

RCS no.44/1986
Hiraman Bhoir & ors. Vs
Lahu Bhoir & ors.

ORDER BELOW AT EXH.440

(Decided on 29/04/2026)

Present application is filed by the plaintiff 1B under Order VIII, Rule 6(A)(1) of the Code of Civil Procedure (hereinafter mentioned as “the Code”) to dismiss counterclaim (Exh. 347) of defendant no. 4 with costs.

2. Defendant no. 4 has strongly objected this application vide say (Exh. 442). Plaintiff no. 1 to 3 have prayed for appropriate order. Defendant nos. 1B/1 to 1B/3, 2/1 to 2/4, 3/1 to 3/3 have prayed to allow this application.

3. It is contended by the applicant/plaintiff no. 1B, contentions made in counterclaim (Exh. 347) are solely against the defendants and not against plaintiff. Therefore, it is not maintainable.

4. Perused record. Heard, ld. advocates for all parties at length.

5. Ld. advocate for the plaintiff argued that in counterclaim (Exh.347), defendant no. 4 has sought reliefs all those which are sought by plaintiffs against defendants which is not permissible under law. Ld. advocate for the plaintiff 1B has placed his reliance upon observation made by the Hon’ble Supreme Court in **Sanjay Tiwari vs. Yugal Kishor Prasad Sao & Ors, 2025 SCC online S.C. 2427**, In this case, it has been held that the counterclaim against the co-defendants cannot survive and same has to be rejected.

6. To the contrary, ld. advocate for defendant no. 4 argued that he impleaded as defendant as per order passed by ld. predecessor of this Court upon his application under Order I, Rule 10 of the Code to add him as plaintiff. Now, if his counterclaim is not entertained, he may suffer unnecessarily. He further argued that case law cited by the plaintiff no. 1B is not applicable in present proceeding as it based upon different factual aspects. He argued that he has claim regarding the same suit property and therefore, if his counterclaim is not entertained, he need to file separate suit and ultimately, it will lead to multiplicity of litigations. Hence, he prayed to reject this application.

7. Ld. Advocate of plaintiff no. 1B has also relied upon ratio laid down in case of *Rohit Singh & Ors Vs State of Bihar & Ors, (2006) 12 Supreme Court Cases 734.* In this case, the Hon'ble Supreme Court held that,

“normally, a counterclaim, though based on a different cause of action than the one put in suit by the plaintiff could be made. But, it appears to us that a counterclaim has necessarily to be directed against the plaintiff in the suit, though incidentally or along with it, it may also claim relief against the co-defendants in the suit. But a counterclaim directed solely against the co-defendants cannot be maintained. By filing a counterclaim the litigation cannot be converted into some sort of an interpleader suit.”

8. After going through material available on record and provision laid down under law, it appears that counterclaim filed solely against co-defendants is generally not maintainable. A counterclaim must be directed against the plaintiff, although it may also include co-defendants. Counterclaims are meant for dispute between plaintiffs and defendants, and not for resolving disputes strictly between co-defendants. To cure this defect, other remedies are available under law.

9. In the instant case, admittedly, the counterclaim (Exh. 347) is against co-defendants only. It is also admitted that not a single relief is sought against the plaintiff. Such situation does not permit to entertain disputes between co-defendants. So also, in the case laws cited by the plaintiff 1B same question of law is involved though original claim in that proceeding is different. Therefore, in my opinion, those are applicable to present case. Considering all aforesaid aspects, present application deserves to be allowed. Hence, following Order:

ORDER

1. Application is allowed.
2. Counterclaim of defendant no.4 is dismissed in view of Order 8, Rule 6(A)(1) of the Code.
3. Defendant no. 4 is at liberty to other remedy available as per law.
4. Cost in cause.

sd/-

Place: Pen
Date: 29/04/2026

(Smt. A. A. Kale)
Civil Judge, Jr. Div.,
Pen