

MHAU050025222024



R.C.S. No.402/2024
Nirmala Vs. Abarao &
others

ORDER PASSED BELOW EXH.21
[Delivered on : 29.09.2025]

This is an application for rejection of plaint.

2. The plaintiff submits that she filed suit for perpetual injunction against the defendants. They also filed counter-claim against her and besides her, added Subhash Magar and Ganesh Magar as defendants in counter-claim. The plaintiff further submits that she did not implead Subhash or Ganesh as defendants in her suit. As the persons added as parties in counter-claim, are not parties in the plaint; therefore counter-claim is barred by law. The plaintiff further submits that counter-claim does not disclose any cause of action and it is barred due to misjoinder of parties. With this, the plaintiff has prayed to reject plaint of counter-claim of the defendants.

3. The defendants have opposed the application and submit that application of the plaintiff is not maintainable as per Order 7 Rule 11 of Code of Civil Procedure. Persons, who are made as defendants in counter-claim are necessary parties and their impleadment in counter-claim is proper. Their counter-claim does not suffer from defect of misjoinder of parties nor there is any question of absence of cause of action. It is specific contention of the defendants that the plaintiff, Subhash and Ganesh had caused obstruction to their possession and title over suit property; therefore they filed counter-claim against them. The defendants further submit that as per judicial precedents and statutory law, their counter-claim is tenable and liable to be decided as per provisions of Code of Civil Procedure. With these contentions, the defendants have prayed to reject application of the plaintiff.

4. On above factual backdrop, following points emerge for my determination, I record my findings thereon for the reasons stated thereunder :-

<u>Sr. No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1)	Whether plaint (in counter-claim of the defendant) is liable to be rejected as per Order 7 Rule 11 of C.P.C.?	... No.
2)	What order ?	... Application is rejected.

REASONS

AS TO POINT NOS.1 AND 2 :-

5. As both points are inter-linked and inter-connected; therefore discussed at once in order to avoid repetition and to achieve the brevity.

6. It is significant to note that the plaintiff has not mentioned in her application as per which provision of law, the counter-claim is liable to be rejected. It is settled law that for misjoinder of parties, counter-claim is not liable to be rejected. The plaintiff has vaguely asserted that the counter-claim does not disclose cause of action. Upon scrutiny and consideration of counter-claim (counter plaint), it is evident that it discloses cause of action; therefore it is difficult to hold that counter-claim does not disclose cause of action.

7. It is matter of record that in their counter-claim, besides the plaintiff, the defendants added Subhash Magar and Ganesh Magar as party-defendants, but they are not bound to add the plaintiff as sole defendant in their counter-claim. In this context, reference to Rule 15 of Order VIII is necessary, which lays down as under:

“Where the counter-claim involves in addition to the plaintiff other persons also, the defendant to add further title to the title of the written statement and deliver copies of his written statement to such persons

as are already parties to the suit:- Where a defendant by a written statement sets up any counter-claim, which raises questions between himself and the plaintiff along with any other persons, he shall add to the title of his written statement a further title similar to the title in a plaint, setting forth the names of all the persons who, if such counter-claim were to be enforced by a cross-suit, would be defendants to such cross-suit, and shall deliver copies of his written statement to such of them as are already parties to the suit within the period in which he is required to deliver it to the plaintiff”

8. In the matter of **Oberlino Cirilo Sanches and others Vs. Momento Vaz and another 2006(4) All MR 640**; Hon’ble Bombay High Court has observed and held thus;

“As regards addition of the parties i.e. the parties who are not arrayed as the parties to the suit by the plaintiffs, the Rule 15 clearly permits addition of such parties in the course of filing of the counter-claim”.

9. Taking into account above said statutory law and judicial precedent, I am of the opinion that grounds raised in the application of the plaintiff are not tenable and the counter-claim is not liable to be rejected. Hence, I record my finding towards point no.1 in the negative. In view of negative finding of point no.1, application deserves to be rejected. In the result, I proceed to pass following order:

ORDER

Application (Exh.21) is rejected.

(Dictated in open Court)

Date: 29.09.2025.

(A. B. Shaikh)
Civil Judge Senior Division,
Vaijapur.