



CNR: KAHC010131972022

NC: 2026:KHC:39086
W.P. No.6291/2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 28TH DAY OF JULY, 2026
BEFORE
THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL
WRIT PETITION NO.6291/2022 (GM-CPC)

BETWEEN:

SMT. K.R. GANGAMMA
D/O RAMANNA
AGED ABOUT 64 YEARS
R/O KEREGALAPALYA
CHINAKAVAJRA MAJARA
KASABA HOBLI, MADHUGIRI TALUK
TUMKUR DISTRICT - 572101 .

...PETITIONER

(BY SRI. K.P. BHUVAN, ADV.,)

AND:

CHOWDAPPA BHOVI
SINCE DEAD BY LR'S.

1. SMT. HANUMAKKA
1ST WIFE OF LATE CHOWDAPPA BHOVI
AGED ABOUT 60 YEARS.
2. SMT. ANKAMMA
2ND WIFE OF LATE CHOWDAPPA BHOVI
AGED ABOUT 50 YEARS.
3. SRI. RAMAKRISHNAPPA
SON OF LATE CHOWDAPPA BHOVI
AGED ABOUT 48 YEARS.
4. SMT. BHAGYAMMA
D/O OF LATE CHOWDAPPA BHOVI

Digitally signed
by RUPA V
Location: HIGH
COURT OF
KARNATAKA



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AGED ABOUT 34 YEARS.

RESPONDENT NOS.1 TO 4 ARE
R/AT. THINGALURU VILLAGE
KODIGENAHALLI HOBLI
MADHUGIRI TALUK
TUMKUR DISTRICT -572101.

5. SRI. T.C. RAMA BHOVI
SON OF LATE CHOWDA BHOVI
AGED ABOUT 75 YEARS.

6. SRI. ASHWATHA BHOVI
SON OF CHOWDA BHOVI
AGED ABOUT 67 YEARS.

BARAMARAJU
SINCE DEAD BY LR'S.

7. SMT. RATHNAMMA
W/O BARAMARAJU
AGED ABOUT 50 YEARS.

8. SRI. SHASHIKUMAR
S/O BARAMARAJU
AGED ABOUT 33 YEARS.

9. SRI. RAVIKUMAR
W/O BARAMARAJU
AGED ABOUT 31 YEARS.

RESPONDENT NOS.5 TO 9 ARE ALL
R/AT THINGALURU VILLAGE
KODIGENAHALLI HOBLI
MADHUGIRI TALUK
TUMKUR DISTRICT -572101.

...RESPONDENTS

(BY SRI. H.P. LEELADHAR, ADV., FOR R1 TO R9)

THIS W.P. IS FILED UNDER ARTICLE 227 OF THE
CONSTITUTION OF INDIA, PRAYING TO QUASHING THE



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IMPUGNED ORDER DATED 08.11.2021 PASSED ON THE APPLICATION FILED UNDER ORDER VIII RULE 6A OF THE CIVIL PROCEDURE CODE IN OS.NO.472/2010 IN IA NO.XVII BY THE LEARNED PRL. CIVIL JUDGE AND JMFC AT MADHUGIRI, AS PER ANNEXURE-A AND THEREBY ALLOWED THE APPLICATION & ETC.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

ORAL ORDER

This writ petition is filed seeking the following reliefs:

"a) Issue a Writ of Certiorari, quashing the impugned Order dated 08.11.2021 passed on the application filed under Order VIII rule 6A of the Civil Procedure Code in O.S.No.472/2010 in IA.No.XVII by the Learned Principal Civil Judge & JMFC at Madhugiri, as per Annexure-A and thereby allowed the application.

b) Issue any other appropriate writ, order of direction as this Hon'ble court deems fit to grant under the facts and circumstances of the case, to meet the ends of justice and equity."

2. Heard the learned counsel for the petitioner, the learned counsel for the respondents and meticulously perused the material available on record.



