

KAKB620024332025



IN THE COURT OF THE CIVIL JUDGE & JMFC., JEWARGI

Present

Sri. Kashinath V. Uppar
B.Sc. LL.B.

Civil Judge & JMFC., Jewargi.

Dated on this the 11th day of September-2025

O.S. No. 146/2016

PLAINTIFF : Peerappa S/o Bhimashya Natekar,
Age:60 years, Occ: Agri, R/o Kanmeshwar,
Tq: Jewargi, dist: Kalaburagi.

(By. Sri.K.N.T., Advocate)

V/s.

DEFENDANTS: 1. Ashok S/o Ramanna Natekar,
Age: 35 years, Occ: Agriculture,

2. Hanamanth S/o Awwanna Natekar,
Age: 50 years, Occ: Agriculture,

3. Shantappa S/o Bhimashya Natekar,
Age: 65 years, Occ: Agriculture,

4. Malkappa S/o Bhimashya Natekar,
Age:50 years, Occ: Agriculture,

All are R/o: Kanmeshwar, Tq:Jewargi.
Dist: Kalaburagi.

(By Sri. M.D., Advocate)

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PARTIES TO I.A. No.XI

APPLICANT/ : 1. Shantappa S/o Bhimasha Natikar
DEFENDANT NO.3
V/S

OPPONENT/ : Peerappa S/o Bhimashya Natekar,
DEFENDANTS

1	Provision under which the application is filed	U/Sec. 151 of CPC.
2	Relief sought for	Permission to file counter claim
3	The date on which the application is filed	04-04-2025
4	Number of application	I.A.No.XI
5	The date which the objection are filed by different opponents	filed on 09-04-2025
6	The date on which the orders were passed on the said application	11-09-2025

ORDER ON I.A.No.XI

This is an application filed by the defendant No.3 U/Sec151 of CPC, for seeking permission to file counter claim for defendant No.2 and 3.

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2. Defendant No.3 sworn to an affidavit in support of the application wherein he has stated that, the defendant No.2 and 3, have filed their written statement thereby contending the defense in their written statement by admitting the claim of plaintiff and disputed and denied the entire case made out by the defendant No.1, and in the above case the plaintiff side evidence closed and now the defendant No.1 is examined as DW-1 and his evidence is closed and posted for further evidence of DW-1. The defendant No.2 being the cousin brothers with the plaintiffs have got the share in the suit schedule property and have constitute a Hindu undivided joint family and the deponent intends to file the counter claim in the above case, therefore, the Hon'ble court be pleased to permit the deponent to file their counter claim so as to shorten the litigation therefore it is just and proper to allow the petition as prayed for.

3. That, in case the petition is allowed no prejudice cause to the defendant No.1 not does he will be put to any inconvenience therefore, it is just and proper to allow the petition as prayed for otherwise the deponent will under got substantiation loss resulting into multiplicity of litigation.

4. The defendant No.1 resisted the claim of the defendant No.2 and 3 filed the objection to I.A.No.XI as under:

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5. I.A. filed by the defendant No.2 and 3 is without any grounds of their deliberated delay of the same. The provision of 151 of CPC is not maintainable and discretionary powers cannot be exercised without sufficient proper reasons assigned for the same. The I.A. No.11 is belated stage and it is after filing of their written statement, after framing of issues and after completion of evidence of both side when the matter posted for arguments and it cannot maintained against the defendant No.1. The cause of action new not arises to the defendants 2 and 3 to file the counter claim. The counter should be filed before delivery of their defense as they colluded to deprive the legitimate rights of the defendant No.1. The plaintiff and defendants No.2 and 3 colluded each other with the plaintiff filed this I.A after long delay with intent drag, to prolong protract. The defendants 2 and 3 filed an application i.e., I.A. NoX to cross examine the defendant, this made objection cross examination is not maintainable without counter claim, then only this counter claim is filed with the ill motive to deprive the rights of the defendant No.1 at the instigation of the plaintiff by these defendants. With these grounds defendant No.1 prays to reject the I.A.No.XI.

6. Heard the arguments of learned counsel appearing for parties and perused the material of records.

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7. On considering the above facts, the following points that would arise for my consideration are as under:

1. Whether the defendants have made out a grounds for allowing I.A.No.XI filed U/Sec.151 of CPC ?

2. What Order ?

8. My answer to the above points are as under:

Point No.1 : In the

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

REASONS

9. **Point No.1**:- Plaintiff has filed the present suit for relief of partition and separate possession against the defendants. When case is posted for further defendants evidence, then defendant No.3 and 5 filed this application for seeking relief of to file counter claim against defendant No.1.

10. On perusal of order sheet it is noticed that the defendant No.2 and 3 filed their written statement on 28-09-2016. Thereafter, plaintiff evidence completed. When matter is posted for cross of D.W.1 then defendant No.2 and 3 came up with this application. It is

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contention of the defendant No.2 and 3 they have also right over the suit schedule property. Plaintiff is the brother of the defendant No.2 and 3 and they have filed written statement of support of claim of plaintiff. The intention of the defendant No.2 to file a counter claim to decide along with the rights of plaintiff along with defendant No.2 and 3.

11. Per contra, defendant No.1 is filed objection that the interim application filed by the defendant No.2 and 3 is not maintainable. The counter claim should be filed along with written statement before framing of issue. The plaintiff and defendant No.2 and 3 colluded with each other filed this application to intend to drag prolong the suit. The counsel for defendant No.1 in support of his claim filed decision of Hon'ble High Court of Karnataka order passed in W.P.No.2867/2020 between Atul Sattar W/o Late Ibrahim and M. Khaleed S/o Ismail Shaikh, wherein para No.7 is held as under:

The aforesaid supplemented reason of the Hon'ble Judge clearly indicates that the filing of the counterclaim can be allowed after filing of the written statement till the stage of commencement of recording of the evidence on behalf of the plaintiff. The enunciation of law by the Hon'ble Supreme Court in the aforesaid decision as per the majority view is very clear that the counterclaim cannot be allowed after framing of the issues.



In the case on hand, the records indicate that the counterclaim filed by respondent Nos.1 and 2 was allowed after closure of the evidence of the plaintiff and after more than six years from the date of filing of the written statement. Hence, applying the aforesaid decision, I am of the considered view that the petition deserves to be allowed. Rejection of the counterclaim of respondent Nos.1 and 2 will not preclude them from availing other

12. The above said decisions applying this case, defendant No.2 and 3 filed their written statement on 28-09-2016. Thereafter, the matter is posted for cross-examination of defendant No.3. The defendant No.2 and 3 not mentioned about the delay of filing the counter claim. Moreover, the suit is partition and separate possession. If the plaintiffs suit is decreed then along with plaintiff rights defendant No.2 and 3 their right also may considered. Therefore, the application filed by the defendant No.2 and 3 deserved to be rejected. Hence, Point No.1 is answered in the Negative.

13. **Point No.2:** In view of the above discussion on point No 1, this court proceed to pass the following:



ORDER

I.A.No.XI filed by the defendant No.2 and 3 is
hereby dismissed.

Considering the facts and circumstances of the
case there is no order as to costs.

(Dictated to the Stenographer directly on the computer, typed by him, script revised and corrected and then pronounced by me in the Open Court on this 11th day of September -2025).

(Kashinath V. Uppar)
Civil Judge & JMFC,
Jewargi.