

MHND170003952021



R.C.S. No.62/2021.

Jijabai &amp; Ors. Vs. Sagarbai

**ORDER BELOW EXH.41.**

01. Heard the learned Advocates for both sides at length. Perused the application, objections, and documents on record.

02. The present application is filed by the defendant for taking on record an amended written statement along with a counter claim. The plaintiff has filed say/objections opposing the same, particularly to the extent of the counter claim. It is contended by the plaintiff that the counter claim is not maintainable at this stage, as the defendant had already filed her original written statement earlier, and therefore, the present attempt to introduce a counter claim is belated and legally untenable. Hence, rejection of the counter claim is prayed.

03. On perusal of the record, it reveals that the plaintiff initially filed the present suit for partition and separate possession. Subsequently, the plaintiff preferred an application below Exh.28 seeking amendment of the plaint for inclusion of an additional house property. The said application came to be allowed, and thereafter the plaintiff carried out necessary amendments and filed the amended plaint. Consequent to the amendment, the matter was kept for filing of an additional written statement by the defendant. Accordingly, the defendant has filed an amended written

statement and, along with it, has also introduced a counter claim.

**04.** In view of the rival contentions, I am going to decide present application. For deciding the said issue, I have carefully gone through the provisions of Order VIII Rules 6-A to 6-G of the Code of Civil Procedure, 1908. As per Order VIII Rule 6-A, a defendant may set up a counter claim against the plaintiff, after filing of the suit, but such counter claim is ordinarily required to be filed along with the written statement or before the issues are framed, so that the same can be adjudicated together.

**05.** In the present case, the record shows that the defendant had already filed her original written statement at Exh.22 on 03.03.2022. Thereafter, issues in the suit were framed at Exh.27 on 25.03.2022. It is thus evident that the stage of pleadings was already concluded and the suit had progressed to the stage of trial.

**06.** It is further pertinent to note that more than three years have elapsed after framing of issues, and the suit has now reached the stage of recording of plaintiff's evidence. At such an advanced stage, permitting a counter claim would not only change the nature and scope of the proceedings but would also cause serious prejudice to the plaintiff and delay the adjudication of the suit.

**07.** In this regard, I have taken guidance from the judgment of the Hon'ble Supreme Court in *Rohit Singh and others Vs. State of Bihar, reported in 2007 (1) Mah. L.R. 615*, wherein it has been held that though a counter claim may be filed even after filing of the written statement, the same cannot be permitted after framing of issues and closure of evidence.

08. Applying the aforesaid legal position to the present case, it is clear that the defendant, after having filed the original written statement and after lapse of considerable time and framing of issues, cannot be permitted to introduce a counter claim under the guise of filing an amended written statement. The amendment in the plaint by the plaintiff does not automatically confer a fresh right upon the defendant to set up a counter claim at such a belated stage, especially when the cause of action for the counter claim existed even at the time of filing of the original written statement.

09. However, to the extent of amendment in the written statement, which is consequential to the amendment in the plaint, the same deserves to be taken on record in the interest of justice.

10. In view of the above discussion, the counter claim filed by the defendant is clearly barred at this stage and is not maintainable.

### ORDER

01. The amendment in the written statement filed by the defendant is hereby allowed and taken on record.

02. The counter claim filed by the defendant along with the amended written statement is hereby rejected as not maintainable.

03. The application stands partly allowed in the above terms.

Himayatnagar.

Date : 05<sup>th</sup> May 2026.

( Z. Z. Quadri )

C.J.J.D, Himayatnagar.

**CERTIFICATE**

I affirm that, the contents of this PD.F. file order are same word to word, as per the original order.	
Name of the Stenographer	N.K.Hingmire
Court Name	Court of CJJD & JMFC, Tq. Himayatnagar. Dist. Nanded
Judgment signed by the Presiding Officer on	05.05.2026
Judgment/Order uploaded on	05.05.2026