

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 7414/2026

URN: CW / 16245U / 2026

- 1 Chaturbhuja, Aged About 74 Years, S/o. Late Shri Kalu Ram
- 2 Shanti Devi, Aged About 74 Years, W/o. Late Shri Babulal
- 3 Kailash, Aged About 50 Years, S/o. Late Shri Babulal
- 4 Subhash S/o. Late Shri Babulal, Aged About 47 Years, All Residents Of Bairathi Bhawan, Dholi Mandi Chomu, District Jaipur (Raj.)
- 5 Anju Devi W/o. Late Shri Gopal D/o. Late Shri Babu Lal, Aged About 50 Years, Resident Of Bhatta Bazar, Ajeetgarh, District Sikar (Raj.)
- 6 Santosh Devi W/o. Shri Baldev D/o. Late Shri Babulal, Aged About 50 Years, Resident Of Khatipura Road, Near Pulia, Jhotwara, Jaipur (Raj.)
- 7 Sangeeta Devi W/o. Shri Bihari Lal D/o. Late Shri Babulal, Aged About 45 Years, R/o. Near Shiv Niwas, Indira Colony, Chomu, District Jaipur (Raj.)
- 8 Anita Devi W/o. Shri Vimal Kumar D/o. Late Shri Babulal, Aged About 43 Years, Resident Of Near Shiv Niwas, Indira Colony, Chomu, Jaipur (Raj.)

-----Petitioners

Versus

- 1 Smt. Shanti Devi, W/o. Late Shri Ramavtar
- 2 Kamal S/o. Late Shri Ramavtar, Both Residents Of Dholi Mandi, Chomu, District Jaipur (Raj.)
- 3 Shashi Kala W/o. Shri Om Prakash D/o. Late Shri Ramavtar, R/o. Laxmi Nagar, Kotputli, District Jaipur (Raj.) (At Present Infront Of Shriram Temple Laxmi Nagar, Kotputli, District Jaipur (Raj.)
- 4 Urmila Devi W/o. Shri Pankaj, (D/o. Late Shri Ramavtar R/o. Nadi Ka Phatak, Murlipura, Jaipur (Raj.) (At Present Surya Nagar, Nadi Ka Phatak, Benar Road, Jhotwara, Jaipur (Raj.)
- 5 Rekha Devi W/o. Shri Mukesh (D/o. Late Shri Ramavtar), R/o. Near Bus Stand, Jobner, District Jaipur (Raj.) (At Present In Front Of Jain Plaza, Renwal Road, Jobner).
- 6 Sudha Kumari (Wife Vijay Kumawat) D/o. Late Shri Ramavtar, Resident Of Dholi Mandi, Chomu, Distt. Jaipur (Raj.) (At Present Madrampura, Sanganer, Jaipur).
- 7 Anjana D/o. Late Shri Ramavtar (W/o. Rakesh Kumawat), Resident Of Dholi Mandi, Chomu, Distt. Jaipur (Raj.) (At Present 203, Nakshatra Residency Behind Jai Shankar Party Plot, Navsari District Navsari, Gujrat-398445)
- 8 Mali Ram, S/o. Late Shri Kaluram
- 9 Yogeshwar, S/o. Late Shri Kaluram

