

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1402 OF 2020

Ashok Apparao Tak

...Petitioner

Versus

Kalyan Bhujangrao Kadam And Others

...Respondents

Mr. V.V. Bhavthankar, Advocate for the petitioner.

Mrs. S.G. Chincholkar, Advocate for respondents No. 1 to 3.

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 20th APRIL, 2023

ORDER :

1. By the impugned order passed by learned Civil Judge, Junior Division, Purna, District- Parbhani, below Exhibit- 24 in Regular Civil Suit No. 12/2017, application filed by defendant No. 1 for permission to file counter claim is rejected.

2. The plaintiffs have filed suit for injunction claiming ownership over the suit plot, being their ancestral property contending that defendant No. 1 has no concern with the said property.

3. Defendants appeared and resisted the suit by filing written statement on 10.07.2017. Thereafter, defendant No. 1

filed application Exhibit-24 seeking permission to file counter claim. The said application is rejected. Hence, the present petition.

4. Heard the learned advocate for the petitioner and learned advocate for the respondents. Perused the memo of petition, annexures thereto and the impugned order.

5. Learned advocate for the respondents vehemently opposed the petition by supporting the impugned order. She submits that since the counter claim is belatedly filed and the same was not filed with written statement, the Trial Court has rightly rejected the application of defendant No. 1.

6. It appears from the record that cause of action for filing counter claim has arisen on 05.02.2018, as per the contention of defendant No. 1 and the counter claim is filed by defendant No. 1 on 23.03.2018. The Trial Court has rejected the application on the ground that defendant No. 1 has failed to file counter claim along with his written statement and on that sole ground counter claim of defendant No. 1 is rejected.

7. The impugned order is unsustainable in law and facts of the present case as the Trial Court has failed to take into consideration the fact that the cause of action for filing counter claim has arisen subsequent to the filing of written statement. By the impugned order, the Trial Court has denied reasonable and fair opportunity to defendant No. 1 to file counter claim and contest it on merits.

8. In view of aforestated reasons following order is passed;

ORDER

- I) Writ petition is allowed.
- II) Impugned order dated 02.07.2019, passed by learned Civil Judge, Junior Division, Purna, below Exhibit-24 in Regular Civil Suit No. 12/2017 is hereby quashed and set aside.
- III) Application Exhibit-24 is allowed subject to the petitioner paying costs of Rs. 5,000/- (Rupees Five Thousand Only) to the plaintiffs in the Trial Court within two weeks from the date of receipt of writ or this order.

[NITIN B. SURYAWANSHI, J.]