



**IN THE HIGH COURT OF KARNATAKA, AT DHARWAD**

**DATED THIS THE 23<sup>RD</sup> DAY OF MARCH, 2026**

**BEFORE**

**THE HON'BLE MR. JUSTICE ASHOK S. KINAGI**

**WRIT PETITION NO.107506 OF 2025 (GM-CPC)**

**BETWEEN:**

BASAVANNEAPPA MALLESHPA NANDGAD,  
AGE. 72 YEARS, OCC. AGRL.,  
R/O. GURUWARPETH, TQ. KITTUR,  
DIST. BELAGAVI-591115.

...PETITIONER

(BY SRI. LAXMAN T.MANTAGANI, ADVOCATE)

**AND:**

1. SMT. SUNANDA MAHABALESHWAR NANDGAD,  
AGE. 55 YEARS, OCC. HOUSEHOLD WORK,  
R/O. GURUWARPETH, TQ. KITTUR,  
DIST. BELAGAVI-591115.

2. MAHANTESH YALLAPPA DIWANADA,  
AGE. 51 YEARS, OCC. AGRL.,  
R/O. GURUWARPETH, TQ. KITTUR,  
DIST. BELAGAVI-591115.

...RESPONDENTS

(BY SMT. ANKITA V.TALAWAR, ADVOCATE FOR  
SRI. GANGADHAR S.HOSAKERI, ADVOCATE FOR R1;  
NOTICE TO R2 IS SERVED)

MOHANKUMAR  
B SHELAR



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MOHANKUMAR B  
SHELAR

Date: 2026.04.06  
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THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227  
OF THE CONSTITUTION OF INDIA, PRAYING TO SET ASIDE THE  
IMPUGNED ORDER DATED 17.09.2025 PASSED BY THE COURT OF THE  
SENIOR CIVIL JUDGE, BAILHONGAL, IN O.S.NO.162/2021 VIDE  
ANNEXURE-E, ON I.A. NO.X, FILED UNDER ORDER VI RULE 17 CPC  
AND ETC.,.

THIS WRIT PETITION, COMING ON FOR ORDERS, THIS DAY,  
ORDER WAS MADE THEREIN AS UNDER:



**ORAL ORDER**

(PER: THE HON'BLE MR. JUSTICE ASHOK S. KINAGI)

1. The petitioner has filed this writ petition challenging the order on I.A. No.X dated 17.09.2025 passed in O.S. No.162/2021 by the learned Senior Civil Judge, Bailhongal vide Annexure-E.

2. Brief facts, leading rise to the filing of this petition are as follows:

Respondent No. 1 filed a suit in O.S. No.162/2021 seeking the relief of partition and separate possession. The petitioner entered appearance and filed a written statement denying the averments made in the plaint. Thereafter, upon collecting bills and vouchers, the petitioner filed I.A. No.X under Order VI Rule 17 R/W Section 151 of the Code of Civil Procedure (for shrot, 'the CPC'), seeking amendment of the written statement to incorporate a counterclaim for reimbursement of the expenditure incurred towards layout formation.



3. The said application was opposed by respondent No. 1 by filing objections.

4. The Trial Court, after hearing the learned counsel for the parties, rejected the application vide order dated 17.09.2025. Aggrieved by the same, the petitioner has filed this writ petition.

5. Heard the arguments of the learned counsel for the petitioner and the learned counsel for the respondents.

6. The learned counsel for the petitioner submits that a counterclaim can be raised even after framing of issues and that the Trial Court has committed an error in rejecting I.A. No.X. In support of his contention, he has placed reliance on the judgment of the Hon'ble Apex Court in ***Ashok Kumar Kalra v. Wing Commander Surendra Agnihotri***<sup>1</sup>. Hence, he prays to allow the writ petition.

7. *Per contra*, the learned counsel for the respondents submits that the application for amendment has been filed after commencement of trial. She submits

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<sup>1</sup> (2020) 2 SCC 394



that the application is not maintainable, as the petitioner has failed to plead that despite due diligence, he could not have sought the amendment earlier. In support of her arguments, she has placed reliance on the judgment of the Hon'ble Apex Court in ***Pandit Malhari Mahale v. Monika Pandit Mahale and Others***<sup>2</sup>.

8. She further submits that a counterclaim ought to be made before framing of issues and not at a belated stage when the matter was posted for cross-examination of PW1. Therefore, on these grounds, she prays for dismissal of the writ petition.

