Chawla (supra)** was not examining 'territorial jurisdiction' but the issue whether in a suit for injunction, counter-claim for injunction in respect of the same or a different property was maintainable and whether counter-claim can be made on different cause of action. It is in that context that the Apex Court held the language is so couched with words of wide width as to enable the parties to bring its own independent cause of action. Similarly, the Apex Court in the same context i.e. 'cause of action' held that the only limitation is that the cause of action should arise before the time fixed for filing the written statement expires. Thus, the *ratio decidendi* of the judgment in re: **Jag Mohan Chawla (supra)** would not lend support to the argument of Mr. B. Sharma, learned Senior Advocate that Order VIII Rule 6A of C.P.C does not have any limitation of territoriality. 'Territorial jurisdiction' and 'cause of action' are two different concepts of law.

33. In re: **Barthels & Luders Gambh (supra)** the Bombay High Court was examining the Chamber Summons taken out by the plaintiff therein to the suit and the defendant therein to the counter-claim for excluding from the suit the counter-claim filed by the defendants therein. The Bombay High Court held that the High Court had been set up as a Court of Admiralty under the Colonial Courts of Admiralty (India) Act, 1891 and that the counter-claim by the defendant therein did not strictly fall within



the Admiralty jurisdiction of the High Court. However, it held that the counter-claim under the provisions of Order VIII Rule 6A of C.P.C was maintainable.

34. The Bombay High Court in re: **Barthels & Luders Gambh (supra)** held that the only restriction as set out in the proviso to Order VIII Rule 6A of C.P.C is that the counter-claim shall not exceed the pecuniary limits of the jurisdiction of the Court. The Bombay High Court took support for the aforesaid view from the judgment of the Madras High Court in re: **T.K.V.S. Vidyapoornachary Sons v. M.R. Krishnamachary**¹² which held that Rule 6C of Order VIII of C.P.C emphasizes by implication that a general rule a suit claim and a counter-claim ought properly to be regarded as constituting a unified proceeding and a counter-claim, therefore, between the same party needs to be only within the pecuniary jurisdiction of the Court where it is filed. The Bombay High Court also relied upon an English judgment rendered by Lord Coleridge in re: **Griendtoveen v. Hamlyn and Co.**¹³ and further held that under Order VIII Rule 6A of C.P.C, once the suit is within the jurisdiction of the Court, the defendant is entitled to file a counter-claim provided the counter-claim is within the four corners of Order VIII Rule 6A of C.P.C and further that there is no provision under this Order that the counter-claim must also comply with the requirement as to territorial jurisdiction.

¹². AIR 1983 Madras 291

¹³ (1892) VIII T.L.R. 231



35. The Bombay High Court in re: **Barthels & Luders Gambh (supra)** was not called upon to examine the provision of Section 16 of the C.P.C regarding territorial jurisdiction. By virtue of Section 120 of C.P.C, Section 16, 17 and 20 shall not apply to the High Court in the exercise of its original civil jurisdiction. This being the legal position **Barthels & Luders Gambh (supra)** cannot be held to be an authority on the proposition sought to be canvassed by Mr. B. Sharma, Senior Advocate as “*neither the C.P.C nor its principles can be made applicable to the Letters patent qua Section 16, 17 and 20, CPC.*” (vide **Jindal Vijaynagar Steel (JSW Steel Ltd.) v. Jindal Praxair Oxygen Co. Ltd.**¹⁴ paragraph 52).

36. The Madras High Court and the Calcutta High Court are also chartered High Courts and have original Civil Jurisdiction. Section 120 of C.P.C is also applicable to the said High Courts. In re : **Ajay Kumar Saraff v. Sushil Kumar Agarwal**¹⁵ the Calcutta High Court was examining a counter-claim relating to recovery of possession of immovable property lying and situated outside the ordinary original civil jurisdiction of the Calcutta High Court. Relying upon **Barthels & Luders Gambh (supra)** it was contended that a counter-claim could be lodged by the defendant therein which directly relates to the same cause of action as made out in the plaint.

37. The Calcutta High Court in re: **Ajay Kumar Saraff (supra)** however, distinguished the judgment of the Bombay

¹⁴ (2006) 11 SCC 521

¹⁵ 2015 SCC online Cal 732: 2015 AIR CC 1953



High Court in re: **Barthels & Luders Gambh (supra)** by holding, intera-alia:-

"The suit premises involved in the present case is Premises No. 344, Canal Street, Kolkata-700048. The suit property is situate outside the territorial jurisdiction of this Court. If the defendant wanted to file a suit with the reliefs as sought for in its counterclaim in respect of such immovable property, the suit would not have been maintainable before this Court.

