

ORDER BELOW EXHIBIT - 29

1. The present application is filed under Order VI Rule 17 and 151 of Code of Civil Procedure, for counter claim by way of amendment of written statement by the defendant. He submitted that the plaintiff has filed suit for declaration and permanent injunction, wherein they claimed sale deed dated 17.10.2013 is out of money lending transaction. After decision of application for temporary injunction, by taking benefit of the order, plaintiffs have taken forcible possession of the suit field and dispossessed the defendant no. 1 and 2. Therefore the defendants wants to amend the written statement by way of counter-claim and rejoinder.

2. The plaintiff has filed his reply and strongly opposed the application vide reply Exh 32. He submitted that the proposed amendment sought when the case is fixed for hearing. The proposed amendment is after thought, illegal and false. It appears that the defendants were having knowledge about facts stated in proposed amendment. The defendant have no right of filing counter-claim at this stage. The defendant has not stated about his due diligence. Therefore, the application deserves to be rejected.

3. Heard Learned Adv. Shri. R. S. Dharskar for the defendant no. 1 and 2 and learned Adv. Shri. A. S. Dharskar for the plaintiff at length.

4. From the rival contentions of the parties, the following

point arise for determination, to which I have recorded my findings for the reason stated below:

Sr. No.	<u>Points</u>	<u>Findings</u>
1.	Whether the defendant no. 1 and 2 are entitled to amend written statement and to file counter-claim?	...Yes
2.	What order ?	..Application is allowed

REASONS

As to Point No. 1:

5. Learned Adv. R. S. Dharskar argued that during pendency of suit, defendants were dispossessed, therefore, defendants wants to amend the written statement by way of counter-claim to claim relief of possession. The plaintiff has not filed copy of conveyance at the time of instituting suit. He relied on:

Ramnivas Bansilal Lakhotiya vs. Sunil Pannalal Agrawal
2015 (3) Mh. L. J. 283

6. Learned Adv. A. S. Dharskar argued that defendant can file separte suit for possession, on the cause of action of dispossession. The defendants should have filed counter-claim alongwith written statement. As per the proposed counter-claim, the cause of action is 17.10.2013 i.e., date of re-conveyance. If

cause of action is 17.10.2013, which arose prior to filing of suit or even written statement, defendants should file application for permission for counter-claim. He relied on :

i) Maruti Laxman Zhipare vs. Rahul Arjun Sarang 2008(3) Mh. L.J. 821

ii) Nagnath Jagannath Lomate vs. Narsingh Sambha More, 2009 (3) Mh.L.J. 564

7. I have considered argument advanced by both parties. I have also gone through the citations relied by both parties. On perusal of record, it appears that the plaintiffs have filed the present suit for declaration and permanent injunction on dated 10.01.2014. Defendants have filed their written statement vide Exh. 17 on dated 14.02.2014, wherein they have denied that it was decided to execute nominal sale deed in favour of defendants and they will execute re-conveyance in the name of plaintiff. Now defendants desire to raise counter claim by way of amendment application. In counter-claim, defendants have claimed relief of possession of the suit property, declaration that re-conveyance is illegal and for permanent injunction. The cause of action for counter-claim shown to be 17.10.2013 i.e., date of reconveyance. As per defendants the cause of action for the amendment application arose on 17.09.2015 when they were dispossessed of the suit land.

8. In ***Maruti Laxman Zhipare vs. Rahul Arjun Sarang 2008(3) Mh. L.J. 821***, Hon'ble High Court held that, "Though a

counter-claim can be filed after filing of written statement for a cause of action which has arisen before or after filing of the suit but before the defendant delivers his defence or before the time limited for delivering his defence has expired. Admittedly, the cause of action for which the counter-claim has been filed has arisen in the year 2005 i.e., much after written statement was filed by the defendant. In that view of the matter, the trial Court has erred in allowing the application of the respondent/ defendant."

