

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

30 WRIT PETITION NO.3185 OF 2016

**MANOHAR RAMJI SHIRSAT UMREKAR PATIL AND OTHERS
VERSUS
SAMBHAJI RAMJI SHIRSAT PATIL UMREKAR AND OTHERS**

...
Advocate for Petitioners : Smt. Harsha R. Lomate h/f.
Mr. V.D. Salunke
...

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 11-01-2023

PER COURT :

- . Heard the learned counsel appearing for the petitioners.
2. The petitioners have challenged the order dated 14.07.2015 passed by the Jt. Civil Judge Senior Division, Nanded below Exhs.45 & 47 in Spl. Civil Suit No.164 of 2009.
3. Spl. Civil Suit No.164 of 2009 was filed by the present petitioners for partition and separate possession. In the said proceedings, an order of 'no written statement' came to be passed as against the respondent no.1. Subsequently an application came to be filed by respondent no.1 for permission to file the counter claim and for the purpose of issuance of summons to the petitioners on the counter claim. The petitioners herein objected to the filing of the counter claim on the ground that without setting aside the order of

‘no written statement’, the counter claim cannot be filed.

4. The provisions of counter claim as contained in Order-VIII, Rule-6-A of the CPC provides that ‘a defendant in a suit may, in addition to his right of pleading a set-off under rule-6, set up, by way of counter-claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence’. The Trial Court has quoted the decision of the Apex Court in **Mahendra & Anr vs. State of Madhya Pradesh & Ors decided on 04.05.1987** holding that after filing of the written-statement, the counter claim of the defendant can be allowed. The trial Court also noted that during the arguments the respondent no.1 has adopted the written statement filed by the respondent no.2.

5. This is a suit for partition and as such, it cannot be said that the counter claim is barred by any law of limitation. The counter claim has been filed by respondent no.1 for including the properties in the partition which are not included by the original plaintiff.

6. For the reasons stated above, there is no infirmity in the impugned order dated 14.07.2015 permitting to file the counter claim. The writ petition is devoid of merits and the same is

accordingly dismissed.

(SHARMILA U. DESHMUKH, J.)

GGP