Rule 12 of Chapter IX of the Original Side Rules states that a counterclaim shall be treated as a plaint and be governed by the rules applicable to plaints. In terms of Rule 12 of Chapter IX of the Original Side Rules treating a counterclaim to be a plaint, the relief of possession in respect of immovable property admittedly lying and situate outside the territorial jurisdiction of this Court cannot be entertained. The provisions of Order 8 Rules 6A to 6G of the Code of Civil Procedure, 1908 do not assist the defendant in sustaining a counterclaim before this Court when this Court does not have the territorial jurisdiction to entertain the counterclaim made in the written statement of the defendant.

Rule 6C Order 8 of the Code of Civil Procedure, 1908 allows a plaintiff to raise an issue that the claim raised in the counterclaim ought not to be disposed of by way of a counterclaim. In the present case, the plaintiffs have not appeared at the hearing of the suit. However, the counterclaim made in the written statement of the defendant is such that the counterclaim cannot be entertained by this Court due to lack of territorial jurisdiction of this Court.

Barthels and Luders GmbH (supra) relates to an admiralty suit. The Bombay High Court considered Order 8 Rules 6A to 6G of the Code of Civil Procedure, 1908 and found that since the counterclaim related to the same repairs as that which was the subject matter of the plaint, it was found not to be fair to drive a defendant to a separate suit in a different Court. The factual situation in the instant case is different. The defendant has sought for relief with regard to an immovable property situate admittedly outside the territorial jurisdiction of this Court in its counterclaim. The defendant could not have filed an independent suit seeking the same relief as that of the counterclaim in this Court. It would not be proper to allow the defendant to invoke the jurisdiction of this Court when this Court does not possess such



jurisdiction by reason of the reliefs sought for in respect of immovable property lying and situate outside its territorial jurisdiction.

In such circumstances, no relief can be granted to the defendant in the counterclaim due to the lack of territorial jurisdiction of this Court to entertain the counterclaim of the defendant."

38. Section 16 of C.P.C relates to 'suits' when it provides that suits to be instituted where subject matter is situate. Section 16 of C.P.C falls within Part I of C.P.C under the heading 'Suits in General'. Counter-claims falls under the First Schedule of C.P.C which contains 'Orders'. Order VIII Rule 6A of C.P.C deals with counter-claim. Under Order VIII Rule 1 of C.P.C the defendant is required to file 'written statement of his defence' on receipt of the summons issued under Order V Rule 1 of C.P.C in the suit instituted. Under Order VIII Rule 6 of C.P.C 'set-off' is required to be given in the written statement filed in defence of the suit. Under Order VIII Rule 6 (2) of C.P.C the written statement shall have the same effect as a 'plaint' in a cross-suit so as to enable the Court to pronounce a final judgment in respect both of the original claim and of the set off.

39. Order VIII Rule 6A of C.P.C deals with counter-claim by the defendant. A 'defendant in a suit' in addition to his right of 'pleading a set-off' under Order VIII Rule 6A of C.P.C, set-up 'by way of counter-claim against the claim of the plaintiff', 'any right or claim' in respect of 'a cause of action' accruing to the defendant against the plaintiff. Under the proviso thereto, the counter-claim shall not exceed the pecuniary limits of the jurisdiction of the Court. Under Order VIII Rule 6A (2) of C.P.C such counter-claim shall have the same effect as a 'cross-suit' so



as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and on the counter-claim. The plaintiff is entitled to file a written statement in answer to the counter-claim of the defendant under Order VIII Rule 6A (3) of C.P.C and under Order VIII Rule 6A (4) the counter-claim shall be treated as a 'plaint' and governed by the 'rules' applicable to plaints. 'Rules' has been defined under Section 2 (18) of C.P.C to mean Rules and forms contained in the First Schedule or made under Section 122 or Section 125 of C.P.C. Order VII Rule 1 is part of the First Schedule of C.P.C. Order VII Rule 1 (f) provides that the plaint shall contain the facts showing the Court has jurisdiction.

40. The Defendant No. 3 and 4 has filed a composite amended written statement and a counter-claim. Para 1 to 27 thereof are the averments of the said amended written statement. Para 28 consisting of para 28-A to 28-F in the said amended written statement is the counter claim. There is no separate averment in the counter-claim on facts showing the Court has jurisdiction. However, para 27 of the said amended written statement categorically states: "this Hon'ble Court has no jurisdiction to try the present case, as the suit premises is situated within the jurisdiction of West Bengal." This being the statement in the amended written statement, the Defendant No. 3 and 4 may not be able to contend otherwise in the counter-claim.



