

MHAH080001452014



Laxman Rabhaji Wagh etc.

VS.

Rangnath Rabhaji Wagh etc.

ORDER BELOW EXH. 246 IN R.C.S.NO. 199/1995

This is an application moved by plaintiffs to object the counter-claim filed by defendant No. 3. It is submitted that, defendant No. 3 had previously filed W.S. at Exh. 48 and 137-B. Thereafter, plaintiff amended plaint, because defendant No. 2 created third party interest in suit property. Accordingly, plaint was amended only with respect to sale transaction entered into by defendant No. 2. Thereafter, it was expected by defendant No. 3 to file additional W.S. only with respect to amended plaint, however, defendant No. 3 filed additional W.S. along with counter-claim with prayer of declaration. It is submission of plaintiff that, defendant No. 3 cannot file counter-claim at this stage when the suit is remand back. He is at liberty to file fresh suit for declaration sought by him through counter-claim. Therefore, plaintiff prayed to reject counter-claim of defendant No. 3.

2. Defendant No. 1A to 1D filed their say overleaf of the application and defendant No. 2 and 3 filed their say at Exh. 247 with submission that, plaintiff's application is not maintainable. Defendant has the right to place his claim by filing counter-claim which plaintiff cannot deny. Hence, defendants prayed to reject the application of plaintiff.

3. Heard both sides. Perusal of records shows that, original the suit was filed for partition between plaintiff and defendant No. 1 to 4. It was decreed by judgment and at the time of execution of decree, defendant No. 5 and legal heirs of defendant No. 1 and 4 challenged the decree being necessary parties for partition. They also challenged decree on ground that, one of the properties was already allotted by way of Will which fact was not brought before the court in that suit. Accordingly, the decree was set aside and suit was remand back for trial afresh.

4. Thereafter, plaintiff added all necessary parties to the suit and meanwhile plaint was amended for sale transaction of some of suit properties. Thereafter, while filing additional W.S. to amended plaint defendant No. 3 has filed counter-claim. The plaintiff objects the counter-claim on the ground that, counter-claim cannot be filed once the suit is remand back and the another objection is that, defendant shall file additional W.S. only with respect to amended plaint and cannot file counter-claim at the stage of filing of additional W.S.

5. Here it is necessary to consider provision of counter-claim provided under O. VIII R. 6A which provides that, *defendant may in addition to right of pleading a set off may set up by way of counter-claim, any right or claim in respect of 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 his defence has expired.

6. This provision only disallow the counter-claim on ground if it exceeds pecuniary limits of jurisdiction of the court. Moreover, the provision under R. 6C provides desecration to the court on application by plaintiff to exclude the counter-claim if it thinks fit. This provision provide that, plaintiff may apply to the court for exclusion of counter-claim. However, this provision is subject to maintainability of counter-claim.

7. It is settled principle of law that, in any suit if the defendant is having any claim against plaintiff with respect to same subject matter of suit or subject matter arising out of suit, for which cause of action is accrued to defendant either before or after filing of the suit, the defendant can file counter-claim against plaintiff and that counter-claim shall have same effect as a cross-suit. This provision is intended to avoid multiplicity of suit and also to avoid contradictory judgments with respect to same subject matter and cause of action arising out of same subject matter. In present suit, though the suit is remand back, the order remanding the suit back for trial is not limited for trial about particular limited issue but it is remanded back for trial afresh. Moreover, the defendant No. 3 had previously filed W.S. at Exh. 48 on 02.07.1997, with defence that, partition in suit properties is already effected. This shows

that, the cause of action to claim declaration that, partition in suit properties is already effected has been arose before filing of W.S. by him. When the suit is remanded back, it has been remanded back for a fresh trial from initial stage. Therefore, the argument that, defendant cannot file counter-claim once the suit is remanded back, cannot be accepted.

8. Moreover, the objection of plaintiff that, defendant shall only file W.S. limited to amended plaint, cannot be accepted because O. VIII, R. 6A only provides the test of time when the cause of action arose to file counter-claim. Therefore, if the cause of action to file counter-claim is accrued to defendant before or after filing of suit and it is with respect to subject matter of suit, he can file counter-claim even after filing of W.S. Therefore, I do not find it necessary to exclude the counter-claim of defendant No. 3, because filing of separate suit for prayer sought in counter-claim, will amount to multiplicity of suit and that filing of separate suit will be affected by the principle of *res-subjudice*. Hence, I proceed to pass following order.

ORDER

The application (Exh. 246) is rejected.

Place : -Sangamner

(Smt. S. B. Dhavale)

Date :- 12.06.2025

Jt. Civil Judge Junior Division,
Sangamner