


MH170005812013 	<u>R.C.S. No.91/2013</u> Yatindra Ramesh Nirgun vs. Shri Sadguru Shri Samarth Satam Maharaj Seva Trust
--	---

ORDER BELOW EXH.133

By way of this application filed under Order VII Rule 11 of the Civil Procedure Code, plaintiff has prayed for rejection of counter claim filed by the defendant.

Facts of application in short as under;

2] Defendant has filed counter claim on 21.10.2024 praying therein that sale deed dated 26.05.2010 bearing nos.3863/2010 and 3866/2010 in respect of suit property are illegal and not binding on defendants. According to plaintiff, plaintiff has filed this suit in the year 2013, to which defendant has filed written statement on 12.09.2013 and denied suit of the plaintiff. Defendant had knowledge in the year 2013 itself about sale deeds but, defendant has filed counter claim on 22.10.2024 only showing cause of action as amendment carried out by the plaintiff in the plaint. It is contention of plaintiff that, counter claim for declaration is barred by law of limitation. Besides that, it is not properly valued. Hence, this application.

3] Counter claimant/original defendant filed his say to this application at Exh.137 and opposed to allow this application. According to defendant, after cross-examination of plaintiff, plaintiff carried out amendment in the plaint and on that amendment portion his evidence is to be recorded. Defendant has filed written statement to counter claim therefore, he has right to file the counter claim alongwith written statement. He has filed counter claim for declaration that both sale deeds

dated 26.05.2010 are not binding on the counter claimant and for that he has made proper valuation and paid proper court fees. Hence, prayed for rejection of application.

4] Heard, learned advocates for both parties and gone through the record. Considering rival contention of both parties, following points arose for my determination and I have recorded my findings thereon alongwith detailed reasons to follow:

Sr. No.	POINTS	FINDINGS
1]	Whether plaint is barred by any provisions of law?	In the affirmative.
2]	Whether plaint/counter claim deserves to be rejected under Order VII Rule 11 of the Code of Civil Procedure?	In the affirmative.
3]	What order ?	As per final order

REASONS

AS TO POINT NOS.1 AND 2 :-

5] First of all it is necessary to mention here that plaintiff has filed this suit in the year 2013 praying therein for removal of encroachment committed by the defendant over the suit property and for perpetual injunction restraining defendant from causing obstruction to the possession of the plaintiff as well as to handover possession of encroached area to the original plaintiff. In this matter, defendant has appeared and filed its written statement and thereafter, issues have been framed on 30.09.2014. Court has specifically framed issue that, "Does plaintiff prove that he has purchased suit property from M/s. Shree Enterprises vide sale deed dated 26.05.2010 ?" Thus it is clearly shows that in the year 2013 itself counter claimant was aware about the sale deed dated 26.05.2010. Counter claimant has filed their counter claim at Exh.131. From perusal of

said counter claim also it clearly appears that counter claimant had knowledge since 2013 itself about the sale deeds dated 26.05.2010. Thus, counter claim filed by present counter claimant is not appears to be within limitation.

6] Now second question is whether there is limitation for filing counter claim is concerned, under Order VIII Rule 6-A of the C.P.C., no such limitation has provided. For ready reference Order VIII Rule 6-A of C.P.C. is quoted below -

6-A. 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 of 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.

(2) Such counter-claim shall have the same effect as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and on the counter-claim.

(3) The plaintiff shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the Court.

(4) The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints.

7] From perusal of Order VIII Rule 6-A it appears that for filing the counter claim cause of action accrued to the defendant against plaintiff must be either before or after filing of suit but before the defendant has delivered the defence or before the time limit for delivering his defence has expired. Thus, there is no specific limitation provided in filing the counter claim. The Hon'ble Supreme Court in the case of **Ashok Kumar Kalra vs. Wing CDR Surendra Agnihotri, AIR ONLINE 2020 SC 1028**, has held that-

We have gone through the judgment of the three-Judge Bench in Ashok Kumar Kalra vs. Wing Cdr. Surendra Agnihotri & Ors., 2019 (16) Scale 544, in particular, para 20 which states as follows:-

“20. We sum up our findings, that Order VIII Rule Reason: 6A of the CPC does

not put an embargo on filing the counter-claim after filing the written statement, rather the restriction is only with respect to the accrual of the cause of action. Having said so, this does not give absolute right to the defendant to file the counter-claim with substantive delay, even if the limitation period prescribed has not elapsed. The court has to take into consideration the outer limit for filing the counter-claim, which is pegged till the issues are framed. The court in such cases have the discretion to entertain filing of the counter-claim, after taking into consideration and evaluating inclusive factors provided below which are only illustrative, though not exhaustive:

- i. Period of delay.
- ii. Prescribed limitation period for the cause of action pleaded.
- iii. Reason for the delay.
- iv. Defendant's assertion of his right.
- v. Similarity of cause of action between the main suit and the counter-claim.
- vi. Cost of fresh litigation.
- vii. Injustice and abuse of process.
- viii. Prejudice to the opposite party.
- ix. and facts and circumstances of each case.
- x. In any case, not after framing of the issues.

3. Given the fact that on the facts of the present case, a counter-claim was filed after the issues were framed, the same counter-claim cannot be filed as per the law laid down by this judgment. Consequently, the Special Leave Petition is dismissed. However, it will be open for the petitioner to file a fresh suit based on the case of action in the counter-claim if it is otherwise permissible in law.

8] In the said judgment the Hon'ble Supreme Court has held that limitation for filing counter claim should be upto the framing of the issues and not thereafter. Beside that, counter claim for declaration in respect of sale deeds, is also clearly barred by law of limitation. Thus, it becomes clear that counter claim filed by the defendant is not within limitation i.e. barred by law and therefore, counter claim deserves to be rejected. In result, I pass the following order.

ORDER

- 1) Application is allowed.
- 2) Counter claim filed by the original defendant no.1/counter claimant at Exh.131 is hereby rejected.

Palghar
Date : 07.01.2026

(K. G. Sawant)
Civil Judge Senior Division,
Palghar.

CERTIFICATE

I hereby certify that the contents of the PDF file are same word to word as per original order:

Name of Steno : Mr. S. B. Rawool, Stenographer, Grade-II.
Court's Name : Civil Judge Senior Division, Palghar.
Date : 07.01.2026
Dictated on : 07.01.2026
Transcribed on : 07.01.2026
Signed by P.O. on : 09.01.2026
Uploaded on : 09.01.2026