

MHKO160001032021 	<u>ORDER BELOW EXH.41 IN</u> <u>R.C.S.NO.16/2021</u>
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1. Present application is filed by defendants in counter-claim under Order 7 Rule 11(d) of the Code of Civil Procedure for rejection of plaint. It is contended by defendants that the plaintiffs in counter-claim have sought declaration regarding suit property by way of Section 32(G) of Bombay Tenancy and Agricultural Lands Act. The jurisdiction of this court is barred by Section 85 of the Act. Therefore, prayed for rejection of plaint.

2. Plaintiffs filed say to the application at Exh.42 and submitted that defendants have admitted tenancy by rejoinder to the counter-claim. The defendants have not raised any objection to the relations between the parties. If elder brother has completed proceeding under Section 32(G) and obtain certificate under Section 32(M), those facts does not affect hereditary rights of the plaintiffs. If one of the co-sharer without consent of other co-sharers obtain certificate under Section 32(F), then, he cannot be sole owner of the property. After the death of person who obtain certificate under Section 32(M), then, his legal heirs will get rights in the said property. The Hon'ble Bombay Court in the case of Ramakant Naik Vs. Anusaya Naik has observed that civil court has jurisdiction to give decisions regarding co-sharers/co-parceners in the tenanted property. Finally prayed for rejection of the application.

4. Heard both the Ld. Advocates of the parties. Perused the plaint and documents filed along with it.

5. It transpires that original plaintiff has filed suit for declaration and injunction. The suit was withdrawn by plaintiff with permission to file fresh suit. The defendants in original suit have filed counter-claim for declaration. The original plaintiff has filed say to the counter-claim. On perusal of say, it can be seen that the relationship between the parties are admitted. Now, after going thorough the provision of Section 85 of the Act; it can be seen that jurisdiction of this court is barred for deciding any question regarding whether the person is or was at the time in the past a tenant and whether such any tenant is or should be deemed to have purchased from his landlord the land held by him. The orders of Mamledar, Tribunal or Collector or State Government shall not be questioned in any Civil or Criminal Courts. Now, in the context of Section 85 of the Act if present counter-claim is perused, then, it can be seen that the plaintiff in counter-claim is praying for declaration of his share in the tenanted property. There is no question pending before this court regarding whether plaintiff was tenant or not at the particular time. Accordingly, it is clear that Bar of jurisdiction provided under Section 85 of the Act will not affect present counter-claim. Moreover, the Hon'ble Bombay High Court in the case of Ramakant Naik Vs. Anusaya Naik has observed that the Civil Court has jurisdiction to decide entitlement of co-parceners for share in the tenanted properties purchased by one of the co-parcener under the provisions of Section 32(G) & 32(M) of the Tenancy Act. As discussed supra, present counter-claim is clearly regarding shares in the tenanted property and not regarding any questions contemplated under Section 85 of the Act. Therefore, the counter-claim cannot be said to be barred

by law. In view of discussion supra, this court finds that the application is devoid of merits and same is liable to be rejected. Accordingly, I pass following order.

ORDER

1. Application Exh. 41 is hereby rejected.
2. No order as to costs.

Date:- 10/02/2026

(P. B. Pawar)
Civil Judge Junior Decision,
Malkapur-Shahuwadi,
Dist. Kolhapur