

RCS NO.266/2013

Murlidhar Gatkal

Vs. Gorakh Gatkal

CNR No.MHOS130008382013

ORDER BELOW EXH.81
(Passed on 25th June, 2025)

In a suit for partition and separate possession the plaintiffs by way of this application is craving to reject the counter claim of the defendant.

02. Plaintiffs have filed the present application on the ground that, defendant No.3 has filed the written statement and counter claim at **Exh.45** and the counter claim filed by the defendant is not filed as per the provision of Order VIII Rule 6/A. As per the provision Order VIII Rule 6/A “the counter claim shall be treated as a plaint and governed by the rule applicable to the plaint. Also as per the provision Order VII Rule 11 it is necessary to describe the 1. name of the Court in which suit is brought 2. the name of description and place of residence of the plaintiff 3. the name, description and place of residence of defendant so far as we can ascertain. But the defendant No.3 has not filed counter claim as per the provision of Code of Civil Procedure hence, prayed to reject the counter claim of defendant.

03. On the contrary, defendant has filed say on the overleaf of application and stated that, the present suit is filed by the plaintiffs for the partition and in the suit of partition each party is treated as a plaintiff. Therefore, there is a no need to file the counter claim as per the contention of plaintiff.

04. Perusal of the record. It appears that, the suit is filed for the partition and separate possession. On the contrary, defendant has filed the counter claim for her accurate share in the suit property. Also not filed as per the contention of the plaintiffs but after looking into the following provision:

Order VII Rule 11. Rejection of plaint stated that,

The plaint shall be rejected in the following cases-

- (a)** where it does not disclose a cause of action;
- (b)** where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c)** where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
- (d)** where the suit appears from the statement in the plaint to be barred by any law:

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

05. Here from the above provision it is crystal clear that, the suit be

rejected on the ground given in the Order VII Rule 11 Sub Rule a to d and the provision Order VII Rule 11 is nowhere stated that the suit can be rejected on the ground mentioned in the application by the plaintiffs i.e. it is necessary to describe the 1.name of the Court in which suit is brought 2. the name of description and place of residence of the plaintiff 3. the name, description and place of residence of defendant so far as we can ascertain. The defendant has not filed the counter claim in the proper manner is not a just and proper ground for rejection of the counter claim and it is not follow under the Order VII Rule 11. Therefore, the application is liable to be rejected. The present application is a interim application hence, the cost be follow the main cause. Accordingly I pass following order:

ORDER

1. Application below **Exh.81** is hereby rejected.
2. Costs is in main cause.

Date:- 25.06.2025

(Smt. A.S.Mate)
2nd Jt. Civil Judge Jr. Dn,
Bhoom.

CERTIFICATE

I affirm that, the contents of this P.D.F. file order are same, word to word, as per the original order.

Name of Stenographer	...	N. V. Koli Stenographer Grade-III
Court	...	2 nd Jt. Civil Court Jr. Dn., Bhoom.
Date	...	25.06.2025
Order signed by Presiding Officer on	...	25.06.2025
Order uploaded on	...	25.06.2025