9. In ***Nagnath Jagannath Lomate vs. Narsingh Sambha More, 2009 (3) Mh.L.J. 564***, the plaintiff has filed suit for decree of perpetual injunction against defendants. The defendant no. 6 by way of counter-claim seeking a declaratory decree to the effect that sale deeds executed by defendant no. 1 in favour of plaintiffs be declared as illegal. The counter-claim raised after settlement of issues as well as recording of evidence of plaintiffs is over. The Hon'ble Court has held that, "The result of permitting raising counter-claim by way of amendment to the written statement has an effect of converting the suit into inter-pleader's suit. The cause of action for raising counter-claim accrued on 02.05.2002 whereas counter-claim is presented on 16.10.2017. Counter-claim itself is beyond prescribed period of limitation." The Court has also held that, "It was incumbent upon defendant to raise claim at the time of filing written statement as the cause of action has arisen before filing of the written statement."

10. ***Ramnivas Bansilal Lakhotiya vs. Sunil Pannalal***

Agrawal 2015 (3) Mh. L. J. 283, wherein the defendants sought amendment to introduce a counter-claim for decree of specific performance of contract through the written statement after closing evidence of the plaintiff. Hon'ble Court has observed that, "In the case of Ramesh Chand, the Apex court has also dealt with the discretion vested in the trial Court to permit a counter claim sought to be introduced through an amendment under Order VI, rule 17 of the Civil Procedure Code. Order VIII Rule 6A was, therefore analysed for the said purpose and it was concluded that such a counter-claim by way of an amendment, could be allowed in order to avoid multiplicity of judicial proceedings, to save the court time and also to avoid inconvenience to the parties, since all the dispute between the same parties could be decided in a single proceeding. Nevertheless, the Apex Court has struck a note of caution that the framers of the law never intended that the pleadings, by ay of counter-claim, be utilized as an instrument for forcing a reopening of the trial or pushing back the progress of the proceeding."

11. In present case, on perusal of the written statement of the defendants it appears that defendants have specifically denied the execution of sale deed as security and undertaking to execute re-conveyance in favour of the plaintiffs. After filing of written statement and order on application for temporary injunction on dated 01.09.2015, issues were framed on same day of passing order on Exh. 05. On next date i.e., on 08.01.2016, the defendant

has filed present application for amendment of written statement. Though issues are framed, however, plaintiff yet to lead his evidence. Therefore, the trial is yet to commence in strict sence.

12. I have gone thought the citations relied by parties. The facts of Ramnivas Lakhotiya case is applicable to the facts of case in hand and the ruling is latest to other citations. Therefore, in view of the Ramnivas Lakhotiya case, to prevent multiplicity of litigations, to save court time and to decide all disputes in a single proceeding, the counter claim by way of amendment of written statement can be allowed. Further counter claim can be entertained even after the framing of issues, so long as recording of evidence has not started, as there is no significant development in the legal proceeding the intervening period between framing of issues and commencement of recording of evidence. If a counter claim is brought during such period, a new issue, if any, can be framed and evidence can be recorded, without prejudicing the rights of either party to the suit.

13. Delay in seeking amendment of written statement can not be a ground for refusing the amendment. Further no prejudice would be caused to the plaintiff, if the application is allowed. Moreover, the other party can be compensated for the delay caused. Moreover, to avoid the multiplicity of litigations and to decide the case on merit, the proposed amendment is necessary. Hence I record answer to point No. 1 in the affirmative.

As to Point No. 2:

14. As stated above defendant is entitled to carry out the proposed amendment and to raise counter-claim. Therefore, this application is entitled to be allowed. Hence, I proceed to pass the following order:

ORDER

1. The application Exh. 29 is allowed.
2. The defendant is permitted to carry out the amendment within limitation period, subject to condition that they shall pay Rs. 500/- to the plaintiff.

Dt. 20.12.2019

{ Manjusha M.Alone }
Civil Judge Junior Division
Karanja (Gh.)