

2025 LiveLaw (SC) 1097

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

K. VINOD CHANDRAN; J., N.V. ANJARIA; J.

Special Leave Petition (C) No.11050 of 2025; November 12, 2025

Sanjay Tiwari versus Yugal Kishore Prasad Sao & Ors.

Code of Civil Procedure, 1908 – Order VIII Rule 6A – Counter Claim – Maintainability against Co-Defendant – Held, a counter-claim cannot be directed solely against a co-defendant; it must be directed against the plaintiff– While a counter-claim can be based on a different cause of action than that put forth in the suit, it should be incidental or connected with that cause of action and has necessarily to be directed against the plaintiff- Counter claim by defendants 2 & 3 against defendant No. 1 for specific performance in a suit filed by the plaintiff set aside- Appeal allowed. [Relied on *Rohit Singh & Ors. v. State of Bihar*, (2006) 12 SCC 734; Para 10, 14].

Specific Performance – Limitation – Impleadment – Where defendants sought to raise a counter-claim for specific performance regarding an agreement dated 02.12.2002 in an impleading application filed only in the year 2006, Supreme Court held the claim was grossly delayed and hit by limitation – No liberty granted to file a separate suit as the claim could not survive. [Para 13, 15]

For Petitioner(s) Mr. Shikhil Suri, Sr. Adv. Mr. Ram Lal Roy, AOR

For Respondent(s) Mr. Narender Hooda, Sr. Adv. Mr. Yuvraj Nandal, Adv. Mr. Shiv Bhatnagar, Adv. Ms. Pallvi Hooda, Adv. Ms. Kavya Manuja, Adv. Ms. Tannu, Adv. Dr. Surender Singh Hooda, AOR Mr. Sriram Parakkat, Adv. Mr. Sriram P., AOR Mr. Neha Kumari, Adv. Ms. Maneesha Sunil Kumar, Adv. Mr. Bajinder Singh, Adv.

J U D G M E N T

K. VINOD CHANDRAN, J.

- 1.** Leave granted.
- 2.** The appellant who is the plaintiff in a suit, is aggrieved with the order of the High Court, which affirmed the order of the Trial Court admitting a counter claim by the defendant Nos.2 and 3, who were subsequently impleaded, on their application. The counter claim was against the first defendant; against whom the plaintiff had sought a specific performance of the very same land; subject matter of the suit.
- 3.** The High Court dismissed the application filed under Article 227 on the ground of avoiding multiplicity of litigation, reasoning that the entire issue can be decided in the suit as to whether the counter claim is maintainable or not.
- 4.** Heard the learned counsel for the appellant and the respondents herein. While learned counsel for the appellant contends that there can be no counter claim against the codefendant in a suit filed by him, the defendants who raised the counter claim pleaded that they may be left liberty to agitate their cause in appropriate proceedings. Learned counsel for the appellant specifically relied on the decisions in ***Rohit Singh & Ors. v. State of Bihar***¹ and ***Rajul Mano Shah @ Rajeshwari Rasiklal Sheth v. Kiranbhai Shakrabhai Patel & Anr.***².

¹ (2006) 12 SCC 734

² (2025) 10 SCR 152

5. On the brief facts, it is to be noticed that the plaintiff filed a suit for specific performance on the contention that defendant No.1, who was the sole defendant had entered into an oral agreement on 02.12.2002 to sell 0.93 acres of land, more fully described in the plaint. The first defendant, was the sole defendant impleaded in the plaint filed. The entire consideration agreed upon was paid on 03.12.2002 by way of three demand drafts, upon which a receipt was issued in favour of the plaintiff, promising transfer of the said land in favour of the plaintiff, which was witnessed by three defendants, claimed the plaintiff. The plaintiff also asserted that he was put in possession of the property on which he had built a boundary wall.

6. The original sole defendant filed a written statement contending that two others (defendant Nos.2 and 3, subsequently impleaded) were the persons in possession of part of the suit property and hence the suit is bad for nonjoinder of the necessary parties. It was claimed that on 01.12.2002, a portion of the very same land, 50 decimals, was agreed to be transferred to the 2nd and 3rd defendants, the consideration of which, Rs.2,95,000/- was required to be paid on 03.12.2002. However, it is also admitted that in the meanwhile, the 1st defendant due to his financial need sold 43 decimals of land to the father of the plaintiff for an amount of Rs.2,55,000/-. There is also an averment that the plaintiff made payment of Rs.2,55,000/- by demand drafts and 2nd and 3rd defendants made payment of Rs.2,95,000/- by deposit in a bank account.

7. As of now, the question of non-joinder of necessary parties does not arise since the 2nd and 3rd defendants themselves filed an application for impleadment, which was allowed, upon which the plaintiff had taken up a challenge before the High Court, rejected as per Annexure P11. However, the written statement filed by 2nd and 3rd defendants assert that their agreement was to purchase the entire land for Rs.5,50,000/- out of which they have paid Rs.2,95,000/-. They also raised a counter claim against 1st defendant that they are entitled to be transferred the entire land which was allowed to be taken up by the Trial Court and challenged unsuccessfully before the High Court; impugned herein.

