

**MHNS280014902023**



**ORDER PASSED BELOW EXH.113 IN REGULAR CIVIL SUIT**

**No.162/2023**

**(Kaushabai Vs. Shankar )**

This is an application filed by defendants no.1 and 2 as per Order VI Rule 17 of CPC for seeking amendment in the Written Statement so as to include the counter-claim in it.

2. It is submitted that, these defendants appeared in the suit and filed their W.S. and Say. After its filing these defendants came to know that defendant no.3 in the present suit has proposed to alienate the ancestral land property bearing Gat no.766. If defendant no.3 alienate the said property then these defendants will suffer irreparable loss. The said property bearing Gat no.766 is not the subject matter of the suit. Consequently these defendants are required to file the counter-claim against the proposed defendants no.1 to 11 for the reliefs mentioned in it, by way of amendment in the W.S. Hence the present application.

3. Plaintiffs filed their say vide Exh.118. Plaintiffs contested the application. It is submitted that, defendants no.1 and 2 have already filed their W.S. and Say. Now by filing this application they are seeking permission to file the counter-claim by amending the W.S. However, these defendants have proposed to induct 11 defendants in the counter-claim which are third parties. Moreover proposed defendants no.1 to 5 are Government officers and there is no cause of action to seek their impleadment as defendants. These defendants filed their W.S. vide

Exh.84 on 19/03/2024. At that time defendants have not filed any counter-claim and now with some ulterior motive and after thought they cannot be allowed to file the counter-claim.

4. It is further submitted that, the proposed amendment and the relief claimed in it is the subject matter of the different suit and same cannot be made part of this suit by way of proposed amendment. The instant suit is filed for seeking relief of partition and the proposed relief sought by defendants against the Government officers. Therefore, it cannot be made part of the suit. Defendants in order to prolong the instant suit, have filed this application which is not legally tenable. Hence, prayed for rejection of the application with costs.

5. Defendant no.3 also filed his say below Exh.125. According to him the present application is not legally tenable. These defendants have already filed their W.S. on record. By way of proposed amendment, third parties are sought to be inducted in the counter-claim and some of them are Government officers. There is no any legal cause of action against these officers in the present suit. Further these defendants have not filed their counter-claim along with their W.S. and now afterthought they are seeking relief which is not legally tenable. Moreover the relief sought by these defendants is the subject matter of an independent suit. Defendants no.1 and 2 are trying to prolong the proceeding of the present suit. Hence, prayed for rejection of the application with heavy costs.

6. Perused the record. Heard both the Ld. Advocates appearing on behalf of defendants no.1 and 2 and plaintiffs. They argued on the line of their respective contentions in the application and

say. It is evident from the record that, the instant suit is filed by the plaintiffs for seeking reliefs of declaration, partition, separate possession and for consequential relief of perpetual injunction. Defendants no.1 and 2 have filed their W.S. and Say vide Exh.84 on 09/07/2024. Thereafter on 05/08/2025 the present application is filed on record.

7. At the outset it is necessary to go through the Order VII Rule 6-A of CPC. Sub Rule(1) states that, "A defendant in a suit may, in addition to his right of pleading a set-off under rule 6, set up, by way of counter-claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not : Provided that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the Court."

8. As per the above mentioned legal provision the defendant is required to setup his claim by way of counter-claim at the time of filing of his W.S. / defence or before the expiry of time limit prescribed for delivering defence. In the present case these defendants have failed to comply with this legal provision. As they have already delivered their defence by filing W.S. and Say vide Exh.84. Further the perusal of proposed counter-claim reveals that, these defendants have not made plaintiffs as party defendants to counter-claim which is not permissible by law.

9. Further these defendants have also tried to induct defendants no.3 and 5 to 7 as party defendants to counter-claim.

However, it is necessary to mention here that, the Hon'ble Apex Court has propounded that, a counter-claim cannot be filed by one defendant against the co-defendants. Therefore, the proposed counter-claim of defendants no.1 and 2 is hit by the above mentioned settle legal preposition. Further it is also settled law that, counter-claim can only be filed on cause of action which is incidental or connected with the cause of action on which the suit of the plaintiff is filed. Here in the present case the property regarding which the counter-claim is proposed is not the subject matter of the present suit. Further plaintiffs by filing their say have raised the objection that, the proposed claim cannot be disposed off by way of counter-claim but, in an independent suit as the cause of action and the property involved is altogether different from the cause of action and the properties involved in the present suit, as provided in Order VII Rule 19 of the CPC (Bombay amendment). Thus, it is clear that, defendants no.1 and 2 have the separate legal remedy to agitate their grievance raised in the proposed counter-claim and same cannot be disposed off in the present suit by way of seeking amendment in the defence which is already delivered on record. Hence, I proceed to pass the following order.

**ORDER**

1. Application Exh.113 is hereby rejected with costs.

Sinnar.  
Date : 03/02/2026

(Sachin H. Khade)  
Civil Judge Senior Division,  
Sinnar.