



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

901 CRA NO. 131 OF 2024

**DILIP RAMCHANDRA KULKARNI
VERSUS
PRAMILA MURLIDHAR KULKARNI DECEASED THR LRS
MURLIDHAR GOVIND KULKARNI AND ORS**

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Advocate for Applicant : Mr. Kulkarni Sanket S.
Advocate for respective Respondents : Mr. S. D. Jayabhar.

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**CORAM : SHAILESH P. BRAHME, J.
DATE : 21.11.2025**

PER COURT :-

1. Heard both sides finally.
2. This civil revision application is directed against common order dated 16.02.2023 below Exh.286 and 288 rejecting applications filed under Order VII Rule 11 of CPC in Regular Civil Suit No.583 of 2014.
3. Applicant is original defendant No.1 who had filed application Exh.286 for rejection of the counter claim preferred by original defendant Nos.3, 7, 8 and 9. Another application Exh.288 was preferred by defendant No.10 Manik who does not wish to challenge the common order. Respondent Nos.1 and 2 Bala @ Shrikant Hari Deshmukh and Rajendra Hari Deshmukh are original plaintiffs. They had filed Regular Civil

Suit No.583 of 2014 for declaration and injunction. It was withdrawn vide order dated 16.04.2018 at their instance. The counter claim preferred by original defendant Nos.3, 7, 8 and 9 remained on the file and which is sought to be rejected.

4. In the counter claim, present applicant is defendant No.9. The original plaintiffs are defendant Nos.1 and 2. Defendant Nos.10 to 17 are transferee or the purchaser. The parties are related inter-se except defendant Nos.10 to 17. The parties are referred to as per their status in counter claim.

5. Learned counsel for the applicant Mr. Kulkarni submits that counter claim against co-defendant is not maintainable. It is further submitted that defendant Nos.1 and 2 (original plaintiffs) have already alienated the property to defendant Nos.10 to 17. They have no interest in the litigation of the suit properties. Hence, all reliefs are claimed against the defendants which is impermissible. It is further submitted that learned Judge committed perversity in holding the counter claim is not against the co-defendants, but, it is against the plaintiffs also. He would further submit that it's a patent illegality in overlooking the submissions made by the applicant in respect of relief of partition. Learned counsel has placed reliance on various judgments.

6. Per contra, learned counsel for the respondent submits that the prayers in the counter claim are not only against the co-defendants but the plaintiffs also. It is submitted that number of prayers are added in the original prayers of the counter claim. The meaningful pleading of the claim in counter claim is that it is maintainable and cannot be rejected at the threshold. It is further submitted that partial rejection of the plaint is impermissible.

7. I have considered rival submissions of the parties. The counter claim shows that relief of partition in respect of the suit properties is solicited. Besides that relief of declaration in respect of sale deed executed on 03.08.1994 by defendant Nos.1 and 2 (Original Plaintiffs) as well as sale deed dated 12.11.2009 executed by defendant No.2 Rajendra and one Sumanbai is solicited. A declaration is solicited for right of pre-emption as against the plaintiff as well as co-defendants. It further reveals that by way of amendment prayer clause Nos.3A, 3B, 3B, 3C, 3D, 3D, 4A are added claiming relief of declaration and injunction.

8. The overall reading of the counter claim and the prayers solicited therein would disclose that the alienation made by

defendant Nos.1 and 2 (original plaintiffs) are challenged. In a suit for partition all are plaintiffs. Defendant Nos.1 and 2 (original plaintiffs) sold their interest to defendant Nos.10 to 17. That does not make any change and the reliefs claimed against them cannot become redundant. The alienation made by them are to be adjudicated during the course of trial. Besides that they are entitled to have share in partition if defendant succeeds in a counter claim. They are necessary parties and reliefs are claimed against them. In that view of the matter, I do not find that any perversity or illegality has been committed by the Trial Court. The submission of learned counsel Mr. Kulkarni that it's a counter claim against co-defendant only cannot be countenanced.

9. No other provision has been pressed into service to disclose that counter claim is liable to be rejected under Order VII Rule 11. It would be matter of trial to decide as to whether such a counter claim is maintainable or not. It is not possible to accept that drastic action of rejection of counter claim is required. Even if for the sake of arguments the submissions of the learned counsel for the applicant is accepted that defendant Nos.1 and 2 have assigned their interest still the relief of partition is claimed expressly against them. The

rejection of the plaint partially is impermissible. In that view of the matter, I do not find any illegality in the impugned order.

10. Learned counsel for the applicant has referred to order passed by learned Single Judge in *Comunidade of Pirla Vs. Government of Goa and others ; MANU/MH/0738/2010, Satyender and others Vs. Saroj and others ; MANU/SC/1008/2022*. To buttress that counter claim is not maintainable against co-defendants. Its a trite law that counter claim has to be directed against the plaintiff in the suit. In the present case, I have observed that not only counter claim is directed against the plaintiff but the reliefs are claimed against them. Therefore, above judgments will not help the applicant.

11. For the reasons stated above, I find no merit in the Civil Revision Application.

12. Civil Revision Application is rejected.

(SHAILESH P. BRAHME, J.)

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vmk/-