8. Admittedly, even if the allegation of an agreement of sale with 2nd and 3rd defendants is accepted, there is no contention that the amount agreed upon was paid to the 1st defendant or that they were always ready and willing to pay the balance sale consideration. It is also pertinent that in the written statement filed, the 2nd and 3rd defendants concede that 43 decimals of land was purchased by plaintiff's father and their agreement was confined to purchase of 50 decimals of land. It is the specific case put forth that the area shown in the receipt was fraudulently changed from 43 to 93 decimals.

9. **Rohit Singh** (supra) was a case in which the plaintiff filed a suit for specific performance and possession, against two defendants. The suit went to trial, the evidence was closed, arguments concluded and reserved for judgment. Then the third parties filed an impleading application claiming right over the suit property by way of a counter claim, which was allowed by the Trial Court. Though the plaintiff's claim was rejected, that of the impleaded respondents stood allowed against which the defendant Nos.1 and 2, the Divisional Forest Officer and the State of Bihar filed an appeal unsuccessfully, which was challenged in a second appeal, successfully. The appellants before this Court contended that the counter claim was maintainable even if the cause of action put forth by the defendants in the suit did not arise out of the cause of action based on which the suit was filed by the plaintiff.

10. The counter claim was rejected by this Court for multiple reasons, one of which, that it could not have been raised after the issues are framed and the evidence was closed.

Then, that though a contention was raised regarding the counter claim, there was not even a prayer seeking a declaration of title, in which event, there was no counter claim in terms of Order 8, Rule 6A of the Code of Civil Procedure, 1908. It was also found that the Trial Court only treated the written statement as a counter claim and afforded no opportunity for the defendant Nos.1 and 2 to effectively contest the same by way of pleadings. Finally, it was held that a counter claim though can be based on different cause of action than that are put forth in the suit, it should be one incidental or connected with that cause of action and it has necessarily to be directed against the plaintiff and cannot be directed against the co-defendant. **11. *Rajul Mano Shah*** (supra) was a case in which the plaintiff filed a suit against her sister-in-law from alienating the latter's portion of the undivided share of a joint family property in favour of a third party; the second defendant. The sister-in-law died while the suit was pending, and the second defendant sought substitution of the original defendant No.1 with a Court appointed officer which came to be allowed. The counter claim raised was for specific performance of the agreement, allegedly executed by the first defendant and for partition, which prayer of partition was claimed to be an incidental prayer against the plaintiff in the suit. This Court found that the claim of specific performance is independent of the claim of partition, since the second defendant should first establish a right of claim over the property, which is absent till he succeeds against the estate of the first defendant; in which event only the question of setting up of a counter claim against the plaintiff by way of a prayer for partition would arise.

12. The said declaration squarely applies in the present case also. True, if the 2nd and 3rd defendants are in possession of any part of the property, their impleadment in the suit is necessary since the plaintiff would also have to claim recovery of possession in the event of a decree of specific performance. Now, the 2nd and 3rd defendants having already been impleaded, the suit does not suffer from the defect of non-joinder of necessary parties.

13. It also has to be noticed that despite raising a claim for conveyance of the entire property, the 2nd and 3rd defendants do not have a concrete case, even for a counter claim. Their first assertion in the written statement is that they had agreed to purchase the entire land for Rs.5,55,000/- against which Rs.2,95,000/- was already paid. However, they conceded that 43 decimals from the very same property was agreed to be conveyed by the first defendant to the plaintiff for consideration of Rs.2,55,000/-. Their contention is also that the plaintiff had fraudulently changed the area from 43 decimals to 93 decimals. Their claim towards the end of the written statement is that, in any event 50 decimals of the suit property has to be conveyed to them based on the part payment made by them for which there is no agreement. The 2nd and 3rd defendants, hence, are found to have no concrete claim against the property and in any event, the impleading application in the suit was also filed only in the year 2006 after the period of limitation seeking the claim of specific performance, the cause of action for which, even according to the defendants, arose on 02.12.2002.

14. As has been held in the decisions cited, the counter claim against the co-defendant cannot survive and the same has to be rejected. Impleadment of the 2nd and 3rd defendants though voluntarily made by themselves, saves the suit from the defect of non-joinder of necessary parties, on the ground of possession, even if it is so found. We make it clear that we have not held on merits regarding the possession as such and it would be for the Trial Court to determine the same and if necessary, grant recovery of possession, if that is sought for by the plaintiff appropriately in the suit.

15. We find no reason to leave liberty to the defendants 2 & 3 to file a separate suit at this stage, when the claim would be grossly delayed, which was hit by limitation even at the time of filing of the counter claim; which in any event cannot survive against the plaintiff.

16. The Civil Appeal is hence allowed, and the parties are left to agitate their cause before the Trial Court, leaving open all contentions except – that of the counter claim of the defendants 2 & 3, which stands set aside.

17. Pending application(s), if any, shall stand disposed of.

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