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**REGULAR CIVIL SUIT No.80/2011**

(CNR No. MHNS230007582011)

Champalal Bhaga Jagtap and ors.,

Vs.

Vijay Fulchand Jagtap and ors.,



**ORDER BELOW APPLICATION (EXH. 146)**

01. The plaintiffs have filed the present application seeking rejection of the defendant's Counterclaim under Order VII Rule 11(a) and (d) of the Code of Civil Procedure, contending as follows:

02. The defendant has raised a Counterclaim in respect of suit property which, according to the defendant nos. 1 to 3, was acquired by them in the year 1961, and the present plaintiffs have no concern or connection with the said properties.

03. The plaintiffs have further alleged that, the Counterclaim is barred by limitation. The defendants are claiming rights in respect of an alleged partition and allotment of share of the year 1961, after a lapse of about 59 years, and therefore the Counterclaim is filed beyond the prescribed period of limitation and is liable to be rejected.

04. It is further contended that the Counterclaim discloses no legal cause of action and the grounds mentioned therein are incorrect; hence, on that count also, the Counterclaim deserves to be rejected.

05. The plaintiffs submit that the suit has already proceeded, issues have been framed, affidavits have been filed and evidence is under process; therefore, such a Counterclaim ought not to be permitted at this stage.

06. It is also contended that the defendant had appeared in the suit through his advocate in the year 2011 and was aware of the alleged claim even then, but did not file any Counterclaim at the appropriate time. Hence, the present Counterclaim is belated and liable to be dismissed and prayed for rejection.

07. The defendants have filed a written reply (Exh.148) opposing the plaintiff's application under Order VII Rule 11 of the Code of Civil Procedure, 1908 contending that the application filed by the plaintiffs under Order VII Rule 11 of the Code of Civil Procedure, 1908 is false, not maintainable in law, and liable to be rejected. The defendants submits that, certain ancestral properties acquired around the year 1961 was not included by the plaintiffs in the original suit. This aspect has already been specifically pleaded by the defendants in the written statement and was also brought to the notice of the plaintiffs earlier. As the plaintiffs failed to address this issue, the defendants were constrained to file a Counterclaim to place the relevant facts before the Court.

08. It is contended that the Counterclaim has been filed to enable the Court to adjudicate the entire dispute comprehensively and effectively. According to the defendants, the plaintiffs cannot object to the same, and the application filed under Order VII Rule 11 of the Code of Civil Procedure, 1908 is not sustainable.

09. The defendants denies the contention of the plaintiffs that the Counterclaim is barred by limitation. It is submitted that the Counterclaim was raised after the relevant facts came to the knowledge of the plaintiffs and defendants, and therefore the Counterclaim cannot

be said to be time-barred.

10. On the basis of the above submissions, the defendants have prayed that the plaintiff's application under Order VII Rule 11 of the Code of Civil Procedure, 1908 be dismissed.

11. Perused the application, Say, record of the case and Counterclaim. Heard both side at length.

12. The record reveals that the suit was instituted in the year 2011. The defendants appeared and filed their Written Statement in the year 2014. In the said written statement itself, the defendants had already taken a specific defence that a partition had taken place in the year 1961 and that the suit properties had fallen to the share of the present defendants, and that the plaintiffs have no concern with the same and are not entitled to claim partition.

13. Despite having full knowledge of these facts and having already raised the said plea in the written statement, the defendants did not file any Counterclaim at that time. The present Counterclaim has been filed only in the year 2025, i.e., after about 11 years from the date of filing of the Written Statement and more than six decades after the alleged partition of 1961.

14. A Counterclaim is in the nature of a Cross-Suit and is required to be filed within the period of limitation prescribed for such a claim. When the defendants had already pleaded the alleged partition of 1961 in their Written Statement in 2014, the cause of action, if any, for seeking Declaratory Relief or other consequential relief had clearly

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arisen by that time. Therefore, any independent claim ought to have been made at least within the period of limitation reckoned from the date of accrual of such cause of action. Filing of the Counterclaim in 2025, after a long lapse of time, is prima facie barred by limitation.

15. Further, the basis of the Counterclaim is the very same plea of partition of 1961, which was already within the knowledge of the defendants and was specifically pleaded by them in 2014. No new cause of action is shown to have arisen subsequently so as to justify filing of a Counterclaim at such a belated stage.

16. In these circumstances, from the averments made in the Counterclaim itself, it appears that the claim is ex-facie barred by limitation. Therefore, the Counterclaim falls within the ambit of Order VII Rule 11(d) of the Code of Civil Procedure, as being barred by law. Consequently, the Counterclaim is liable to be rejected. Hence, I pass the following order.

**ORDER**

1. The application filed by the plaintiffs under Order VII Rule 11(a) & (d) of the Code of Civil Procedure for rejection of the counter-claim is allowed.
2. The counter-claim is hereby rejected.
3. Costs in cause.

Date :- 11/02/2026

(Yashshree Marulkar)  
**Civil Judge Sr. Division,  
Igatpuri.**