



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

CIVIL REVISION APPLICATION NO.46 OF 2024

Balaji s/o Piraji Manphade,
Age : 45 years, Occu.: Agri.,
R/o.: At Tipanna Nagar, Ahmedpur,
Tal. Ahmedpur, District : Latur

... **PETITIONER**
(Ori. Defendant No.3)

VERSUS

1. Kondabai w/o Digambar Kalingire
2. Housabai w/o Gundu Bundre,
3. Chanderkala @ Mirabai w/o Shivaji Gaikwad,
4. Daiwshal w/o Sanjiv Gaikwad
5. Pramod s/o Mohan Gadge
6. Shantabai w/o Babu Manphde
7. Sumitra w/o Babu Manphde **RESPONDENTS**
(Original Plaintiffs)
8. Rajabai Piraji Manphade
- 8/1. Sachin s/o Tukaram Mahphade (Jadhav)
- 8/2. Nitin Tukaram Mahphde (Jadhav)
- 8/3. Surekha Vishvajit Mane
- 8/4. Sarika Tukaram Manphde (Jadhav)
- 8/5. Lakshmibai Tukaram Manphde (Jadhav)
9. Sanju s/o Piraji Manphde
10. Dilip s/o Piraji Manphde

11. Ujawal w/o Tukaram Kalingire
- 11/1. Dipak Tukaram Kalingire
- 11/2. Sandip Tukaram Kalingire
- 11/3. Kondiba s/o Tukaram Kalingire
- 11/4. Reshma w/o Ankush Manphade
- 11/5. Rekha w/o Parmeshwar Bijrale
12. Shrupada Mahan Ghadge
13. Subhadra Bhagwan Mane
14. Vaijnath Babu Manphade
15. Suresh Babu Manphada
16. Chhaya Balaji Kalingire
17. Jaya Sandeep Kalingire
18. Hakani Babu Manphade
19. Subhash Babu Manphade
20. Sangeeta Babu Kalingire
21. Rekha Kodiba Kaligire

... **RESPONDENTS**
(Original Defendants)

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Mr. Shrikant B. Madde, Advocate for the Applicant

Mr. Ganesh L. Kedar, Advocate for Respondent Nos.1 to 8/1 to 8/5
& 11 to 21.

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CORAM : SANDIPKUMAR C. MORE, J.

DATED : 17/10/2024.

ORDER :

1. The applicant i.e. original defendant No.3 in Regular Civil Suit No.54 of 2015, is challenging the order dated 18/01/2024 passed by the learned Civil Judge (Senior Division), Ahmedpur, District : Latur i.e. learned trial court, below Exhibit-47 in aforesaid suit. Under the impugned order, the learned trial court has rejected an application Exhibit-147 filed by the present applicant for rejection of counter-claim Exhibit-130 filed by the original defendant Nos.2/1 to 2/5 in the said suit against him.

2. The learned counsel for the petitioner submits that the counter-claim filed by the defendant Nos.2/1 to 2/5, was filed without any cause of action and being filed by some defendants against co-defendant is not maintainable. He further submitted that the counter-claim cannot be filed after framing issues by the learned trial court. The learned counsel for the applicant has relied upon following judgments.

- A) Rohit Singh and others vs. State of Bihar (Now State of Jharkhand) and others, reported in 2006 (12) SCC 734;**
- B) Bollepanda P. Poonacha and another vs. K. M. Madapa, reported in 2008(13) SCC 179;**

- C) *Vijay Prakash Jarath vs. Tej Prakash Jarath, reported in (2016) 11 SCC 800;***
- D) *Ashok Kumar Kalra vs. Wing CDR. Surendra Agnithotri and others, reported in (2020) 2 SCC 394;***
- E) *Maria Thelma Elvira and others vs. Michael Lopes and others, reported in 2017(6) Bom.C.R. 605 and***
- F) *Damodhar Narayan Sawale (d) through LRs. vs. Shri Tejrao Bajirao Mhaske and others (Civil Appeal No.930 of 2023, Special Leave Petition (c) NO. 10747 of 2016) delivered on 04/05/2023 by the Hon'ble Apex Court.***

3. On the contrary, the learned counsel for the concerned respondents submits that in a suit for partition, the counter-claim against co-defendants by some of the defendants is definitely permissible as the position of plaintiff and defendants in such suit is interchangeable. It is significant to note that this court has already taken a view in earlier Civil Revision Application No.58 of 2023 by passing judgment dated 21/02/2024 that the counter-claim in a suit for partition by some of the defendants against the co-defendants is permissible since in a partition suit the shares of all the litigating parties are to be determined. For that purpose this court had relied upon the judgment of Madras High Court in the

case of **A. Mohamed Sulaiman and another vs. A. Amena Beevi, reported in 2013(2) CTC 735.**

4. The learned counsel for the applicant heavily relied upon observation of the Hon'bl Apex Court in the case of **Rohit Singh and others vs. State of Bihar (Now State of Jharkhand) and others (supra)**. But in that case also the Hon'ble Apex Court has held that in a counter-claim filed against plaintiff by some of the defendants, certain reliefs against co-defendants can be claimed. The learned counsel for the applicant further submitted that counter-claim filed after framing issues cannot be entertained. For that purpose, he relied on the judgment of the Hon'ble Apex Court in the case of **Ashok Kumar Kalra vs. Wing CDR. Surendra Agnithotri and others (supra)**. However, the Hon'ble Apex Court in the said case while answering the reference has concluded that the court in its discretion may allow the counter-claim to be filed after filing of written statement till the stage of commencement of recording the evidence on behalf of the plaintiff. Thus, there is no bar for filing counter-claim after framing of issues and before the commencement of the trial. Even otherwise also in the instant matter the counter-claim filed by defendant Nos.2/1 to 2/5 is filed alongwith written statement.

5. Apart from that if the prayer of aforesaid counter-claim is perused, then it is clearly evident that these defendants are claiming shares in the amount of compensation in respect of the joint family properties and finally it is prayed in the counter-claim that while allowing the suit of plaintiff, they also be given their legal shares in the suit properties. Thus, there is no adverse prayer against the present applicant. Considering all these aspects, there is no perversity in the impugned order and therefore, the present civil revision application stands rejected.

(SANDIPKUMAR C. MORE, J.)