- 10 Mahesh S/o. Late Kaluram, (Since Deceased)
- 10.1 Smt. Kiran Devi, W/o. Late Mahesh
- 10.2 Ashu Kumawat, S/o. Late Mahesh
- 10.3 Keshav Kumar S/o. Late Mahesh, All Residents Of Dholi Mandi, Chomu
- 10.4 Meenakshi Kumawat D/o. Late Mahesh (W/o. Ram Niwas Kumawat), Resident Of Dholi Mandi, Chomu (At Present Vrandawan Vihar Extension, Anokha Gaon, Harmada, Jaipur).
- 10.5 Urvashi Kumawat D/o. Late Mahesh (W/o. Guarav Kumawat), Resident Of Dholi Mandi, Chomu (At Present 50 Green Park, Anand Vihar, Dadi Ka Phatak, Jaipur).
- 10.6 Shalu Kumawat W/o. Manoj Kumawat D/o. Late Mahesh, R/o. Plot No.29, South Part, Kathahata, Green Avenue, Kalwar Road, Hathoj, Jaipur.
- 10.7 Seema Kumawat W/o. Mukesh Kumawat D/o. Late Mahesh, R/o. E-468, Nar Sanjay Public School, Lalkothi Yojana, Jaipur.
- 10.8 Jyoti Kumawat W/o. Suraj Kumawat D/o. Late Mahesh, R/o. a-35, Indira Verma Colony, Shastri Nagar, Jaipur (At Present 13-A, Hanuman Vatika, Near Vijay Vidhyasthali School, Gokulpura, Jhotwara, Jaipur (Raj.0
- 11 Sub-Registrar, Chomu, District Jaipur (Raj.)
- 12 District Collector, Collectroate, Bani Park, Jaipur.
- 13 Rukma Devi W/o. Late Shri Bhagwan Sahai, R/o. Badanpura Chomu, District Jaipur (Raj.)

----Respondents

For Petitioner(s)	:	Mr. Pradeep Sulaniya
For Respondent(s)	:	Mr. Siddharth Bapna with Mr. Rahul Kumar Mr. Dhruv Tailor

HON'BLE MR. JUSTICE SUDESH BANSAL

Order

REPORTABLE

20/07/2026

1. Petitioners are defendant No.2 and defendants No.5 to 11 in the civil suit for partition, declaration and permanent injunction bearing Civil Suit No.27/2014 titled as 'Shanti Devi & Ors. Vs. Mali Ram & Ors.', pending before the Additional District & Sessions

Judge No.10, Jaipur Metropolitan-II, Headquarters Chomu, District Jaipur. This civil suit has been filed by and on behalf of plaintiffs-respondents No.1 to 7, wherein respondents No.8, 9 & 10/1 to 10/8, are defendants No.1, 3 & 4/1 to 4/8. In this civil suit, defendant Nos.1, 3 & defendant No.4 (now deceased and substituted by 4/1 to 4/8), submitted a counter claim along with their written statement filed on 19.05.2014. After framing of issues and conclusion of plaintiffs' evidence, when this civil suit arrived at the stage of recording evidence of defendants, at that stage, petitioners filed an application (Annex.11) seeking to struck out the counter claim and evidence, submitted by respondents No. 8, 9 & 10/1 to 10/8 from the record, being not maintainable qua petitioners-co-defendants in the suit. That application has been dismissed by the trial Court vide order dated 28.03.2026, whereagainst instant civil writ petition under Article 227 of the Constitution of India has been filed by petitioners.

2. Heard counsel for petitioners and counsel appeared for and on behalf of respondents No.8, 9 & 10/1 to 10/8, so also perused the material available on record carefully including the order impugned.

3. Submission of counsel for petitioners is that the counter claim which has been submitted by defendant Nos.1, 3 & defendant No.4 (now deceased and substituted by 4/1 to 4/8) along with their written statement in the present suit, is indeed not against the plaintiffs rather same virtually has been submitted against the petitioners who are co-defendants No.2 & 5 to 11 in this suit and it is well established that a defendant cannot set up a

counter claim against co-defendant, therefore, such counter claim along with evidence adduced in support thereof is not maintainable and liable to be struck out from the record, hence, trial Court erred in dismissing petitioners' application and not striking out the counter claim of defendants No.1, 3 & 4/1 to 4/8, from the record. To buttress his submission, counsel for petitioners has referred and relied upon the judgment of Supreme Court delivered in case of **Sanjay Tiwari Vs. Yugal Kishore Prasad Sao & Ors.** reported in **AIR 2025 SC 5576**.

