

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

WRIT PETITION NO. 7213 OF 2013

Manik S/o Ambadas Chakor,
Age: 36 years, Occu. : Agril.,
R/o Mategaon, Tq. Basmath,
Dist. Hingoli.

...Petitioner

versus

Vilas S/o Ganpatrao Nalte,
Age: Major, Occu. Business,
R/o Rahim Nagar, Parbhani,
Tq. & District Parbhani.

...Respondent

.....
Mr. A. A. Kharde, Advocate for petitioner.
Mr. P. N. Kalani, Advocate for respondent.
.....

CORAM : N.W. SAMBRE, J.

DATE : 25TH FEBRUARY, 2015

ORAL ORDER :

. This petition is by present petitioner-plaintiff, questioning the order dated 19/07/2013 passed below Exhibit-64 in Regular Civil Suit No. 209 of 2010, whereby the defendant sought amendment to the written statement. By the amendment, the defendant sought to insert counter claim, as according to the defendant, said application though objected by present petitioner-plaintiff, came to be allowed by the impugned order dated 19/07/2013. As such, present petition.

2. Learned Counsel for the petitioner, while questioning the

legality and validity of the order impugned, has urged that bar incorporated under Rule 6(A) of Order 8 of Code of Civil Procedure is ignored by the trial Court. He submits that the remedy that is available to the present defendant is to file separate suit and not the amendment to the existing written statement by incorporating counter claim. He submits that the interference, at the stage at which the trial Court has indulged into, is not permissible, in view of the statutory embargo. In support of his contention, he has relied upon the judgment of this Court in the matter of ***Nagnath s/o Jagannath Lomate and another vs. Narsingh s/o Sambha More and others*** reported in ***2009(3) Mh.L.J. 564*** so as to canvass embargo provided under Rule 6(A) of Order 8 of the Code of Civil Procedure. In addition to above, he submits that unless the respondent demonstrate his dispossession by the proper evidence, the amendment ought not to have been granted by the trial Court.

3. While countering the above referred submissions, learned Counsel for the defendant though has not disputed embargo in Rule 6(A) of Order 8 of Code of Civil Procedure, however would urge that the circumstances as are existing in the present suit, has prompted learned trial Court to grant application for amendment to the written statement. He has invited my attention to the fact that the counter claim is based on the fact of dispossession by the plaintiff of

the defendant on 30/01/2013. He submits that learned trial Court has rightly shown indulgence in the matter, as at the time of filing of the written statement, the defendant was very much in possession of the suit property and during the pendency of the suit, he was dispossessed. He has placed reliance upon the reported judgment of this Court in the matter of ***Sheshrao vs. Ganesh*** reported in ***2006(6) Mh.L.J. 728*** so as to canvass that in the given set of facts and circumstances in the present case, the trial Court has rightly shown indulgence by granting amendment so as to insert the counter claim.

4. Having considered to the rival contentions of the parties, it is noticed that in the present case, the plaintiff-petitioner has filed suit for perpetual injunction claiming the injunction against the defendant or anybody claiming through him from interfering in the peaceful possession and cultivation of the plaintiff over the suit land. The very basis for filing of the suit is settled possession of the plaintiff. After trial in the suit has begun, the defendant has come out with the case that he was dispossessed by the plaintiff on 30/01/2013. The fact remains that the trial in the suit has begun on the premise that the plaintiff is in settled possession of the suit land, whereas the claim that is sought to be put forth, by way of amendment, by the defendant through counter claim, is in relation to

dispossession and restoration of the possession of the suit property.

5. The grant of amendment by way of counter claim, under such circumstances and at the stage at which it was granted, as is rightly pointed out by learned Counsel for the defendant, is no more *res intergra* and the said issue is squarely covered by the judgment of this Court in the matter of **Sheshrao** (supra). The observations made by this Court in the said judgment in paragraph-9 reads thus:

"9. In these circumstances, it is apparent that when grievance of present petitioner-defendant is in relation to very same property and he is pointing out subsequent dispossession by respondent after obtaining a temporary injunction, the issue can be conveniently and properly decided in the same suit. This will avoid multiplicity of litigation. The argument about delaying of disposal of suit filed by respondent is fallacious because of the fact that if subsequent suit can be filed, the counter-claim also can be entertained. The delay and labour required in the subsequent suit can be avoided if the counter-claim is allowed to be raised in the same suit."

6. In that view of the matter, in my opinion, learned trial Court was right in law in granting the amendment.

7. So far as the judgment relied upon by learned Counsel for the petitioner in the matter of Nagnath (supra) depicts altogether

different factual matrix. In the said case, what is sought to be incorporated by the amendment, was very much available to the defendant at the time of filing of the written statement and the defendant has failed to plead so. In the present case, the factum of dispossession on 30/01/2013 was not available to the defendant at the time of filing of the written statement and as such, learned trial Court has rightly granted counter claim. The law laid down in the case of Nagnath (supra) has hardly any applicability to the facts of the present case.

8. As such, present writ petition fails, same stands rejected.

[N.W. SAMBRE, J.]