

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7647 OF 2025

Seema Vijay Malu And Others

VERSUS

Hemlata Nandkishor Mantri And Others

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Advocate for the Petitioners : Mr. Deshmukh Rahul Rajiv

Advocate for Respondent No.1 : Mr. S.V. Dixit

Advocate for Respondent Nos.3 & 4 : Ms. Seema Vijay Malu h/f Mr.
M.D. Deshpande

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CORAM : S. G. CHAPALGAONKAR, J.

DATED : FEBRUARY 04, 2026

PER COURT :-

1. Heard.
2. Present petition takes exception to order dated 11.03.2025 passed by Civil Judge Senior Division, Latur below Exhibit-76 in Special Civil Suit No.86 of 2017, by which petitioners prayer for filing counter claim has been rejected.
3. The petitioners are defendants in Special Civil Suit No.86 of 2017. The suit is filed by respondent no.1 seeking decree of partition and separate possession. The petitioners appeared in suit and filed written statement on 31.08.2018. Later on, petitioners filed an application seeking permission to file counter claim. The Trial Court rejected said application vide impugned order dated 11.03.2025.
4. Mr. Deshmukh, learned advocate appearing for petitioners submits that counter claim was necessary to avoid

multiplicity of litigation. Further, prayers in counter claim were required to be considered as those are pertaining to subsequent events i.e. sale deed executed by defendant no.2 dated 04.11.2022 in respect of joint family property.

5. Mr. Dixit, learned advocate appearing for respondent no.1 supports impugned order and submits that Trial Court has rightly considered law laid down by Hon'ble Supreme Court of India in case of *Satyender Vs. Saroj* reported in *AIR 2022 SC 4732* and rejected prayer to file counter claim.

6. Having considered submissions advanced, it is apparent that respondent no.1 filed suit for partition and separate possession. After framing of issues on 15.03.2024, petitioners filed application below Exhibit-76 seeking permission for filing counter claim. Undisputedly, application seeking permission to file counter claim was filed after commencement of trial and cause of action for counter claim was accrued prior to filing of defence. The another part of counter claim based on sale deed dated 04.11.2022. However, relief is sought only against defendant no.2 and not against plaintiff.

7. In this backdrop, Trial Court rightly refused permission to file counter claim. The law on point of filing of counter claim is well settled. In case of *Ashok Kumar Kalra Vs. Wing CDR, Surendra Agnihotri and Others* reported in *(2020) 2 SCC 394*, Hon'ble Supreme Court after considering similar issues observed as under :

“21. We sum up our findings, that Order 8 Rule 6-A CPC does not put an embargo on filing the counterclaim after filing the written statement, rather the restriction is only with respect to the accrual of the cause of action. Having said so, this does not give absolute right to the defendant to file the counterclaim with substantive delay, even if the limitation period prescribed has not elapsed. The court has to take into consideration the outer limit for filing the counterclaim, which is pegged till the issues are framed. The court in such cases have the discretion to entertain filing of the counterclaim, after taking into consideration and evaluating inclusive factors provided below which are only illustrative, though not exhaustive:

(i) Period of delay.

(ii) Prescribed limitation period for the cause of action pleaded.

(iii) Reason for the delay.

(iv) Defendant’s assertion of his right.

(v) Similarity of cause of action between the main suit and the counterclaim.

(vi) Cost of fresh litigation.

(vii) Injustice and abuse of process.

(viii) Prejudice to the opposite party.

(ix) and facts and circumstances of each case.

(x) In any case, not after framing of the issues. “

8. Looking to observations of Hon’ble Supreme Court, counter claim cannot be permitted in respect of claim for which cause of action arose subsequent to putting defence. Similarly, counter claim cannot be permitted only as against defendants. It may be against plaintiff or against plaintiff and defendants jointly. In present

case, cause of action to file counter claim arose after putting defence.

So also, counter claim is restricted against co-defendants.

9. In that view of matter, no case is made out to cause interference under Article 227 of Constitution of India. Hence, writ petition stands rejected.

(S.G. CHAPALGAONKAR, J.)