

1. Plaintiff has filed suit for declaration and perpetual injunction to which defendant no. 1 has filed his written statement alongwith counter claim at Exh. 31. Thereafter plaintiff has filed application under Order 8 Rule 6C read with Order 7 Rule 11 of Code of Civil Procedure at Exh. 33. Defendant has filed his reply to the said application at Exh. 36. Perused the plaint, written statement, application and say. Heard both the sides.
2. It is submitted by learned advocate for the plaintiff that, after perusal of provisions of Order 8 Rule 6C read with Order 7 Rule 11 of Code of Civil Procedure and Para 10 of Written Statement, it reveals that defendant has not disclosed cause of action. It is further submitted that, defendant has filed counter claim in respect of Gat no. 918 and Gat no. 923 which is different property and not related to suit property. If ever defendant desire to file counter claim, he may file in respect of suit property, however defendant is not permitted to file counter claim in respect of another property which is not the subject matter of the suit. In support of his submission, learned advocate for plaintiff has relied on Amit s/o Balasaheb Takte and other V/s Krishna Raosaheb Pawar and others reported in 2015 (3) ALL MR 82.
3. Per contra it is submitted by learned advocate for defendant no. 1 that, prior to amendment, counter claim was permitted to file in respect of money suits only. After amendment, the position is changed, therefore defendant can claim any right by way of counter claim in respect of any cause of action that has accrued to him even though it is independent of the cause of action averred by plaintiff and have same cause of action adjudicated without relegating defendant to file a separate suit. It is further submitted that only question of limitation is to be seen while dealing with counter claim. In support of his submission, learned advocate for defendant no. 1 has relied on Jag Mohan Chawla and another V/S. Dera Radha Swami Satsang and others reported in AIR

(S.C) (1996) 2222.

4. I have Perused the provisions of order 8 rule 6A and 6C and Order 7 Rule 11 of Code of Civil Procedure and case laws adduced by both the parties. After going through case of Amit s/o Balasaheb Takte and other V/s Krishna Raosaheb Pawar and others reported in 2015 (3) ALL MR 82, it reveals that, the subject matter of suit and counterclaim was totally different and in present case suit and counterclaim is filed for declaration. Therefore it will be equitable to try and decide suit and counter claim together. On the contrary, it is rightly observed in Jag Mohan Chawla and another V/S. Dera Radha Swami Satsang and others reported in AIR (S.C) (1996) 2222 that, any relief can be claimed by way of counter claim subject to limitation.
5. There is no bar to the defendant to file counter claim in respect of other properties which are not the subject matter of the suit. The only condition is that, the cause of action to file counter claim should be arise before the time fixed for filing the written statement expires. Moreover, the counter claim is expressly treated as cross suit with all the indicia of the pleading of a plaint including the duty to aver his cause of action and also payment of dues requisite court fee thereon. The object behind the above said provision is to try and decide the suit and counter claim together in order to avoid multiplicity of litigation, to avoid contradictory decisions and to save the time of the court and litigants. Thus it being an independent cause of action, though the identity of the property may be different, there arises no illegality warranting dismissal of counter claim.
6. The plaintiff has also submitted that, defendant has not pleaded or disclosed cause of action and prayed for rejection of plaint. It is pertinent to note that, in order to ascertain whether cause of action is disclosed or not, it is essential to read and consider the pleadings in

whole. Merely not stating the cause of action in words cannot be said that cause of action is not disclosed. After perusal of counter claim of the defendant at Exh. 31, it reveals that defendant was not satisfied with the impugned order of Circle Officer, Lanja as regards to mutation entry bearing no. 334 and therefore defendant being aggrieved and dissatisfied, filed counter claim for declaration. Thus, after clear reading of said counter claim it reveals that, defendant has disclosed cause of action.

7. If plaintiff has any grievance against counter claim of defendant, he has liberty to raise in his written statement. Thus, there will be no harm if application is rejected, on the contrary if application is allowed, inconvenience is likely to be caused to the defendant. Hence, following order.

ORDER

- i. Application is rejected.
- ii. Plaintiff is at liberty to file written statement against counter claim of defendant subject to limitation.
- iii. No order as to cost.

Date: 10.02.2016

(Uday S. Jadhav)
Jt. Civil Judge Junior Division, Lanja