41. The scheme of the C.P.C is clear. Suit must necessarily be instituted in the Court that has territorial jurisdiction as provided under Section 16 of C.P.C. Section 20 of C.P.C being a residuary provision covers only those cases not falling within the limitations of Section 15 to 19 of C.P.C. Once the suit has been instituted as provided above, written statement, set-off or counter claim has to be filed in that suit. The counter-claim so filed need to comply with the provisions of Order VIII Rule 6A of C.P.C. In Order VIII Rule 6A (1) of C.P.C “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.” (vide **Jag Mohan Chawla (supra)**). It must be straightaway noticed that in re: **Jag Mohan Chawla (supra)** the Apex Court has used the words “an independent suit” preceded by the words “the subject matter of” clearly holding that under Order VIII Rule 6A of C.P.C a defendant could bring an independent cause of action relating to a subject matter of an independent suit by way of counter-claim. Allowing set-offs and counter-claims to be filed in the suit in which the defendants are to file written statement in its defence is to avoid multiplicity of litigation. In re: **Ramesh Chand Ardawatiya v. Anil Panjwani**¹⁶ it has been held by the Apex Court that the purpose of the provision enabling the filing of a counter-claim is to avoid multiplicity of judicial proceedings and saving of the Court’s time as also to exclude inconvenience to the parties by enabling claims and counter-claim, that is,

¹⁶ (2003) 7 SCC 350



permitting all disputes between the same parties to be decided in the course of the same proceedings.

42. However, there could be cases when a counter-claim may have to be excluded as provided under Order VIII Rule 6C of C.P.C. In fact the impugned order was passed while considering the Plaintiff's application under Order VIII Rule 6C of C.P.C for exclusion of the counter-claim filed by the Defendant no. 3 and 4 on the ground that the prayer for a declaration of eviction against the Plaintiff from the immovable property situated in Siliguri, West Bengal was beyond the territorial jurisdiction of the Courts in Sikkim.

43. Order VIII Rule 6C of C.P.C deals with exclusion of counter-claim. Where a defendant sets up a counter-claim and the plaintiff contends that the claim thereby raised ought not to be disposed of by way of counter-claim but in an 'independent suit', the plaintiff may, at any time before issues are settled in relation to the counter-claim, apply to the court for an order that such counter-claim may be excluded, and the Court may, on the hearing of such application makes such order as it thinks fit.

44. The key words in Order VIII Rule 6C of C.P.C are 'independent suit'. If the Court is of the view, in an application made by the plaintiff at any time before the issues are settled in relation to the counter-claim, that the counter-claim ought to be disposed of by way of an 'independent suit' the Court is empowered to make such orders as it thinks fit. An 'independent suit' need to be instituted in the Court within the local limits of



whose jurisdiction the property is situate in terms of Section 16 of C.P.C. The counter-claim filed by the Defendant No. 3 and 4 seeking a prayer for declaration of eviction of the Plaintiff from the immovable property in possession of the Plaintiff situate in Sliguri, West Bengal outside the territorial jurisdiction of the Courts in Sikkim squarely falls within Section 16 of C.P.C and would be liable to be rejected if it were to be filed as an 'independent suit'. As such, this Court is of the view that the application filed by the Plaintiff under Order VIII Rule 6C of C.P.C for exclusion of counter-claim was maintainable. This interpretation would avoid any embarrassment to the Court in passing any judgment in a counter-claim which it could not have passed being beyond its territorial jurisdiction. To the said extent the application of the Plaintiff under Order VIII Rule 6C of C.P.C filed on 19.06.2014 for exclusion of the counter-claim of the Defendant no. 3 and 4 was maintainable and rightly held in favour of the Plaintiff by the learned Principal District Judge in the impugned order holding that the Court had no jurisdiction to adjudicate upon the counter-claim of the Defendants.

45. Be that as it may, as this Court has held that the said suit filed by the Plaintiff ought to have been filed as per the provisions of Section 16 (d) of the C.P.C in the Court within the local limits of whose jurisdiction the property is situate the plaint filed by the Plaintiff must necessarily be returned to be presented to the Court in which the said suit should have been instituted under Order VII Rule 10 of C.P.C as held by the learned Principal District Judge. In such an event the counter-



claim would also have to be filed before the same Court as per the provision of Order VIII Rule 6A of C.P.C. The counter-claim as filed by the Defendant No. 3 and 4 in the said suit, if it were to be instituted in the Court within the local limits of whose jurisdiction the immovable property is situate, Order VIII Rule 6C of C.P.C would not apply in the facts of the present case.

46. In view of the aforesaid, the impugned order dated 25.03.2015 passed by the learned Principal District Judge, in Money Suit no. 21 of 2014 is upheld and Appeal dismissed. The said plaint must be returned under the provision of Order VII Rule 10 of C.P.C to be presented to the Court in which the suit should have been instituted. As a counter-claim shall be treated as a plaint and governed by the Rules applicable to plaints under the provision of Order VII Rule 10 of C.P.C the counter-claim filed by the Defendant No. 3 and 4 must also be returned to be presented to the Court in which the said counter-claim should be filed. Consequently, the Court fee paid by the Defendant No. 3 and 4 for the counter-claim is also liable to be returned to the Defendant No. 3 and 4. It is accordingly ordered. In view of the final order the interim order shall cease to operate.

47. No order as to cost.

(Bhaskar Raj Pradhan)
Judge

25.07.2017