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**IN THE COURT OF THE PRL.CIVIL JUDGE & JMFC, AT
CHANNAPATNA.**

PRESENT: SRI.MAHENDRA.M B.A, LL.B.,

**Prl.Civil Judge & JMFC.,
Channapatna.**

Dated this 18^h day of July-2023

O.S. NO.37/2018

PLAINTIFF : Sri.Putteeregowda
-Vs-

DEFENDANT : Sri.Ramalingaiah

I.A.No.IX

APPLICANT/

DEFENDANT : Sri.Ramalingaiah,
S/o Late Eregowda,
Aged about 75 years,
R/at Kodipura Village,
Kasaba Hobli,
Channapatna Taluk,
Ramanagara District.

(Sri.A.B.K., Advo.,)

V/s

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OPPONENT/
PLAINTIFF :

Sri.Putteeregowda,
S/o Late Eregowda,
Aged about 65 years,

R/at Kodipura Village,
Kasaba Hobli,
Channapatna Taluk,
Ramanagara District.

(Sri.J.T.P., Advo.,)

I	<i>Provision under which the application is filed</i>	<i>U/o XXXIX Rule 4 (2 and 3) R/w sec. 151 of CPC</i>
II	<i>Relief sought for</i>	<i>Variation and discharge of Temporary injunction order passed by this court on 22.09.2023</i>
III	<i>The date on which the application is filed</i>	<i>11.01.2024</i>
IV	<i>Number of the application</i>	<i>I A No.IV</i>
V	<i>The date on which the objection are filed by deferent opponents</i>	<i>09.02.2024</i>
VI	<i>The date on which the orders were passed on the said application</i>	<i>05.04.2024</i>

(Sri.Mahendra M.)
Prl. Civil Judge & JMFC.,
Channapatna.

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ORDERS ON IA.No.IX

This is an application filed by the defendant under order VI rule 17 r/w Sec.151 and 94(e) of C.P.C for amend the written statement and implead the relief of counter claim.

2. The averments of the affidavit filed in support of the application are as follows:-

The defendant had purchased the 20 guntas of land on 09.09.1998 and he is in possession and enjoyment over the said property. The plaintiff suppressed the material facts and filed present false suit against the defendant. While prepare the cross-examination of plaintiff the defendant is intended to amend the written statement by sought for counter claim in respect of his ownership over the said property. The proposed amendment is not injustice to plaintiff. If this application is not allowed the defendant will be put to irreparable loss and injury which cannot be compensated. **Hence filed I.A No.IX.**

3. The learned counsel for the plaintiff has filed an objection to I.A.No.IX and contended that, the application filed by the defendant is not maintainable either in law or on facts the same is liable to be dismissed in limine. The plaintiff further contended that, the defendant is never in possession and enjoyment of the suit

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schedule property. The suit schedule property belongs to the plaintiff. The father of the plaintiff had purchased the suit schedule property from one Honganuru Shanubhogaru and it is an ancestral property. The defendant created the alleged document taking the advantage of the innocence of the plaintiff. The plaintiff is in possession and enjoyment over the suit schedule property hence, the question of counter claim does not arise at all. The alleged claim is also barred by limitation. The proposed amendment is made it will definitely change the defense. **Hence, IA.No.IX is deserve to be dismissed with cost.**

4. Heard the arguments from the counsel for plaintiff and defendant and perused the records.

5. The following points are arise for consideration of this court:-

POINTS

1. Whether the applicant/defendant proves that, IA.No.IX is deserves to be allowed?
2. What order?

6. The answer of this court to the above points are as follows:-

Point No.1: In the Negative

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

REASONS

7. **Point No.1:-** The defendant has filed present application seeking permit to amendment of written statement. Now the case is posted for cross-examination of PW.1. At this stage the defendant has filed present application. The plaintiff has filed an objection to the application contended that, the application filed by the defendant is not maintainable either in law or on facts.

8. The plaintiff filed this suit against the defendant for the relief of cancellation of sale deed dtd.09.09.1998 and permanent injunction in respect of suit schedule property. Now the defendant is intended to amend the written statement by inserting the relief of counter claim.

9. **Under order 6 rule 17 of CPC as follows-**

Amendment of pleadings- the court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just and all such amendments shall be made

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as may be necessary for the purpose of determining the real questions in controversy between the parties.

Provided that, no application for amendment shall be allowed after the trial as commenced, unless the court come to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of trial.

10. This court let us discuss about the application filed by the defendant is maintainable in this stage. In this stage can amend the written statement and insert the relief of counter claim. In this regard this court has relied upon the provision **under order 8 rule 6B of CPC**. The said provision reads as follows:

Counter claim to be stated- where any defendant seeks to rely upon any ground as supporting a right of counter claim, he shall, in his written statement, state specifically that he does so by way of counter claim.

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11. This court also relied upon the decision of **Hon'ble Apex Court in Civil Appeal No.7203/2022 between Mahesh Govindji Trivedi V/s Bakul Maganlal Vyas and Others.**

In para No.13 of this decision as follows:

in Ashok Kumar Kalra, the three judge bench of this court essentially considered the question on reference as to whether it is mandatory for a counter of claim of the defendant to be filed along with the written statement. While answering this question, this court underscored the basic principles that procedural law should not be construed in such a way that is would leave court help less, and that a wide discretion had been given to the Civil Court regarding the procedural elements of a suit. Having said so, this court observed that a counter claim is designed to avoid multiplicity of proceedings that time limit for filing a counter claim is not explicitly provided for but there is limitation as to the accrual of the cause of action. However, the majority opinion has been that the defendant cannot be

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permitted to file counter claim after the issues are framed and the suit has proceeded substantially.

12. In the present suit the defendant has been filed his written statement on 06.06.2018. The issues also framed on 03.07.2019. The plaintiff also examined as PW.1 and got marked Exs.P1 to Ex.P21 and case was posted for cross-examination of PW.1 on 07.09.2021. The defendant took five hearing dates to cross-examine the PW.1 and filed present application. After laps of 4 years from the date of filing of written statement and after settlement of issues the defendant is intended to amend the plaint by inserting the relief of counter claim. The above decision is aptly applicable to present facts and circumstances of the case. As per the above decision the defendant cannot be permitted to counter claim after settlement of issues. Hence, the present application filed by the defendant after settlement of issues is not maintainable under the law. The application filed by the defendant is not deserves to allowed. **Hence, answer the Point No.I in the Negative.**

13. **Point No.2:-** For the above reasons I proceed to the pass the following:-

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**ORDER**

The IA.No.IX filed by the defendant under order VI rule 17 r/w Sec.151 and 94(e) of CPC is hereby dismissed.

No order as to cost.

(Dictated to the Stenographer and transcribed by her, Order corrected and signed by me, then pronounced by me in the Open Court on this the 18th day of July-2023).

Sd/-
(Mahendra. M)
Prl Civil Judge & J.M.F.C.,
Channapatna.

Order pronounced in open court

(Vide Separate Order sheet)

O R D E R

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**The IA.No.IX filed by the defendant
under order VI rule 17 r/w Sec.151 and
94(e) of CPC is hereby dismissed.**

No order as to cost.

**Sd/-
Prl. Civil Judge & JMFC.,
Channapatna.**