



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

56 WRIT PETITION NO. 9636 OF 2017

JALINDHAR KONDIBA KUTAL
VERSUS
RAJARAM KONDIBA KUTAL AND OTHERS

...

Mr. Vinayak Sudhakar Bedre, Advocate for the Petitioner.
Mr. Y. B. Kakade h/f. Mr. Niteen V. Gaware, Advocate for Respondent
Nos.1 and 2.
Mr. Balaji S. Chondhekar, Advocate for Respondent Nos.5 to 7.

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WITH
CIVIL APPLICATION NO. 8076 OF 2025
IN WP/9636/2017

JALINDHAR KONDIBA KUTAL
VERSUS
RAJARAM KONDIBA KUTAL DIED THR LRS SUMANBAI RAJARAM
KUTAL AND OTHERS

...

Mr. Vinayak Sudhakar Bedre, Advocate for the Applicant.
Mr. Y. B. Kakade h/f. Mr. Niteen V. Gaware, Advocate for Respondent
Nos.1 and 2 in WP
Mr. Balaji S. Chondhekar, Advocate for Respondent Nos.5 to 7 in WP

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WITH
CIVIL APPLICATION NO. 4652 OF 2018
IN WP/9636/2017

JALINDHAR KONDIBA KUTAL
VERSUS
RAJARAM KONDIBA KUTAL AND OTHERS

...

Mr. Vinayak Sudhakar Bedre, Advocate for the Applicant.
Mr. Y. B. Kakade h/f. Mr. Niteen V. Gaware, Advocate for Respondent
Nos.1 and 2 in WP
Mr. Balaji S. Chondhekar, Advocate for Respondent Nos.5 to 7 in WP

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CORAM : SIDDHESHWAR S. THOMBRE, J.

DATE : 18th FEBRUARY, 2026

P.C.:-

1. Heard learned Advocates for the respective parties.
2. By the present petition, the Petitioner is aggrieved by the order dated 21.01.2017 passed below Exhibit-30 by the learned Civil Judge Junior Division (Court No.2), Shrigonda in Regular Civil Suit No.219 of 2013, whereby the application filed by the Petitioner/Original Defendant under Order VII Rule 11(a) and (b) of the Code of Civil Procedure, 1908 (for short "CPC") seeking rejection of the counter claim came to be rejected.
3. Mr. Vinayak Bedre, learned Advocate for the Petitioner submits that the Petitioner (Original Plaintiff) had filed a suit for partition and separate possession. In the said suit, Respondent Nos.1 and 2 filed their written statement along with a counter claim. It is contended that while filing a counter claim, the provisions of Order VIII Rule 6-A of the CPC would apply and all the requirements applicable to a plaint are equally applicable to a counter claim. He submits that the Original Defendants have not specifically pleaded any cause of action for filing the counter claim and, therefore, the Petitioner filed an application under Order VII Rule 11(a) and (b) of the CPC for rejection of the counter claim. According to him, the

learned Trial Court rejected the said application without assigning proper reasons and merely observed that filing of the suit itself amounts to a cause of action. It is, therefore, prayed that the impugned order be set aside.

4. Per contra, Mr. Y.B. Kakade holding for Mr. Niteen Gaware, learned Advocate for Respondent Nos.1 and 2 and Mr. Balaji Chondhekar, learned Advocate for Respondent Nos.5 to 7, support the impugned order. They submit that the learned Trial Court has rightly considered the pleadings and has correctly held that the counter claim discloses a cause of action.

5. Having heard the learned Advocates for the respective parties and upon perusal of the plaint as well as the written statement and counter claim, it reveals that the Original Plaintiff has filed a suit for partition and separate possession contending that the suit properties are joint family properties. In response thereto, the Original Defendants have filed a written statement disputing the said claim and by way of counter claim have sought declaration that they are the absolute owners of the suit properties.

6. When the Original Plaintiff asserts that the properties are joint family properties and seeks partition therein, the Original Defendants are entitled to assert their independent and absolute title.

The challenge to their title in the partition suit itself furnishes the cause of action for seeking declaration by way of counter claim. In such circumstances, it cannot be said that the counter claim does not disclose a cause of action. Merely because the cause of action is not separately and elaborately worded would not attract rejection under Order VII Rule 11(a) and (b) of the CPC, when from the overall pleadings it is evident that a dispute regarding title has arisen.

7. In view of the above, I find that the learned Trial Court has not committed any error in rejecting the application filed under Order VII Rule 11(a) and (b) of the CPC.

8. No case is made out for interference with the order dated 21.01.2017 passed below Exhibit-30 by the learned Civil Judge Junior Division (Court No.2), Shrigonda in Regular Civil Suit No.219 of 2013 in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

9. Hence, the present petition stands dismissed. No order as to costs.

10. In view of dismissal of writ petition, civil applications do not survive and they are also disposed of.

(SIDDHESHWAR S. THOMBRE, J.)