



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

CIVIL REVISION APPLICATION NO.152 OF 2022

Tulshiram Manohar Rathod,
Age : 62 years, Occu.: Agriculturist,
R/o.: Chopda Layout, Ward No.18,
Rathod Galli, Buldhana,
Tq. & Dist. Buldhana.

... **PETITIONER**

VERSUS

1. Ramesh Damodhar Patil
2. Ushabai Ramesh Patil
3. Ajaysing Ramesh Patil (Dead)
Through L.Rs.
- 3-A. Sulabha Ajaysing Patil
- 3-B. Prathamesh Ajaysing Patil
- 3-C. Snehal Ajaysing Patil
4. Surendrasing Damodhar Patil
5. Nirmalabai Nayansing Patil
6. Sushilabai Kubersing Ingale
7. Sunta Anilsing Deshmukh
8. Anita Govindsing Rajput
9. Shailendrasing Ramesh Patil (Dead)
Through L.Rs.
- 9-A. Suvarna Shailendrasing Patil
- 9-B. Rajveer Shailendrasing Patil
- 9-C. Siddharth Shailendrasing Patil

... **RESPONDENTS**

....
Advocate for the Applicant : Mr. Vijay B. Patil
Advocate for Respondent Nos.5 to 8 : Mr. Balbhim R. Kedar
....

CORAM : SANDIPKUMAR C. MORE, J.

DATED : 10/04/2024.

ORDER :

1. The applicant, who is the original plaintiff in Special Civil Suit No.141 of 2016, has challenged the order dated 18/01/2022 below Exhibit-97, passed by the learned trial court i.e. 3rd Joint Civil Judge (Senior Division), Jalgaon, whereby the application of the present applicant / plaintiff for rejection of counter-claim filed by original defendant Nos.5 to 8 in the aforesaid suit, has been rejected.

2. The applicant / plaintiff has filed the Special Civil Suit No.141 of 2016 for specific performance of contract and recovery of an amount of Rs.20,59,100/- initially against original defendant Nos.1 to 3, who are the present respondent Nos.1 to 3 in respect of the suit property mentioned therein. However, during pendency of the suit, settlement took place between the applicant / plaintiff and defendant Nos.1 to 3 and accordingly defendant Nos.1 to 3 executed a sale deed of the suit premises in favour of the applicant / plaintiff in the year 2017 pursuant to agreement to sell in dispute. However, the applicant / plaintiff though abandoned the claim for specific performance against defendant Nos.1 to 3 vide pursis Exhibit-31,

but decided to proceed with the prayer of recovery of amount of Rs.20,59,1000/-. The present respondent Nos.5 to 8, who are the original defendant Nos.5 to 8, got themselves added in the suit and by claiming the suit properties as ancestral properties of all the defendants, they filed a counter claim against the applicant / plaintiff and rest of the defendants for partition and separate possession of the suit properties. They also sought declaration that the sale deed executed in favour of the applicant / plaintiff, is not binding upon them. Therefore, the present applicant / plaintiff was constrained to file an application Exhibit-97 for rejection of the said counter-claim under Order VII Rule 11 of CPC. Since the learned trial court rejected the said application, this civil revision application is preferred.

3. The learned counsel for the applicant / plaintiff submits that the counter-claim filed by original defendant Nos.5 to 8 is not at all maintainable since it is filed against co-defendants. According to him, after execution of sale deed by original defendant Nos.1 to 3 in favour of the applicant / plaintiff, the suit of the applicant / plaintiff remained only for recovery of the amount and therefore, in such a suit for recovery, counter-claim for partition, cannot be entertained as prayer in the counter claim is entirely different than the prayer in the plaint, which is only for recovery. In support of

submission, he relied on the judgment of this court in the case of ***Comunidade of Pirla vs. Government of Goa by Forest Department and others, reported in 2010(3) Bom.C.R.548***, wherein reference of judgment of the Hon'ble Apex Court in case of ***Rohit Singh and others vs. State of Bihar, (2006) 12 SCC 734***, has given.

