

ORDER BELOW EXH-20

1. The present application is filed by applicant namely Rekha Janrao Manne (Proposed Plaintiff No.3 in Counter Claim) seeking permission to add her in counter claim which was filed by defendant No.1 and 2.
2. Plaintiff objected the present application stating that, application of applicant is outside the scope of counter claim. Lastly, plaintiff prayed to reject the application.
3. Perused application and say of plaintiff. Perused record. Heard both sides.
4. It is submitted by applicant that, defendant No.1 is wife, defendant No. 2 is son and present applicant is daughter of Bapurao Urkuda Bawane. It is stated that, Bapurao died on 05/04/2018 at Village-Mansavali leaving behind defendant No. 1 and 2 and present applicant as legal heirs. It is stated that, except defendants and present applicant, Bapurao Bavane having no other legal heirs. It is stated that deceased Bapurao Bavane owned the land Gat No. 56/2 at Mauja Karegao. Plaintiff has filed suit against defendants. Present applicant along with defendants have filed counter claim against plaintiff for declaration of their ownership in respect of suit property bearing Gat No. 56/2. Hence present applicant prayed to add her as plaintiff No. 3 in counter claim and permit her to continue with counter claim.
5. Plaintiff has filed this suit against defendant No. 1 and 2 for recovery of possession of suit property by claiming her ownership

contending that she is only legal heir of deceased Bapurao Bavane. It is further case of the plaintiff that, suit property was handed over by Bapurao Bavane to defendant No. 1 and 2 only for cultivation. They cultivated suit property with permission of Bapurao Bavane. It is contented that defendant No. 1 and 2 are only permissive user of suit property. Hence plaintiff filed this suit for possession against defendant No. 1 and 2.

6. Defendant No. 1 and 2 have filed contested Written Statement at Exh-19 and counter claim along with present applicant against plaintiff for declaration of their ownership in respect of suit property.
7. It is submitted by present applicant that, plaintiff has no concern with suit property, she is not legal heir of deceased Bapuarao Bavane but defendant No. 1 & 2 and present applicants are only legal heirs of late Bapurao. Therefore, being legal heirs of late Bapurao, they have filed counter claim against plaintiff. It is submitted that, present applicant is necessary party in counter claim but as she is not made party in original suit, therefore present application is filed to add her as plaintiff No.3 in counter claim and permit her to continue with counter claim. Per contra, it is submitted on behalf of plaintiff that, counter claim can only be filed against plaintiff or party to original suit, but present applicant is not party in original suit, hence present application is not tenable and liable to be dismissed.
8. It is to be noted that, original suit is filed by plaintiff only against defendant No.1 and 2 who have filed counter claim along with

present applicant. It is undisputed that, present applicant is not party in original suit. In this situation the question arises whether the person who is not party in original suit, can file counter claim against plaintiff or whether permission can be granted to such person to continue with counter claim.

9. Order VIII Rule 6A of the C.P.C provides that a defendant may file a counterclaim against the plaintiff concerning any cause of action accruing to the defendant. It means, only defendant can file counter claim against plaintiff in respect of cause of action accruing to defendant. The inclusion of a non-party in the counterclaim violates procedural rules and out-side the scope of counter claim. Therefore, the person unless he made party to original suit, cannot file counter claim. It is to be noted that, present applicant is not party to original suit. Therefore, the counterclaim filed by applicant i.e non-party is not maintainable as per the provisions of Order VIII Rule 6A of C.P.C. Hence application is liable to be rejected. Resultantly, I pass the following order.

ORDER

1. Counter claim filed by the present applicant is rejected only to her extent.
2. No order as to cost.

(D.R. Kulkarni)

Date:-29/01/2025

Jt. Civil Judge (Jr. Dn.),

Ralegaon