4. *Per contra*, submission of counsel for respondents No.8, 9 & 10/1 to 10/8 is that the counter claim set up by respondents-defendants for partition and permanent injunction is against the plaintiffs, nevertheless, even if, this counter claim is considered against the co-defendants No.2 & 5 to 11, then also since present suit involves the issue of partition, therefore, in the suit for partition, a defendant can set up counter claim against co-defendant because the position of defendant is similar to that of a plaintiff, like a person suing, and status of parties in partition suit remains interchangeable. His further submission is that the similar issue of seeking to strike out the counter claim of respondents, that too, on the previous application of petitioners, has already been adjudicated on merits by the trial Court vide order dated 26.05.2015, hence, the principle of interlocutory *res judicata* comes in play and petitioners are estopped to reagitate the same issue afresh. In support of his submission, reliance on para No.35 of the judgment of Hon'ble Supreme Court delivered in case of **B.S. Lalitha & Ors. Vs. Bhuvanesh & Ors.** reported in **2026**

SCC Online SC 860, has been placed to contend that the principle of *res judicata* applies not only between two separate suits but also between two stages of the same litigation.

5. Learned trial Court in the impugned order dated 28.03.2026, while dismissing application of petitioners and denying to struck out the counter claim, set up by defendants No.1, 3 & 4, noted that the present suit is in the nature of partition, hence, the ratio decidendi expounded by the Hon'ble Supreme Court in case of **Sanjay Tiwari** (*supra*), which was a suit for specific performance, does not apply in the present suit because in the suit for partition, the status of defendants is also like a suing person. Further, trial Court has noted that the issue as to whether to exclude the counter claim or not, set up by defendants No.1, 3 & 4, has already been adjudicated by this Court vide order dated 26.05.2015 on merits while dismissing application of petitioners dated 17.07.2014, which was filed for the same relief, hence, second application by petitioners for same relief cannot be entertained.

6. Heard. Considered.

7. The legal issues, which come up for consideration are that (i) whether in a suit for partition, a defendant can set up a counter claim against co-defendant? and (ii) whether the order dated 26.05.2015, declining the prayer of petitioners-defendants No.2 & 5 to 11 to exclude counter claim of defendants No.1, 3 & 4, operates as *res judicata* against petitioners to reagitate same issue in the same suit at a subsequent stage?

8. Before delving into answering the two issues, arising in this petition, this Court finds it necessary to look into the pleadings of parties, succinctly.

8.1 Property in question is a residential house measuring 677.3 sq. yards situated at Village Chomu, District Jaipur.

8.2 Parties are descendants of one Kalu Ram and pedigree of family of Kalu Ram is mentioned in para No.3 of plaint.

8.3 Plaintiffs have filed present civil suit in the nature of partition, declaration & permanent injunction pleading *inter alia* that the property in question is property of joint Hindu family, although same was purchased through registered sale deed dated 14.06.1978 in the joint name of two sons of Kalu Ram viz. Chaturbhuji (defendant No.2) & Babulal (deceased and survived by his legal heirs defendants No.5 to 11). Plaintiffs further pleaded in the plaint that in respect of the property in question, a document dated 06.02.1994, was executed between the parties and parties agreed to get respective portion, which came to their share. The prayer of plaintiffs is that based on the document dated 06.02.1994 which is in nature of family settlement/ memorandum of partition, plaintiffs be declared owners of portion, which fell in their share and that share be partitioned by metes and bounds so also the defendants be restrained by way of permanent injunction not to hinder/obstruct in peaceful use and occupation of the portion, which came in the share of plaintiffs.

8.4 Defendants No.2 & 5 to 11, in their joint written statement have denied the execution of document dated 06.02.1994 stating that same is a fake and forged document. They have pleaded that

the property in question is self-earned property of Chaturbhuj & Babulal through registered sale deed dated 14.06.1978 and is not a property of joint Hindu family. Therefore, civil suit is liable to be dismissed.

