

**OS 70-2016**

**19-08-2021**

**ORDER ON I.A.NO . XXIII**

Learned counsel for the plaintiff filed the present application under Order VIII Rule 6-C of C.P.C., to exclude the counter claim of the defendant No.3 in the ends of justice and equity.

Opposing the said application, learned counsel for the defendant No.3 has filed objections statement.

Heard the learned respective counsels and perused the materials placed on record.

The point that would arise for the consideration of the court is

“Whether I.A. No.XXIII filed under Order VIII Rule 6(c) of C.P.C., deserves to be allowed?”

My answer to the above point is in the negative for the following

### **REASONS**

The plaintiff has filed this suit against defendant Smt. Irene Nazareth for the relief of declaration that plaintiff is the absolute owner of the suit 'A' schedule property with right to use the suit road and consequently for a relief of permanent injunction restraining the defendant from blocking the suit road leading to the suit 'A' schedule property from Mallibettu public road and from interfering in any manner in plaintiff's use and enjoyment of the suit road. The defendant on her appearance filed her written statement and also filed counter claim seeking the relief of permanent

injunction against the plaintiff restraining her from trespassing into the written statement schedule property by forming or using for road except the road on the southern side of plaintiff 'A' schedule property as shown in her sale deeds dated 4-4-2007 and 3-1-1989 and not to alter the road to the middle of 'A' schedule property and not to encroach upon the property shown in A schedule of the written statement. It is during the pendency of the suit, defendants NO.2 and 3 got themselves impleaded in this suit. Subsequent to the defendants 2 and 3 got impleaded in the present suit they have filed their written statement on 8-3-2021, defendant No.3 has claimed counter claim against the plaintiff for the relief of permanent injunction restraining the plaintiff from blocking or obstructing the five meter reserved road on the southern side of the suit property or from interfering with using of the said reserved road by the 3<sup>rd</sup> defendant. On the basis of the rival pleadings of the parties, this court has framed issues on 1-4-2021. It is after apse

of nearly five months from the date of filing of counter claim of defendant No.3, the plaintiff has come up with the present application to exclude the counter claim of the defendant No.3.

It is vehemently submitted by the learned counsel for the plaintiff by referring Order VIII Rule 6 (A) of C.P.C., that plaintiff has not claimed any relief against the defendant No.3 and it is the defendant No.3 who voluntarily got impleaded as one of the defendant, hence he cannot be permitted to file his counter claim. If Order VIII Rule 6 (A) is perused, it provides that , the defendant in a suit may, in addition to his right of pleading a set-off under Rule 6 , set up, by way of counter-claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence

has expired/ whether such counter-claim is in the nature of a claim for damages or not.”

It is further submitted by the learned counsel for the plaintiff that if really defendant No.3 has cause of action to claim the relief against the plaintiff, he has to maintain independent suit, but not claim relief by way of counter claim, hence submitted to exclude the counterclaim of the defendant No.3.

Defendant No.3 by fling objection has vehemently disputed the absolute ownership and possession of the suit property by the plaintiff and categorically submitted that there exists five meter width road on the southern portion of the suit schedule property and the reservation of the road is clearly recited in the sale deed of the plaintiff and that the plaintiff has deliberately suppressed the said reserved road existed on the southern side of the suit property with an intention to block the said reserved road and that the 3<sup>rd</sup> defendant has

no alternative road to each his property except the reserved road in the suit property and that the plaintiff intended to obtain a decree from the court and intended to block the road and the relief is granted in favour of the plaintiff, it will affect the legal right of the defendant No.3, hence it constrained the defendant No.3 to claim counter relief of permanent injunction against the plaintiff by way of counter claim.

It is true that the plaintiff has not sought any relief against the defendant No.3. But the defendant No.3 by filing written statement has categorically stated that in view of the relief sought by the plaintiff and if such relief is granted, the legal right of the defendant No.3 will be seriously affected and that he has no other alternative road to reach his property except the reserved road in the suit property and the said road is the subject matter in the present suit and both plaintiff as well as defendants No.1 and 3 claimed right in the suit road . In further if Order VIII Rule 6-C

of C.P.C. is read in whole it provides that -  
“Where a defendant sets up a counter-claim and the plaintiff contends that the claim thereby raised ought not to be disposed of by way of counter-claim but in an independent suit, the plaintiff may, at any time before issues are settled in relation to the counter-claim, apply to the court for an order that such counter-claim may be excluded, and the court may, on the hearing of such application make such order as it thinks fit.”

Herein, as observed earlier, defendant No.3 has filed his written statement on 8-3-2021. It is after lapse of nearly five months from the date of counter claim of the defendant No.3 and after lapse of nearly four months from the date of framing of issues, the plaintiff has filed the present application. If really defendant No.3 has no cause of action to file counter claim, then the plaintiff could have raised such objection in her rejoinder filed to the counter claim of the defendant No.3. It is submitted by the learned counsel for the plaintiff that

framing of issues is judicial order and merely because the court has framed issues, that do not come in the way of filing of the present application by the plaintiff. But in Order VIII Rule 6-C of C.P.C. it clearly provided that application of the nature of I.A.No.XXIII has to be filed before framing of the issues and when plaintiff has filed this application at belated stage, such application cannot be entertained. More than that the defendant No.3 has categorically stated that his legal right has been affected in view of the contention taken by the plaintiff in the present suit, hence even though no specific relief has been claimed against defendant No.3, but when defendant No.3 has appeared before the court and filed his written statement, he has every right to seek the relief against the plaintiff in respect of the disputed property in which defendant No.3 asserts his right . Hence considering the above facts and circumstances of the case, this court holds the above point in the negative and proceeds to pass the following:-

**ORDER**

I.A.No.XXIII filed by the plaintiff under  
Order VIII Rule 6-C of C.P.C., is rejected.

**(ROOPASHRI)**

Senior Civil Judge & ACJM, Karkala.