

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 544 OF 2018

DNYANDEV MADHAVRAO KURE AND OTHERS
VERSUS
BALASAHEB BALAJI MADHAVRAO KURE AND OTHERS

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Advocate for Petitioners : Shri Kale Mahesh P.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: January 16, 2018

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PER COURT :-

1. The petitioners are aggrieved by the order dated 15.11.2017 passed by the trial Court, by which, defendant No.1 has been permitted to file a counter claim.

2. Learned counsel for the petitioners has strenuously criticized the impugned order contending that the counter claim could not have been permitted to be filed as the cause of action to file the counter claim has occurred after the filing of the written statement on 30.11.2015. It is, therefore, contended that Order VIII Rule 6A of the CPC, would not permit the defendant No.1 to file the counter claim since the cause of action to do so should have occurred either before the suit was instituted or within the period during which the filing of the written

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2 - WRIT PETITION NO. 544 OF 2018

statement is permitted under the CPC. He strenuously submits that the cause of action can be said to have arisen on 15.8.2017 and hence the trial Court should not have allowed defendant No.1 to file a counter claim.

3. I find from the counter claim that the cause of action with regard to obstruction and harassment has occurred for the first time on 8.6.2015. Having suffered the conduct of the plaintiff on 8.6.2015 and thereafter, defendant No.1 has lodged a police complaint on 8.6.2015, 1.7.2016, 4.1.2017 and 5.7.2017. On 15.8.2017, when it became unbearable for defendant No.1 as the plaintiff declined to recognise him as the owner of the property, that the defendant No.1 decided to file an application for putting forth a counter claim.

4. Considering the above, I do not find that the impugned order could be termed as being perverse or erroneous. This petition being devoid of merits, is therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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