8.5 Defendants No.1, 3 & 4 in their joint written statement have not disputed the case of plaintiffs that the property in question is of joint Hindu family and has also not denied the execution of document dated 06.02.1994, however, has prayed to dismiss the plaintiffs' suit. Simultaneously, in their joint written statement, defendants No.1, 3 & 4 have set up a counter claim against plaintiffs, for partition and permanent injunction, in respect of portion, which came in their share under the document of family settlement dated 06.02.1994.

8.6 In the present civil suit, as per rival pleadings of parties on the original claim and counter claim, issues have been framed and plaintiffs have concluded their evidence. The civil suit is pending before the trial Court at the stage of recording defendants' evidence.

Issue No.(i)

Whether in a suit for partition, a defendant can set up a counter claim against co-defendant?

9. Order VIII Rule 6-A of CPC enables a defendant to set up a counter claim, which reads as under:

"6A. 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 or 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."

10. Hon'ble Supreme Court in case of **Jag Mohan Chawla & Anr. Vs. Dera Radha Swami, Satsang & Ors.** reported in **(1996) 4 SCC 699**, opined that the legislative intent for enabling a defendant to set up a counter claim is just to avoid multiplicity of proceedings by allowing both the original suit and the counter claim to be tried and disposed of in a single trial. It was further opined that setting up a counter claim by defendant, certainly has certain limitations such as the counter claim must be instituted within time limit and cannot exceed the pecuniary limits of the jurisdiction of the Court. Through a counter claim, defendant may assert any right or claim against the plaintiff in respect of a cause of action accruing to the defendant against the plaintiff and such a counter claim of defendant is treated as a cross suit and is governed by the rules applicable to the plaint.

11. On the issue that a counter claim can be made against a co-defendant, the Hon'ble Supreme Court in case of **Rohit Singh**

and Ors. vs. State of Bihar and Ors. reported in **(2006) 12**

SCC 734, has held and observed in Para No.21 as under:

"21. Normally, a counter-claim, though based on a different cause of action than the one put in suit by the plaintiff could be made. But, it appears to us that a counterclaim has necessarily to be directed against the plaintiff in the suit, though incidentally or along with it, it may also claim relief against co-defendants in the suit. But a counter-claim directed solely against the co-defendants cannot be maintained. By filing a counter-claim the litigation cannot be converted into some sort of an inter-pleader suit....."

12. In case of **Sanjay Tiwari** (*supra*) relying upon the decision of Hon'ble Supreme Court delivered in case of **Rohit Singh** (*supra*), while dealing with the issue in a civil suit for specific performance, defendant No.2 was not allowed to set up a counter claim against defendant No.1 and it has been held that the counter claim against the co-defendant cannot survive and the same has to be rejected.

13. Recently Hon'ble Supreme Court, in case of **Rajul Manoj Shah @ Rajeshwari Rasiklal Sheth Vs. Kiranbhai Shakrabhai Patel & Anr.** reported in **2025 AIR(SC) 4284**, in the backdrop of factual matrix that property in question, a bungalow in Ahmedabad, was alleged to be undivided and joint family property of plaintiff & defendant No.1, being surviving natural heirs of the owner of property. Plaintiff alleged that defendant No.1, without her consent has agreed to sell a portion of the undivided share of the joint family property in favour of defendant No.2, therefore, she filed a suit for declaration that her sister-in-law (defendant

