



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13256 OF 2022

Ratilal Zalu Mavchi

... Petitioner

Versus

Damu Khalpa Mavchi(Dead) through LRs.
Rayalbai Damu Mavchi and Others

... Respondents

...

- Mr. R. S. Wani, Advocate for the Petitioner
- Mr. P P Mandlik, Advocate for Respondents

...

CORAM : ROHIT W. JOSHI, J.

DATE : 16th JUNE, 2025

ORDER :

1. The petitioner in the present petition is the original plaintiff. The respondents are the original defendants. The plaintiff filed a suit for perpetual injunction claiming ownership over the suit property on the basis of partition. The plaintiff and defendants are family members. The defendants filed a written statement opposing the suit disputing the fact of partition. However, it was stated that the four brothers were cultivating the suit property separately under an arrangement made by their mother – Hirkibai. Thereafter, Damu - defendant no. 1 has filed an application for amendment of written statement and inclusion of counter claim in the written statement on 28.02.2020 vide application marked as 'Exhibit C'.

2. As regards the counter claim, the learned counsel for the petitioner has placed reliance on the judgment of the Hon'ble Supreme Court in the matter of **Ashok Kumar Kalra V/s. Wing Cdr. Surendra Agnihotri and Others** reported in **(2020) 2 SCC 394**, wherein the Hon'ble Supreme Court has held that counter claim cannot be entertained after framing of issues. In the present matter the counter claim is sought to be included in written statement after framing of issues and after filing of claim affidavit. The order allowing filing of counter claim is clearly in the teeth of the judgment of the Hon'ble Supreme Court.

3. The impugned order, therefore, deserves to be quashed and set aside to that extent. The learned counsel for respondents has further made a submission that although permission to incorporate the counter claim may not be granted, relief of incorporating the plea in the written statement may be granted. It is found that all the defendants have filed a common written statement and the application for amendment is filed only by defendant no. 1.

4. In that view of the matter, reserving liberty to the defendants to file a fresh application for amendment of written statement, if they so choose, the impugned order is liable to be quashed with respect to the prayer for amendment of written statement as well since the application

for amendment is not filed by all the defendants, who have signed the original written statement.

5. The petition is disposed of by quashing and setting aside the order dated 08.09.2022, granting liberty to file fresh application for amendment of written statement without counter claim.

6. The civil application, if any, stand disposed of.

[ROHIT W. JOSHI]
JUDGE