4. On the contrary, the learned counsel for respondent Nos.5 to 8 strongly opposed the submissions made on behalf of the applicant / plaintiff. According to him, the suit properties involved in the suit, are ancestral properties of the original defendants and original defendant Nos.1 to 3 by depriving the rights of defendant Nos.5 to 8, executed sale deed in favour of the applicant / plaintiff. As such, the applicant / plaintiff after having been stepped into the shoes of defendant Nos.1 to 3, is answerable for partition of the suit properties. As such, he prayed for rejection of the application.

5. Heard rival submissions. Also perused documents on record.

6. It is significant to note that the applicant / plaintiff is seeking rejection of the counter-claim filed by original defendant Nos.5 to 8 under Order VII Rule 11D of CPC. According to him, filing of such counter-claim is completely barred by the Order VIII Rule 6A to 6C

of CPC, wherein it is provided that counter claim against co-defendant, is not permissible. It is to be noted that original defendant Nos.5 to 8 have claimed partition in the suit properties claiming that the same are ancestral properties of the defendants and therefore, defendant Nos.1 to 3 are not having exclusive ownership right over the same to execute the sale deed of the suit properties in favour of the applicant / plaintiff. They have also claimed declaration that the sale deed executed by defendant Nos.1 to 3 in favour of the applicant / plaintiff during pendency of the suit being void and illegal and thus, claimed partition in the same of their respective share.

7. The learned trial court has rejected the application mainly by observing that there is no necessity to file a separate suit for defendant Nos.5 to 8 in respect of prayers in their counter claim since it will amount to multiplicity of proceedings. The learned trial court has also discussed various judgments of this court as well as the Hon'ble Apex Court and observed that the entertainment of such counter-claim against the co-defendants, is depending upon the nature of facts of each case. According to the learned trial court, the subject matter of the dispute between the applicant / plaintiff and defendants in the suit as well as counter-claim, is same and therefore, for avoiding multiplicity of proceeding,

the counter-claim can be entertained in the instant suit itself. It is significant to note that the main prayer in the counter claim filed by defendant Nos.5 to 8 is for partition of the suit properties. It is to be noted that in a partition suit, the position of the plaintiff and defendant is always interchangeable and in the said suit the shares of all the parties are to be determined. This court in earlier Civil Revision Application No.58 of 2023, has already relied upon the judgment of the Madras High Court in the case of **A. Mohamed Sulaiman and anr vs. A. Ameena Beevi and others, 2013(2) CTC 735**, wherein it is observed as follows :

“A perusal of the Order 8 Rule 6A of CPC , no doubt contemplates that a counter claim in a suit has to be made against the plaintiff. A careful perusal of Rule 6A would indicate that it is not very specific that the counter claim by a defendant has to be made only against the plaintiff. In other words, in a given circumstances, it does not specifically bar the filing of a counter claim against the co-defendant as well. Why I am expressing this view is that the plea of the parties and relief sought for vary in every suit and only by taking into consideration of the facts and circumstances of each case, it has to be determined as to whether such counter claim raised by a defendant can be restricted or permitted only against the plaintiff or it can be extended even to the other co-defendant. For instance, in a suit for partition, the parties are being interchangeable and therefore a defendant therein can be considered to be a person suing.

Therefore, when a defendant in a partition suit can be considered as a party suing also, I am of the view that such defendant can also make a counter claim under Order 8 Rule 6A in a partition suit against the co-defendant. When such claim is exercised, certainly, the person making such plea becomes the plaintiff insofar as that relief is concerned and the person against whom such claim is made, becomes the defendant in the very same suit. That is why sub-clause (2) of Order 8 Rule 6A was very specific in saying that such counter claim shall have the same effect as a cross suit so as to enable the court to pronounce the final judgment in the same suit both

on the original claim and on the counter claim. Therefore, in my considered view, it cannot be said that Order 8 Rule 6A in stricto sensu is applicable only as against the plaintiff and not against a co-defendant.

Even otherwise, an overall consideration of the facts and circumstances of the case would necessarily warrant the Court below to consider the said issue raised by the first defendant, while deciding the suit filed by the plaintiff, in view of the fact that the first defendant also claimed 1/6th share in the suit property. Therefore, for adjudication of her claim, necessarily the rival claim made by the defendants 2 and 3 based on the disputed settlement has also to be gone into by the court below. While considering such rival claim of the defendants 2 and 3, necessarily the Court below has to go into the question with regard to the validity of the said settlement deed which has been raised by the first defendant in her original written statement itself. Therefore, even in the absence of the application under Order 8 Rule 6A, the Court below is bound to consider this issue in order to arrive at a just and proper conclusion and to decide the lis between the parties without relegating any one of them to agitate an issue, which is relevant and germane to the main issue, to be agitated and adjudicated upon in a separate proceedings.