No.1) has no right to transfer or deal with the property without her consent and to declare the agreement to sell dated 21.10.2011, executed by defendant No.1 in favour of defendant No.2, as null and void. After filing of suit, defendant No.1 passed away and her name was deleted by trial Court, but defendant No.2 carried the issue in High Court, and High Court, with the consent of plaintiff and defendant No.2, substituted deceased-defendant No.1, by appointing a Court Official. Thereafter, defendant No.2 sought to amend his written statement by adding a counter-claim, praying for a relief of specific performance of agreement dated 21.10.2011 against defendant No.1, substituted through court officer and consequently for partition of the suit property. Trial Court dismissed the application on various other grounds and also held that a counter claim by defendant No.2 is not maintainable against the co-defendant. However, on filing writ petition by defendant No.2 thereagainst in the High Court, petition was allowed. Plaintiff approached the Hon'ble Supreme Court. In that scenario, the Hon'ble Supreme Court held that counter claim of defendant No.2 is primarily for a relief of specific performance of agreement dated 21.10.2011 executed in his favour by deceased original defendant No.1. The sale deed in furtherance to agreement to sell dated 21.10.2011 was prayed to be executed by the Court Officer, who was substituted in place of defendant No.1, after receiving the balance amount of sale consideration. The Hon'ble Supreme Court held that the relief of specific performance as prayed by defendant No.2, in respect of undivided share in the property belonging to defendant No.1 (now deceased), is not

against the plaintiff, but same has been made against the Court Officer, appointed as substituted representative of deceased-defendant No.1. Therefore, the Hon'ble Supreme Court held that such a counter claim of defendant No.2, fundamentally against defendant No.1 is not maintainable. In this decision, Hon'ble Supreme Court relied upon the proposition of law enunciated in case of **Rohit Singh** (*supra*). In respect of relief of partition, claimed by defendant No.2 in his counter claim, it was observed by the Hon'ble Supreme Court that until defendant No.2 succeeds in establishing his right in the property in question against the undivided share of defendant No.1, he has no right to claim for partition in the property in question. Finally, the Hon'ble Supreme Court held that the civil remedy as availed by plaintiff in the present civil suit, to seek a declaration that her sister-in-law-defendant No.1 has no manner of right to alienate the joint family property without her consent and therefore, to seek annulment of the sale agreement, is very different from the attempt of civil remedy, sought to be availed by defendant No.2 by setting up a counter claim for the relief of specific performance against a co-defendant. Therefore, in such backdrop of pleadings of parties, the principle of law that a defendant cannot be permitted to set up a counter claim against a co-defendant was followed and reiterated and consequently, the order of allowing to set up a counter claim by defendant No.2 in his written statement was set aside.

14. In the present case, nature of present suit is for partition, declaration and permanent injunction. Plaintiffs have prayed for partition and declaration in respect of the portion in the property

in question, which according to them, came in their share under the document of family settlement dated 06.02.1994. In addition, plaintiffs have also claimed a relief for permanent injunction against defendants. Defendants No.1, 3 & 4, in their written statement have set up a counter claim for partition of their share, based on the same document of family settlement dated 06.02.1994. In addition, they have also prayed for issuing a decree of permanent injunction against plaintiffs. The petitioners herein, who are defendants No.2 & 5 to 11, *per contra*, have not admitted the document dated 06.02.1994, rather alleged the same to be a fake and forged document and asserted that property in question is self-earned and jointly purchased property of Chaturbhuji (defendant No.2) and Babulal (predecessor of defendant No.5 to 11). It is well established that in a civil suit for partition, every interested party is deemed to be a plaintiff because a defendant, in a partition suit can be considered to be a person suing, thus, in a partition suit, the status of parties is altogether different than the status of parties in other nature of suits. Hence, the proposition of law that "a defendant cannot set up a counter claim against co-defendants" may not apply in a civil suit for partition. This Court finds support from the judgment of Hon'ble Supreme Court in case of **A. Krishna Shenoy Vs. Ganga Devi G. & Ors.** delivered on 11.09.2023 reported in **MANU/SCOR/112970/2023**.