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3. The respondents filed a suit in OS.No.472/2010 seeking relief of partition and separation possession of the plaintiffs 1/5th share each in all the suit schedule properties by metes and bounds, as the decree passed in OS.No.155/2009 in respect of suit item No.3 in favour of defendant No.2 is not binding on the plaintiffs share. In the said suit, the defendants filed their detailed written statements as well as an additional written statement. Thereafter, defendant No.2 filed an application under Order VIII Rule 6A of the Code of Civil Procedure (for short 'CPC') seeking permission to file a counterclaim. In the said counterclaim, defendant No.2 is seeking prayer of declaration that she is the lawful owner in possession of the counterclaim property as per the Will dated 14.02.2009, along with the consequential relief of permanent injunction. The plaintiffs opposed the said application. The trial Court, under the impugned order rejected the application by assigning detailed reasons that the application was filed after an inordinate delay of nine



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years and that no satisfactory explanation had been offered for such delay.

4. It is to be noticed that the respondents' suit is one for partition and separate possession. The trial Court framed the issues way back in the year 2011. Thereafter, the petitioner/defendant No.2 in the said suit was impleaded on 16.04.2012, pursuant to which she was allowed to file written statement. Thereafter, at the instance of plaintiffs, the pleadings were amended and again opportunity was provided to the defendants to file an additional written statement, which they have filed. The matter was then posted for framing of additional issues. On 30.08.2013, as there were no additional issues, the matter was posted for evidence of the plaintiffs.

5. The records further indicate that the plaintiff examined himself as PW1 on 24.06.2019 and PW1 was further examined in chief on 25.09.2019. Thereafter, defendant No.2 filed the present application seeking



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permission to file a counterclaim on 02.02.2021. The trial Court rightly recorded the reason that the application had been filed after lapse of nine years from the date of filing of the written statement. The records also indicate that defendant No.2 had filed a written statement. Later, she was permitted to file an additional written statement; even then the counterclaim was not filed. The trial Court framed the issues and plaintiff has been examined in the proceedings. Thereafter, an application was filed by defendant No.2 along with the counterclaim. In these circumstances, the trial Court has rightly rejected the application.

6. The Hon'ble Supreme Court in the case of ***Ashok Kumar Kalra v. Wing Cdr. Surendra Agnihotri and Others***¹ at paragraph Nos.20 and 21 held as under:

"20. We may note that any contrary interpretation would lead to unnecessary curtailment of the right of a defendant to file counterclaim. This Court needs to recognise the practical difficulties faced by the litigants across

¹ (2020) 2 SCC 394



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the country. Attaining the laudable goal of speedy justice itself cannot be the only end, rather effective justice wherein adequate opportunity is provided to all the parties, need to be recognised as well (refer to Salem Advocate Bar Assn. case [Salem Advocate Bar Assn. (2) v. Union of India, (2005) 6 SCC 344 : AIR 2005 SC 3353]).

21. *We sum up our findings, that Order 8 Rule 6-A CPC does not put an embargo on filing the counterclaim after filing the written statement, rather the restriction is only with respect to the accrual of the cause of action. Having said so, this does not give absolute right to the defendant to file the counterclaim with substantive delay, even if the limitation period prescribed has not elapsed. The court has to take into consideration the outer limit for filing the counterclaim, which is pegged till the issues are framed. The court in such cases have the discretion to entertain filing of the counterclaim, after taking into consideration and evaluating inclusive factors provided below which are only illustrative, though not exhaustive:*

- (i) Period of delay.*
- (ii) Prescribed limitation period for the cause of action pleaded.*
- (iii) Reason for the delay.*
- (iv) Defendant's assertion of his right.*
- (v) Similarity of cause of action between the main suit and the counterclaim.*
- (vi) Cost of fresh litigation.*
- (vii) Injustice and abuse of process.*
- (viii) Prejudice to the opposite party.*
- (ix) And facts and circumstances of each case.*
- (x) In any case, not after framing of the issues."*



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7. In view of enunciation of the law laid down in the aforesaid decision, the counterclaim cannot be entertained after framing of issues and the commencement of trial. Hence, there is no merit in the present petition. Accordingly, the writ petition is devoid of merits and the same is ***rejected***.

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE

ABK
List No.: 1 Sl No.: 27