

MHKO050026202020



Order below Exh. 25 in RCS No. 170/2020

1. This is an application filed by plaintiff for exclusion of counter claim filed by Defendant No. 1 vide Order VIII Rule 6 read with section 151 of Civil Procedure Code (hereinafter referred as “C.P.C.”). The defendant No. 2 has filed say on same application. Heard both sides. Perused the record.

2. The plaintiff contended in the application that defendant has not filed his WS or say within time. Defendant no. 1 has filed application for condone the delay and file to say on 25.10.2021 and 06.12.2021 respectively. On the applications order was passed on 28.02.2022 and application was allowed. But defendant no. 1 has not filed counter-claim alongwith WS. Defendant no. 1 has no right, interest to file counter-claim. The counter-claim has not filed within limitation. On that counter-claim the court has not pass any order. Counter claim is not WS, it is separate suit and counter-claim is not within limitation. Thus, counter claim of the defendant No. 1 is not maintainable and liable to be excluded.

3. Defendant opposed the application stating that the present

application is not tenable to in the eyes of law. The contents in the application are not true. The events, time are different from original suit and counter claim. Due to the claim of the plaintiff, the defendant no. 1 did not file a counter claim. Various incidents have occurred to file a counter claim. A counter-claim has been filed immediately after the incident. The suit property is of defendant no. 1 and he has right of ownership and possession. Plaintiff raised the objection from October 2021 for possession of the defendant then he filed the counter claim. Hence, application be rejected with costs.

4. The facts in the plaint in nut shell:- plaintiff has filed suit for the cancellation of the sale-deed and injunction. Plaintiff's mother Chhaya Devappa Dhamanekar executed sale-deed dated 11.02.2010 in favour of defendant no. 1. Which was bogus one. Plaintiff came to know about the sale-deed on 17.02.2020 and after verifying property card. Then plaintiff sent notice to defendant. Defendant No. 1 filed W.S. with counter claim at Exh. 22. In written statement, he denied all the allegation. The possession was given to the defendant by Chhayya Devappa Dhamanekar at the time of sale-deed. He is owner and possessor of the suit property. The suit property is open plot. Chhaya Dhamanekar's heirs or anyone other than Chhaya Dhamenekar have no right on the property purchased by Chhaya Dhamenekar. He purchased Bhukhand no. 85. Suit property is exclusive possession of the defendant. Defendant has ownership and possession in the suit property as per sale-deed.

5. Order VIII Rule 6-C of the C.P.C. provides that:

6-C. Exclusion of counter-claim- 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.

6. Heard both advocates. Record shows that defendant no. 1 has filed his WS and counter-claim claim at Exh. 22 on 06.12.2021. In his WS he has filed counter claim in which he has mentioned cause of action arise on October 2021. Therefore, as the WS of the defendant is filed within limitation. Hence, counter-claim is to be treated as separate suit. Therefore, whenever, cause of action arise defendant has right to file his counter-claim. But in the present case defendant has filed his counter-claim alongwith WS, which is within limitation. Therefore, the contention of the plaintiff that counter-claim of defendant is not within limitation and defendant has no right to file counter-claim is not sustainable. Therefore, counter-claim of the defendant will be decided on its own merit. Hence, present application of the plaintiff liable to be rejected.

7. Defendant can file counter claim about his right or claim in respect of cause of action accruing to him against Plaintiff by filing of suit. The provision of counter claim has been added in the C.P.C. to avoids multiplicity of the suits arising out of same cause of action. Thus, filing of counter claim when Defendant was served with the notice of the suit is maintainable. Therefore, grounds for exclusion of counter claim as alleged by plaintiff are not tenable. Hence, the application of the Plaintiff is liable to be rejected. Hence, following order :

ORDER

1. Application Exh. 25 is rejected,
2. Counter-claim of the defendant no. 1 be taken on record.
3. Costs will be in cause.

Ichalkaranji
Date: 03.07.2024

(S. S. Pednekar)
5th Jt. Civil Judge Junior Division,
Ichalkaranji