15. The similar issue came up for consideration before the High Court of Madras in case of **A.V. Murugan Vs. K. Maheswari & Ors.** reported in **MANU/TN/5155/2019**, and therein, reliance

was placed on the another judgment passed by the High Court of Madras in case of **A. Mohamed Sulaiman and others vs. A. Ameena Beevi (deceased) and others** reported in **MANU/TN/0332/2013** wherein it was held and observed in Para No.19 as under:

19. Therefore, when a defendant in a partition suit can be considered as a party suing also, I am of the view that such defendant can also make a counter claim under Order 8 Rule 6A in a partition suit against the co-defendant. When such claim is exercised, certainly, the person making such plea becomes the plaintiff insofar as that relief is concerned and the person against whom such claim is made, becomes the defendant in the very same suit. That is why sub-clause (2) of Order 8 Rule 6A was very specific in saying that such counter claim shall have the same effect as a cross suit so as to enable the court to pronounce the final judgment in the same suit both on the original claim and on the counter claim. Therefore, in my considered view, it cannot be said that Order 8 Rule 6A in *stricto sensu* is applicable only as against the plaintiff and not against a co-defendant."
(emphasis supplied)

16. In addition, it may be noted that defendants No.1, 3 & 4 set up a counter claim for partition, to separate their portion in the property in question, on the basis of same document dated 06.02.1994, on which plaintiff had relied upon in the plaint to get separated their portion. Plea of defendants No.2 & 5 to 11, who are petitioners herein, is common for original claim of plaintiffs so also for counter claim of defendants No.1, 3 & 4 that document of family settlement dated 06.02.1994 is a fake and forged one. In the counter claim, defendants No.1, 3 & 4 have also prayed for a decree of permanent injunction against plaintiffs. Hence, it appears that the counter claim of defendants No.1, 3 & 4 is against plaintiffs so also against defendant No.2 & 5 to 11. Thus,

in the backdrop of such factual scenario, instead of relegating the defendants No.1, 3 & 4 to file an independent suit, their right as claimed by them in the suit property, can be adjudicated by way of deciding their counter claim on merits in the same suit, which would also be in alignment of the legislative intent, to entertain the counter claim of defendants to avoid multiplicity of the proceedings and to try both the suits and the counter claim in a same suit and in a same trial.

17. Further, it can also safely be held that a counter claim set up by defendant, may be based on a different cause of action then the cause of action of plaintiff and in order to ascertain the maintainability of the counter claim, various considerations based on facts and circumstances of each case are required to be considered. There cannot be a strait jacket formula, rather their are numerous factors, which need to be taken into consideration by the Court, before admitting or rejecting a counter claim. In case of **Ashok Kumar Kalra Vs. Wing C.D.R. Surendra Agnihotri**, reported in **(2020) 2 SCC 394**, the Hon'ble Supreme Court laid down few inclusive factors/ guidelines, which are not exhaustive, but illustrative one:-

"21.....

- (i) Period of delay.
- (ii) Prescribed limitation period for the cause of action pleaded.
- (iii) Reason for the dealy.
- (iv) Defendant's assertion of his right.
- (v) Similarity of cause of action between the main suit and the counterclaim.
- (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."

18. Coming back to the issue, after considering the issue in the light of above-referred proposition of law, this Court arrives at a conclusion that when it is well settled that a defendant, in a partition suit is considered to be a person suing, it means alike plaintiff, then a counter claim can also be made by him against plaintiff so also against another co-defendants or against both. The proposition of law that one defendant cannot set up a counter claim against co-defendant, does not apply in *stricto sensu* in the civil suit of partition. Accordingly, the Issue No.(i) is answered in affirmative.

Issue No.(ii)

Whether the order dated 26.05.2015, declining the prayer of petitioners-defendants No.2 & 5 to 11 to exclude counter claim of defendants No.1, 3 & 4, operates as res judicata against petitioners to reagitate same issue in the same suit at a subsequent stage?

