



**IN THE COURT OF THE PRL. CIVIL JUDGE AND JMFC.,
MUDIGERE**

Present: Sri. Vishwanath A., B.B.A., L.L.B.
Prl. Civil Judge & JMFC.,
Mudigere.

DATED: THIS THE 12th DAY OF NOVEMBER 2024

ORIGINAL SUIT No: 41/2016

BETWEEN :

Kum. Ashwini G.S.,
Aged about 25 years,
D/o G.M. Subbarayachar,
C/o Mohanesh V.R.,
Lakshmikrupa Nilaya, P&T Side Road,
Gandhi Nagar, Near Lakshmeesha Nagar,
Chikmagalore.

.... Plaintiff

(By Sri. B.Jagadeesh, Adv.,)

AND :

1. Smt. Saroja,
Aged about 55 years,
W/o Late G.M.Subrayachar.
2. Master. Danush,
Aged about 21 years.
3. Baby Dikshitha,
Aged about 17 years.

Defendant No.2 and 3 are children of
Late G.M.Subrayachar,
Defendant No.3 Since Minor
By his mother Smt. Saroja defendant No.1,
Defendant No.1 to 3 R/o Gowdahalli Village,
Mudigere Taluk, Chikmagaluru District.



4. Smt. Devaki G.M.,
Aged about 51 years,
D/o Manjachar,
W/o Mohanesh V.R.,
R/o Lakshmikrupa Nilaya,
P & T Side Road, Gandhi Nagar,
Near Lakshmeesha Nagar,
Chikmagalore District.

.... Defendants

(D-1 to 3 By: Sri. K.M.Prashanth Adv.,)
(D- 4 By: Sri. N.S.Jayaram Adv.,)

PARTIES ON I.A.NO.VII

BETWEEN :

Smt Saroja & 2 Others (D1 to 3)

... Applicants

AND :

Ashwini G.S. & one (Plaintiff and D4)

... Opponents

i	Provision under which the application is filed	Order XIV Rule 5 R/w Sec 151 of CPC
ii	Relief sought for	Frame the additional issues
iii	The date on which the application is filed	04.07.2024
iv	Number of the application	VII
v	The date on which the objections are filed by different opponents	22.07.2024 & 05.08.2024
vi	The date on which the orders were passed on the said application	12.11.2024

(Vishwanath A.)
Prl. Civil Judge & JMFC,
Mudigere.



Orders on IA No. VIII filed by the defendant No.1 to 3

The defendant No.1 to 3 have filed the present application at the stage of defendant evidence. This application is filed under Order XIV rule 5 r/w Section 151 of CPC, seeking to frame additional issues with respect to the maintainability of the counter claim set up by the defendant No.4.

2. The grounds urged in support of this application is that the defendant No.1 to 3 in their written statement have contended that the counter claim of defendant No.4 is not in the form of pleadings and she was required to file the counter claim in respect of cause of action accrued against the plaintiff before she has filed her written statement. Thus, filing of written statement is a precondition for making counter claim and the same has to be specifically pleaded in the written statement. The contentions of defendant No.4 does not constitute the counter claim and the cause of action to the counter claim is nowhere disclosed. On the above averments, the defendant No.1 to 3 have sought for allowing the application.

3. The plaintiff as well as the defendant No.4 have resisted the present application by filing their separate statement of objections wherein contended that the present application is filed only to drag the proceedings. The writ petition preferred by the defendant No.1 to 3 regarding rejection of counter claim, has been disallowed. On these grounds, the plaintiff and defendant No.4 have sought for rejection of application.



4. Having heard the arguments addressed on behalf of the respective parties, this Court has carefully perused the entire materials available on record. In view of the above contentions, the following points arise for consideration:

1. Whether the defendants No.1 to 3 have made out sufficient grounds to allow the application as sought for?
2. What order?

5. The answers of this Court on the above points are as under:

Point No.1 : **In the Partly Affirmative,**

Point No.2 : **As per final order
for the following:**

REASONS

6. Point No.1: This is a suit for partition of suit properties wherein the defendant No.1 to 3 have denied the relationship between the plaintiff and the defendant No.1 has raised counter claim regarding the declaration to effect that the defendant No. 1 to 3 are the legal heirs of late G.M. Subrayachar and also regarding compensation awarded in O.S. No. 206/2002 on the file of Hon'ble Civil Judge (Sr.Dn), Chikkamagaluru. The defendant No.4 has also set up a counter claim in her written statement with respect to the suit item No.2 property. It is at the stage of defendant evidence, the defendant No.1 to 3 have come with the present application



seeking framing of additional issues with respect to the maintainability of the counter claim in the backdrop of their contentions in para No. 6 of their written statement.

7. This Court on 12.09.2022 has framed 10 issues with respect to the claim and counter claim of respective parties. The plaintiff as well as the defendant No.4 have contended that the prayer of defendant No.1 to 3 for excluding the counter claim of defendant No.4 is rejected by the Hon'ble High Court of Karnataka. On perusal of the order dated 07.07.2023 passed by the Hon'ble High Court of Karnataka in W.P. No. 36800/2017 filed by the defendant No.1 to 3 themselves challenging the order dated 07.03.2017 of this Court wherein rejected the prayer of defendant No.1 seeking exclusion of counter claim of defendant No.4. Hon'ble High Court was also pleased to hold that the counter claim of defendant No.4 indicate that there are sufficient pleadings to support the counter claim. However it is also ordered that the dismissal of writ petition would not prejudice the petitioners/defendant No.1 to 3 herein while taking contentions against counter claim while filing the written statement.

8. In para No.6 of the written statement filed by defendant No.1 to the counter claim of defendant No.4, the defendant No.1 having sought for excluding the counter claim, has contended that the counter claim is not maintainable as the same had to be filed after filing of written statement. The defendant No.1 to 3 have also contended that the defendant No.4 has not pleaded cause of action



for her counter claim. This being the case, the additional issues in that regard is necessary for full and final adjudication of the dispute involved in the matter, but not the issues on the same line proposed in the present application. Rejection of the above application may lead for multiplicity of proceedings. Under the circumstances, point No.1 is answered in the '**Partly Affirmative**'.

9. Point No.2: In view of the above findings recorded on point No.1, this Court is of view to allow the present application in part. Hence, the following;

ORDER

I.A.No.VII filed by the defendants
No.1 to 3 under Order XIV Rule 5 of Code
of Civil Procedure, is partly allowed.

For framing of additional Issues by:
19.11.2024.

(Dictated to the Stenographer, typed by him on computer, corrected and then pronounced by me in the open court on this the **12th day of NOVEMBER, 2024**).

(Vishwanath A.)
Prl. Civil Judge & JMFC.,
Mudigere.