All the above decisions relied on by both sides only indicate that an issue which is raised by the defendant by way of counter claim even arising out of fresh cause of action can be considered within the same suit as a cross suit in order to avoid multiplicity of proceedings between the parties. In this case the counter claim made by the first defendant cannot be said to be as the one out side the scope and lis between the parties in the suit. The plaintiff filed the suit for partition of her 1/6th share of the suit property. The first defendant supported the plaintiff and claims her 1/6th share also. But the defendants 2 and 3 claimed that the first defendant had released her right of 1/6 th share in the suit property by way of disputed release deed.

In all fairness and in the interest of justice, the first defendant should be given an opportunity to make her counter claim against the defendants 2 and 3 especially when she claims to be an illiterate and pleads no knowledge of the execution of the said document. The fight is between the brothers and sisters and as such, too much of technicalities should not be permitted to flow in between the claim and counter claim made by them. Otherwise, the litigation would never reach its finality. In order to arrive at a just and proper conclusion in the said suit and to decide the lis between the parties, the Court below has rightly allowed the application filed by the first defendant for filing the additional written statement with which I find no infirmity or irregularity warranting interference by this court. Accordingly,

the Civil Revision Petition deserves no merits and the same is dismissed. Consequently, the connected M.P. is closed. No costs”.

In the aforesaid judgment, the Madras High Court has also discussed case of **Rohit Sing vs State of Bihar** (*supra*), wherein it is observed that counter-claim against co-defendant, is not maintainable. The learned counsel for the applicant / plaintiff heavily relied on the said judgment of **Rohit Sing** (*supra*). However, in the said judgment also the Hon'ble Apex Court has made following observation in para 21 as follows:

“Normally, a counter-claim, though based on a different cause of action than the one put in suit by the plaintiff could be made. But, it appears to us that a counter-claim has necessarily to be directed against the plaintiff in the suit, though incidentally or along with it, it may also claim relief against co-defendants in the suit. But a counter-claim directed solely against the co-defendants cannot be maintained. By filing a counter-claim the litigation cannot be converted into some sort of an interpleader suit. Here, defendants 3 to 17 had no claim as against the plaintiff except that they were denying the right put forward by the plaintiff and the validity of the document relied on by the plaintiff and were asserting a right in themselves. They had no case even that the plaintiff was trying to interfere with their claimed possession. Their whole case was directed against defendants 1 and 2 in the suit and they were trying to put forward a claim as against the State and were challenging the claim of the State that the land involved

was a notified forest in the possession of the State. Such a counter-claim, in our view, should not have been entertained by the trial court”.

8. On going through the aforesaid observations though it is observed by the Hon'ble Apex Court that a counter-claim directed solely against the co-defendant, cannot be maintained, but in the counter-claim directed against the plaintiff in the suit by some of the defendants, the said defendants can also claim relief against co-defendants in the suit. It is significant to note that the present defendant Nos.5 to 8 have filed the counter-claim not only against the co-defendants but also against the plaintiff. Therefore, the observation of the Hon'ble Apex Court as mentioned above in the case of **Rohit Sing** (*supra*), in fact helps defendant Nos.5 to 8. Therefore, considering the nature of dispute between defendant Nos.5 to 8 and the applicant / plaintiff and the *interse* dispute between among the defendants about the partition of the suit properties, it cannot be said that the counter-claim filed by defendant Nos.5 to 8, is barred under Order VIII Rule 6A to 6C of CPC.

9. In view of the same, there is no perversity in the impugned order passed by the learned trial court in Special Civil Suit No.141 of 2016 below Exhibit-97 and therefore it requires no interference.

As such, the present Civil Revision Application No.152 of 2022 stands rejected alongwith interim relief granted, if any. The Civil Revision Application stands disposed of.

(SANDIPKUMAR C. MORE, J.)

VS Maind/-