

ORDER BELOW EXH. 66 IN RCS NO.173/2016

1. The present application is filed by the defendants to file counter claim. To add the counter claim they are seeking amendment in the written statement under Order VI Rule 17 of Civil Procedure Code.

2. According to the defendants, they have filed their written statement below Exh 26. By way of this application defendants wanted to file counter claim. For said purpose defendants came with a theory that, suit premises was given to the plaintiff on leave and license basis. But plaintiff has filed present suit for specific performance of an agreement to sale regarding suit property. Defendants have filed their written statement and took specific contention that, plaintiff is a licensee in the suit property and by creating forged document plaintiff wanted to grab the property. Defendants further contended that, they are owners of the property and plaintiff is licensee and in view of license agreement plaintiff is in possession. They have denied possession of the plaintiff on the basis of agreement to sale. Hence, to avoid multiplicity of proceedings defendants wanted to file counter claim in this proceeding. It is also contented that, both the questions can be decided in the present suit hence for said purpose defendants have filed this application.

3. Plaintiff opposed present application by filling his say below Exh 70. It is contended by him that the present application not maintainable in present form. It is further contended by him that defendants ought to have filed separate suit. On this ground plaintiff prayed for rejection of the application.

4. Heard both the sides at length. Perused application, say and documents on record. Perused written arguments below Exh 74. Considering rival contention of both the sides following points arose for my

determination and I have record my findings to them for the reasons to follow-

Sr. No	POINTS	FINDINGS
1	Whether application is maintainable in the present form?	Partly affirmative
2	Whether proposed amendment is deserves to be allowed ?	In the affirmative
3	What order?	As per final order.

REASONS

5. Defendants have placed their reliance on following case laws:-

i)Southern Ancillaries Pvt Ltd V/s Southern Alloy Foundation Pvt Ltd. Reported in AIR 2003 Madras 416.

ii)Raja Ram Dal Mill V/s Gayatri Debi reported in 2009 CJ (Cal) 558.

iii) Parvathamma V/s K.R. Lokanath and others reported in AIR 1991 Kant 283

iv)Bollepanda P. Poonacha V/s K. M. Madapa reported in 2008 CJ (SC) 236.

6. On the contrary plaintiff placed his reliance on the Judgment of Hon'ble Supreme Court in Vijay Prakash Jarath V/s Tej Prakash Jarath in Civil Appeal no 2308-2309/2016 decided on 1/03/2016.

All above cited case laws are on the point that at what time and in which circumstances counter claim can be filed. I have gone through above cited case laws of Hon'ble High Courts and Hon'ble Apex Court. The ratios and the findings are very helpful to decide present application. I most humbly state that I am using those ratios in the present application while deciding this application wherever

applicable.

AS TO POINT NO. 1

7. This application is named as application to amend written statement to file a counter-claim. Plaintiff has raised objection that Order VI rule 17 nowhere states that such kind of amendment can be filed. He also argued that defendants ought to have directly filed the counter claim but by way filling application under Order VI rule 17 it can not be done. On the contrary counsel for defendants submitted that it is not required to go in minute technicalities.
8. I have perused the provisions of Order VIII rule 6-A to 6-G nowhere explained what is the form of counter claim. No doubt rules of the plaint are applicable to it, but there is no specific form of counter claim. Right to file a counter-claim is a separate right and it can not be filed by filling application to amend the pleadings. Application for amendments of pleadings are considered liberally but while dealing with the application to file counter-claim there are various aspects need to be considered. Hence, at the most this application can be treated as application to seek permission to file a counter claim. In the light of this I am of the opinion that, it will not proper to reject this application merely because it is given in the form of amendment application, but at the same time they are not allowed to carry out any amendment in the written statement in that respect. Hence, I am giving finding of issue no 1 in the partly affirmative.

AS TO POINT NO. 2

9. To decide this issue it is required to go through the provisions of Order VIII rule 6A of the Code of Civil Procedure. For the sake of convenience I am reproducing relevant portion of the said provision.

“6A. Counter-claim by defendant— (1) 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.....”*

10. It is the specific case of the defendants that plaintiff is their licensee and their mother has not executed any deed for agreement to sale of suit property in plaintiff's favor. It is further contended that plaintiff's possession is on the basis of leave and license agreement and not on the basis of agreement to sale. It is further contended that present defendants were insisting to plaintiff for delivering possession but inspite of delivering possession plaintiff filed this suit with false contentions. Hence, now defendants do not want to extend possession of the plaintiff hence they have filed present counter-claim.
11. After going through all the contentions of both the parties only question remained to decide is that “ whether the cause of action to the counter claim” is prior to the date of the filling of his defence or not?
12. To decide this question it is required to peruse proposed counter-claim. After perusal of the Para no 19 of the present application it seems that present defendants have already sent a notice to the present plaintiff on 19/10/2015 for vacating the suit property. The same fact is reflected in the para no 6 of the plaint as well. After gone through said averments, it seems that the cause of action is start for said counter-claim from October 2015 i.e. prior to filling of present suit. Hence, the counter claim filed by the

defendants is in consonance with the provisions of the Order VIII rule 6-A (1). In view of above mentioned provision I am of the opinion that present counter-claim can be entertained in this suit. Instead of driving the defendants to file a separate suit it will be proper to avoid unnecessary litigation this application is deserves to be allowed. Hence, I am going to allow the present application and I proceed to pass following order-

ORDER

1. The application below Exh 66 is hereby partly allowed.
2. Defendants are allowed to file separate counter-claim within 14 days from the date of this order.

Date :28/04/2017

(Shri. P. G. Lambe)

3rd Jt. Civil Judge Jr. Division, Daund