

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 10577 OF 2015

**NARENDRADAS VISHNUDAS SHAHA DIED THROUGH LRS.
TUSHAR NARENDRADAS SHAHA**

VERSUS

ANIL VISHNUDAS SHAHA AND OTHERS

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Advocate for Petitioner : Brahme Shailesh P.

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CORAM : N.W.SAMBRE,J.

DATED : 16TH DECEMBER,2015

PER COURT :-

This petition is by original defendant no.4-B to a Suit bearing No.18/07 which is for partition and separate possession. After the death of original defendant no.4 each of the defendants were having an opportunity to file their written statement and it is claimed that pursuant thereto these defendants have every right to file counter claim in a Suit which came to be rejected by learned trial Court by order dated 20/3/2015, as such present petition.

2] Heard Shri Brahme, learned counsel for the petitioner. According to him, the object of incorporation of the provision for filing of counter claim alongwith written statement in a Suit is with an intention to avoid multiplicity of litigation and to avoid the contradictory findings on the same issue. According to Shri Brahme, learned counsel once a right to file written statement is identified, under Order 22 Rule 27 of CPC to legal heir of original defendant, he has every right to file counter claim. According to him, the order

impugned prevents the very object of the said provisions and sought indulgence of this Court.

3] With the assistance of learned counsel I have perused the detail order passed below Exhs.1 and 3 and application preferred by the petitioner defendant no.4-B seeking the permission to file counter claim.

4] It is to be noted that originally the predecessor of the petitioner i.e. defendant no.4 has already adopted the written statement which was filed on 3/5/2008 and thereafter, these defendants were brought on record after the death of original defendant no.4. The defendants initially accepted the same line of argument as one and the same of defendants as that of original defendant no.4 as all the defendants have engaged same lawyer.

5] However, it appears that after the trial in the suit has commenced and the evidence of plaintiff and defendant no.1 is recorded, this defendant no.4 has moved the application claiming that the counter claim as is sought to be put forth is based on the facts discovered during the evidence of plaintiff and defendants.

6] Upon perusal of this prayer made by this petitioner-original defendant no.4 it could be gathered that the insertion of counter claim by way of amendment is contrary to the provisions of Order 8 Rule 6-A(1) as same is filed after the evidence in the matter has commenced.

7] The said issue is in detail dealt with by learned trial Court by observing that legal heirs of defendant no.4 are trying to prolong the litigation and their earlier conduct was also discussed by learned trial

Court. The learned trial Court noticed that the legal heirs of defendant no.4 are acting in collusion with each other before the Court and has made reference to certain evidence which took place during last hearing before trial Court.

8] Apart from above, the perusal of the order impugned depicts that the learned trial Court was alive of the right of the present petitioner of filing of a written statement pursuant to Rule 2 of Order 22 after the death of original defendant no.4 however, noticed malafide/absence of bonafide on the part of the petitioner.

9] In my opinion, in view of the observations recorded and as are discussed hereinabove, no case for interference is made out. Petition fails and dismissed.

(N.W.SAMBRE,J.)

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