IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10182 OF 2015

. MARUTI UTTERESHWAR SHINDE,
Age: 34 Years, Occu.: Agri.,
R/o. Mandwa, Tal. Washi,
Dist. Osmanabad .. Petitioner
(Orig. Deft. No.1)

Versus

1. RAJABHAU DIGAMBAR NAIKWADI
2. PABHU HARIBA JADHAV (Orig. Deft. Nos.2&3)
3. INDUBAI UTTERESHWAR SHINDE
4. PANDURANG UTTERESHWAR SHINDE
5. SUSHMA VISHAL TUPE
6. SULAKSHNA DHANAJI MANE
7. SOJARBAI SHRIPATI KHANDAGALE
8. SAKHARBAI PANDURANG AWACHITE
9. NAJUKABAI RAMU KASBE
10. JALINDAR GULAB KHANDAGALE
11. VIJAY SHAMRAO RANSHINGE (Orig. Plaintiffs)

.. Respondents

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Advocate for the Petitioner : Mr. Sandeep Y. Mahajan
Advocate for Respondents No.1&2 : Mr. Akash S. Nawade h/f .Mr. Vikram S Undre

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CORAM : SACHIN S. DESHMUKH, J.
Date : 28.10.2026

PER COURT :-

1. The petitioner assail order dated 08.09.2015, rendered by the learned Joint Civil Judge, Junior Division, Washi, below Exhibit-46 in Regular Civil Suit No. 44/2014, allowing application under Order VII Rule 11 and Order VIII Rule 6-A of

the Code of Civil Procedure, 1908, presented by respondent No. 2 and 3, rejecting the counter-claim filed by petitioner.

2. Respondent No. 3 to 11 (original Plaintiffs) instituted Regular Civil Suit No. 44/2014, before Joint Civil Judge, Junior Division, Washi, against the Petitioner (original Defendant No. 1) and Respondents No. 1 and 2 (original Defendants No. 2 and 3) seeking partition and separate possession of joint family properties comprising agricultural lands, and three house properties. The Plaintiffs asserted that the suit properties were ancestral undivided joint family properties and partition was not effected. The sale deeds executed by the Petitioner's late father in respect of Gat No. 162 in favour of respondent No. 2 and 3 were without legal necessity, illegal and not binding on the joint family.

3. In response to the suit summons, the Petitioner presented Written Statement, also raised Counter-Claim at Exhibit-36, challenging the sale deeds executed in favour of respondent No. 1 and 2, and seeking declaration and separate possession of his 14/189th share (or such share as determined under law) in the suit properties upon paying the requisite court fees.

4. The Petitioner / The original Defendant No.1, while presenting the Written Statement also raised counter claim. Subsequent to the framing of issues, Respondent No. 1 and 2 presented an application below Exhibit-46 under Order VII Rule 11 and Order VIII Rule 6-A of the Code of Civil Procedure, 1908, prayed for rejection of the counter-claim.

5. Petitioner resisted application by filing say. Trial court, after hearing the parties, allowed application presented below Exhibit-46 by its order dated 08.09.2015 and rejected the counter-claim raised by the Petitioner below Exhibit-36. Aggrieved by the same, the petitioner is before this Court.

6. Mr. Mahajan, counsel for the Petitioner, when confronted with the availability of an alternative statutory remedy in respect of challenging the rejection of the counter-claim, fairly conceded that an appeal is the appropriate remedy. However, learned council submitted that the Petitioner's only apprehension is that allowing the application below Exhibit-46 would effect the rejection of the written statement. As such, prayed to allow the Petition.

7. Mr. Nawade, learned counsel appearing for

Respondent No. 1 and 2 supports the order under challenge and submitted that, counter-claim was defective and legally unsustainable. As such, prayed for the dismissal of the Petition.

8. Upon hearing the learned council for respective sides and perusal of the material on record, the order under challenge is in relation to rejecting the counterclaim and the same cannot be regarded as the return / rejection of the written statement as has been attempted to be submitted by the counsel for the petitioner.

9. In view of the same and having regard to the fact that the appropriate remedy in relation to rejection of the counter claim as is conceded on behalf of the petitioner, this court finds no reason to interfere with order. However, this order will not preclude the petitioner from raising an appropriate challenge in relation to the rejection of counter claim before the appropriate court.

10. With the aforesaid directions and observations, the Writ Petition stands disposed of.

(SACHIN S. DESHMUKH, J.)

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