9. Perused the records and considered the submissions made by the learned counsel for the parties.

10. Respondent No. 1 filed the suit for partition and separate possession in O.S.No.162/2021. The petitioner appeared and filed his written statement. The Trial Court framed issues, and Respondent No.1 was examined as PW1.

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<sup>2</sup> (2020) 2 SCC 549



His cross-examination had commenced, and the matter was posted for further cross-examination.

11. At that stage, the petitioner filed I.A. No.X seeking amendment of the written statement, by way of which he intended to incorporate a counterclaim.

12. To consider the case on hand, it is necessary to examine the provisions of Order VIII Rule 6A of the Code of Civil Procedure, which read as follows:

*"16-A. Counter-claim by defendant.-(1) A defendant in a suit may, in addition to his right of pleading a set-off under plaintiff, any right or claim in respect of a cause of action Rule 6 set up, by way of counter-claim against the claim of the accruing to the defendant against the plaintiff either before delivered his defence or before the time limited for delivering or after the filing of the suit but before the defendant has 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."*

13. Upon perusal of Order VIII Rule 6A, it is evident that a defendant in a suit may, in addition to his right of pleading set-off under Rule 6, set up a counterclaim against the claim of the plaintiff. Such a counterclaim may be made before the defendant has delivered his defence or before the time limited for delivering his defence has expired.

14. Admittedly, the said application was filed when the case was posted for cross-examination of PW1. The learned counsel for the petitioner has placed reliance on the judgment of the Hon'ble Apex Court in **Ashok Kumar Kalra** (referred to supra), wherein the Hon'ble Apex Court, in paragraph 23, has held as follows:

*"23. The above discussion lends support to the conclusion that even though Rule 6A permits the filing of a counter Claim after the written statement, the Court has the discretion to refuse such filing if it is done at a highly*



*belated stage. However, in my considered opinion, to ensure speedy disposal of suits, propriety requires that such discretion should only be exercised till the framing of issues for trial. Allowing counter claims beyond this stage would not only prolong the trial, but also prejudice the rights that may get vested with the plaintiff over the course of time."*

15. The Hon'ble Apex Court has held that a defendant cannot be permitted to file a counterclaim after the issues are framed and the suit has substantially progressed, as it would defeat the cause of justice and be detrimental to the principles of speedy justice, as envisaged in the object and reasons for the relevant amendment to the Code of Civil Procedure.

16. The Hon'ble Apex Court, in the case of **Rajul Manoj Shah @ Rajeshwari, Rasiklal Sheth Vs. Kirabhai Shakrabhai Patel and Another** (arising out of SLP (C) No. 5635/2023), has referred to its earlier judgment in **Ashok Kumar Kalra** (supra) in paragraph 24 and has held that a counterclaim can be made only before the defendant has delivered his defence.



17. Admittedly, in the present case, the petitioner has already delivered his defence, and the trial has commenced, as the Trial Court has framed the issues and the matter is posted for further cross-examination of PW1.

18. The petitioner has filed an application seeking amendment of the written statement; however, the said application has been filed after commencement of trial. Further, the petitioner has not stated in the application that, despite due diligence, he could not have filed the application under Order VI Rule 17 of the CPC at an earlier stage.

19. The proviso to Order VI Rule 17 of the CPC provides that no application for amendment shall be allowed after the commencement of trial unless the Court comes to the conclusion that, in spite of due diligence, the party could not have raised the matter before the commencement of trial.

20. The Hon'ble Apex Court, in ***Pandit Malhari Mahale*** (supra), has held that in cases of amendment of pleadings, the Court must record a finding regarding the



due diligence of the party, as required under Order VI Rule 17 of the CPC.

21. In the present case, the amendment application was filed after the commencement of evidence, and there is no pleading or material to show that, despite due diligence, the petitioner could not have sought the amendment earlier. In the absence of such a pleading, the application for amendment cannot be allowed.

22. The Trial Court, considering the legal position laid down by the Hon'ble Apex Court in ***Pandit Malhari Mahale*** (supra), has rightly rejected the application on the ground that it was filed after the commencement of trial.

23. Hence, I do not find any error or illegality in the impugned order at Annexure-E. Accordingly, I proceed to pass the following:

**ORDER**

- i. The writ petition is ***dismissed***.
- ii. However, a liberty is reserved to the petitioner to file a separate suit, if so advised.



**NC: 2026:KHC-D:4400**  
**WP No. 107506 of 2025**

iii. Pending applications, if any, shall stand  
disposed of.

**Sd/-**  
**(ASHOK S. KINAGI)**  
**JUDGE**

AC  
CT: UMD  
List No.: 1 Sl No.: 16