

**ORDERS ON PRELIMINARY ADDITIONAL ISSUE NO.3**  
**FRAMED ON 13-07-2022**

The plaintiffs have filed this suit against defendants seeking relief of partition and separate possession over suit schedule property, thereafter defendants were appear through their counsel and filed separate written statement on their behalf, thereafter this court had framed so many issues and determined rights of liability of parties by passing judgment on dated 10-04-2008, aggrieved by defendants had preferred an appeal before Hon'ble Fast-track court by challenged judgment and decree of this court in RA No. 53/2008, said Regular Appeal was allowed on dated 15-07-2010 by set aside judgment of this court and directing this court to give opportunity to both parties and heard fresh hearing, thereafter opportunity has been given to both parties.

2. During pendency of suit, defendants have taken specific contention that, this court have no pecuniary jurisdiction to try this matter, thereafter this court had framed preliminary additional issue No.1 and 2 on dated 25-02-2004 pertaining to pecuniary jurisdiction of this court and also heard on both side and answered in the affirmative as per order dated 24-01-2005.

3. After remanded this case by Hon'ble Fastrack court, the present defendant No. 5 to 8 are come on record on I.A No.19 filed by present defendants U/o 1 Rule 10(2) of CPC, which was allowed by this court on dated 08-11-2011 and the present defendant No. 5 to 8 have filed written statement as well as counter claim by adding counter claim property No.1 to 13, wherein this court has been rejected counter claim filed by defendant No. 5 to 8 on dated 25-11-2013, aggrieved by defendant No. 5 to 8 have proffered on

writ petition before Hon'ble High court of Karnataka in WP bearing No.WP 56646-47/2013(GM-CPC) which came to be allowed on dated 05-03-2015 and set aside order of this court on I.A No.27 and permitted to defendant No.5 to 8 have filed their counter claim, thereafter present plaintiff has filed Re-joinder to counter claim filed by defendant No.5 to 8 on dated 27-04-2015 and taken specific contention that, counter claim property value is more than one crore, therefore this court have no pecuniary jurisdiction to try this case, thereafter this court had framed preliminary issue on dated 13-07-2022.

4. In order to substantiate this issue, plaintiff was step into witness box and examined himself as Pw1 and got marked 1 document as Ex.P37. On the other hand defendant No.8 was step into witness box, but not got marked any documents on their behalf.

5. On looking into Ex.P37, which is official Gazate published on dated 11-11-2014, it is disclose that government has fixed property value in and around over Bengaluru Rural District, the said notification which is coming the in force on dated 13-11-2014, on gone through page No.156, the government has fixed rate in landed property situated at Lalagondanahalli village as 1 acre dry land it is valued 40 lakh, veat land it is valued 45 lakhs, irrigated land it is valued 60 lakhs, further 1 Sq. feet Gramatana property it's valued of Rs. 250 and 1 Sq. meeter the valued Rs. 2691/-, if properties are converted or BYAPPA property, the valued is 1 sq. feet Rs.750/-, 1 Sq. meeter Rs.8073/-, wherein the counter claim properties is totally measuring 50,000 Sq. feet, which is comes under Gramatana properties situated at Lalagondanhalli village, therefore the counter claim suit properties are valued more than 2 crore as per rate fixed by the government on dated 13-11-2014 as per Exp37, where in the said amount divided into plaintiff and defendants, this

court have no pecuniary jurisdiction to try the counter claim suit properties.

6. It is well settled law in that property value should be consider as on the date of pretension of suit or counter claim, wherein defendant No.5 to 8 have filed their counter claim on 05-03-2015 on the basis of Hon'ble High Court direction in WP No.56646-47/2013(GM-CPC) and the Hon'ble High Court has directed this court that, ***the court below is directed to frame an issue and permitted the parties to substantiate the same and then if the court below come to conclusion that, in fact it exceeds pecuniary jurisdiction, transmit the case having jurisdiction either on it own motion or on the application filed by the said purpose.*** Wherein this court has been rejected counter claim sole on the ground that, the counter claim is exceeding pecuniary jurisdiction, whereas Hon'ble High Court has been set aside these grounds by observing supra.

7. On gone through the oral testimony of both parties it appears that, the Dw1 has been technically answered that, the property value is Rs. 2 lakhs, which answer deposited by CW1 approximately, further Dw1 has specifically admitted that, she has not produced any document to showing the suit counter claim property value is Rs. 2 lakhs, wherein, Pw1 has categorically deposited the counter claim property value is more than Rs. 2 crores, however the documentary evidence is prevail over oral testimony, therefore the evidence of Dw1 is prevail over Ex.P37. Therefore, this court of opinion that, this court having no pecuniary jurisdiction to try counter claim property.

8. When such being the case now the question before this

court, whether the suit schedule property can be adjudicated by this court?

9. It is well settled law in that, suit or counter claim both are same, the intention of legislator pertaining to try the suit and counter claim on one stretch it is avoid multiplicity as well as precious time of the court as well as parties to lies, further the plaintiff has sought partition over plaint schedule properties, on the other hand defendants have sought partition over counter claim properties, therefore, those lies has to be adjudicated by one court, if two courts has to be adjudicated it will be chances to multiplicity order will be come forwarded. Therefore for avoiding multiplicity of order or judgment, these court of opinion that counter claim and plaint can be adjudicated by one court. ***Accordingly, these court answered preliminary additional issue No.3 in the Affirmative.***

### **ORDER**

The plain and counter claim is return to parties with direction to present plaint and coutner claim before competent jurisdiction of court within 30 days from the date of this order.

Office is hereby directed to return plaint and counter claim along with original documents as soon as possible without any delay.

**(Sri. Prathap Kumar. N)**  
Prl. Civil Judge and JMFC.,

Devanahalli.