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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO.273 OF 2019

Dilip Sadashiv Khandve

... Applicant.

V/s

Marzabhan F. Bharucha

and others

.... Respondents.

Mr. Dilip S. Khandve, Applicant in person present.

Ms. Ujwala Sawant for Respondent Nos. 1 and 2.

CORAM: NITIN W. SAMBRE, J.

DATE: FEBRUARY 15, 2022

P.C.:-

1] Revision is directed against the order dated 17/10/2018 passed by the 7th Addl. Judge, Small Causes Court, Pune below Exhibit-209 taken out by the Applicant/Defendant No.8 in Special Civil Suit No.606 of 2010 whereby prayer of the Applicant/Defendant No.8 for permission to file counter-claim came to be rejected.

2] Non-applicant Nos. 1 and 2 initiated Special Civil Suit No.606 of 2010 for specific performance, declaration and injunction against original Defendant Nos. 1 to 7.

3] In the said suit, present Applicant i.e. Defendant No.8 alongwith Defendant Nos. 9 and 10 filed common Written Statement. Applicant/ Defendant No.8 initiated separate Suit being RCS No.2497 of 2015 against Defendant Nos. 9, 10 and third party on the file of Joint Civil Judge, Junior Division, Pune. Defendant Nos. 1 to 7 during the course of advancement of the trial in the aforesaid suit filed “evidence closed” pursis on record. It is the case of the Applicant that aforesaid factual matrix has prompted him to take out Application-Exhibit-209, seeking permission to file counter-claim. The said Application was preferred on 8/3/2018. The cause for preferring counter-claim pursuant to provisions of Order 8 Rule 6A of the CPC as claimed by the Applicant is, partition had taken place between Govind Vithoba Khande and Sadashiv Vithoba Khande vide registered Partition Deed dated 10/5/1994. In spite of Partition Deed, Defendant Nos. 1 to 7 have executed Agreement of Sale that too by mischievously mentioning wrong boundaries. As such, it is claimed that transaction *inter se* between the Plaintiff and Defendant Nos. 1 to 7 is sham and bogus. Subject matter of the counter-claim which Applicant intends to canvass is in respect of Survey No.15/1 to the extent of 4R + 9.5R

pastured land. It is claimed that suit of the non-applicant Nos. 1 and 2 for specific performance is in respect of pieces of land; one admeasuring 76R and another 94R out of Survey No.15, Hissa No.1. It is claimed that counter-claim is in respect of Survey No.15/1 and as such considering object of provisions of Order 8 Rule 6A viz avoidance of multiplicity of claims and to save precious judicial time, he should be permitted to file counter-claim.

4] In this backdrop contention of Mr. Khandve who is appearing in person is, Court below committed an error in rejecting the Application as it has shown complete insensitivity to the aforesaid provisions and nature of counter-claim which Applicant intends to canvass. His further contentions are, for the very same cause as cited in the counter-claim, he is allowed to file an independent suit, which fact is ignored by the Court below.

5] While countering the aforesaid submissions, Counsel for the non-applicants i.e. original Plaintiffs would support the order impugned. According to them, attempt on the part of the Applicant is to nothing else than deliberate intention to prolong the suit which is

pending for last more than 11 years. According to her, order impugned is in tune with the provisions of Order 8 Rule 6(a) and that being so, Revision is liable to be rejected.

6] Fact remains that Applicant has already initiated an independent suit against Defendant No.9, 10 and third party being RCS No. 2497/2015 which is pending on the file of Joint Civil Judge, Junior Division, Pune. This Court is equally required to be sensitive to the fact that Applicant has filed joint Written Statement with Defendant Nos. 9 and 10 vide Exhibit-60. As far as claim in the Plaint of the present suit is concerned, fact remains that no relief is claimed by the Plaintiff i.e. non-applicant Nos. 1 and 2 against Defendant Nos. 8 to 10 including present Applicant i.e. Defendant No.8. This Court is required to be sensitive to the fact that present Applicant Defendant No.8 has thrice amended his Written Statement and as far as claim as put-forth by way of counter-claim is concerned, same is not incorporated therein. If the nature of counter-claim which Applicant intends to file in the suit is concerned, fact remains that Applicant has every right as is claimed to file an independent suit for the same which can be considered in accordance with law. However,

considering the stage at which suit proceedings have advanced and attempt on the part of the present Applicant to scuttle progress in the said suit by seeking permission to file counter-claim at much belated stage that too without giving any convincing explanation for taking out such proceedings, in my opinion, court below was justified in rejecting the prayer. Rather, Trial Court has safeguarded interest of the present Applicant by observing that Applicant can file separate suit qua the counter-claim which can be dealt with independent of the suit claim.

7] Apart from above, prayer in the suit is for specific performance as against which Applicant/Defendant No.8 though has filed joint Written Statement with Defendant Nos. 9 and 10, has sought permission to file counter-claim under Order 8 Rule 6A. I have perused the prayers in the counter-claim which are in relation to setting aside registered Partition Deed and cancellation of temporary map based on alleged Partition Deed 2867/2002 *inter se* between Defendant Nos. 11, 12 and third party, so also measurement of suit property mentioned therein. It is also claimed that registered Deed 2866/2004 is not binding on Defendant No.8 and partition of part of

the property Survey No.15/1 in favour of Defendant Nos. 1 to 4, 6, 7 and 8 to 10. Further declaration is sought that Defendant No.5 has no title to the aforesaid property and declaration is sought that name of Defendant No.5 should be Laxmi @ Pamabai Keru instead of Laxmibai Govind Khandve. As such, prayers in the counter-claim perhaps appear to be are in different tune than claimed in the suit and Defendant No.8 is seeking relief of counter-claim against other Defendants, which has rightly so prompted the Trial Court to reject the prayer by granting liberty to the Applicant to take out fresh suit proceedings for the same.

8] In the aforesaid backdrop, I hardly see any error of jurisdiction or failure to exercise jurisdiction on the part of the Court below. That being so, Revision fails and same stands dismissed.

(NITIN W. SAMBRE, J.)