19. Concededly, in the present suit itself, after submitting the counter claim by defendants No.1, 3 & 4 along with their written statement, petitioners have filed an application dated 17.07.2014 (Annx.5) praying to strike out the counter claim. This application was opposed by defendants No.1, 3 & 4. Learned trial Court vide order dated 26.05.2015, dismissed the application with the following fact findings:

"पत्रावली व लिखित बहस का अवलोकन किया गया। वादीगण ने यह वाद बाबत् तकासमा, घोषणा व स्थाई निषेधाज्ञा का पेश किया है, जिसमें वाद पत्र के पैरा संख्या 1 में वर्णित संपत्ति बाबत् निष्पादित पारिवारिक विभाजन पत्र दिनांक 06.02.1994 के अनुसार विभाजन करवाकर वादीगण के हिस्से की संपत्ति बरंग लाल का वादीगण को स्वामी होने बाबत् घोषणा एवं स्थाई निषेधाज्ञा का अनुतोष चाहा है। प्रतिवादीगण संख्या 1, 3 व 4 ने काउण्टर क्लेम प्रस्तुत करते हुए, इसी विभाजन पत्र दिनांक 06.02.1994 के अनुसार प्रतिवादीगण संख्या 1 व 3, 4 के हिस्से में आई क्रमशः गुलाबी, भूरे व नीले रंग की संपत्ति का स्वयं को स्वामी होने की घोषणा चाही है व बादीगण को स्थाई निषेधाज्ञा से पाबंद करना चाहा है। प्रतिवादीगण संख्या 2 व 5 से 11 ने जबाव में विभाजन पत्र दिनांक 06.02.1994 को फर्जी व कूटरचित दस्तावेज होना बताते हुए वाद खारिज करने का निवेदन किया है। इस प्रकार पक्षकारों में एक ही हैसियत से वादग्रस्त संपत्ति, जिसका

विवरण बाद पत्र के पैरा संख्या 1 में किया गया है, के विभाजन व पृथक पारिवारिक बंटवारे के संबंध में विवाद है।

मूल प्रश्न दिनांक 06.02.1994 के विभाजन पत्र पर टिका हुआ है। वादीगण व प्रतिवादीगण संख्या 1, 3 व 4 विवादग्रस्त संपत्ति को बंटवारे अनुसार स्वयं का हिस्सा घोषित करवाना चाहते हैं। जबकि प्रतिवादी संख्या 2, 5 व 11 विवादग्रस्त संपत्ति को स्वयं की होना बताते हैं प्रतिवादी संख्या 2, 5 व 11 ने विवादग्रस्त संपत्ति का विवरण व परिवार का सजरा भी स्वीकार किया है। लिहाजा प्रार्थना पत्र के संदर्भ में विद्वान अधिवक्ता प्रतिवादी संख्या 1, 3 व 4 के तर्क ही सारवान प्रकट होते हैं। अतः प्रार्थना पत्र द्वारा प्रतिवादी संख्या 2, 5 से 11 दिनांक 17.07.2014 स्वीकार किया जाना उचित प्रकट नहीं होता है।"

The copy of order dated 26.05.2015 has been placed on record as Annx.6.

20. Thereafter, in the present suit, issues have been framed and evidence of plaintiff has been concluded. Thereafter, at a subsequent stage, petitioners again have filed application, which is enclosed with the writ petition as Annx.11, seeking to strike out the counter claim of defendants No.1, 3 & 4. The prayer of petitioners in this second application is as under:

"अतः प्रार्थना पत्र मय शपथ पत्र प्रस्तुत कर श्रीमानजी निवेदन है कि प्रार्थी का प्रार्थना पत्र स्वीकार कर प्रतिवादी संख्या 1, 3 ता 4 द्वारा प्रस्तुत काउन्टर क्लेम व प्रतिवादीगण संख्या 1, 3 व 4 द्वारा काउन्टर क्लेम के समर्थन में प्रस्तुत प्रदर्श दस्तावेज व साक्ष्य को पत्रावली वाद संख्या 27/14 से हटाये जाने के आदेश प्रदान करने की कृपा करे।"

21. The Hon'ble Supreme Court in case of **Satyadhyan Ghosal & Ors. Vs. Deorajin Debi & Anr.** reported in **AIR 1960 SC 941**, has held and observed in Para No.8 as under:

"8. The principle of res judicata applies also as between two stages in the same litigation to this extent that a court, whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings."

(emphasis supplied)

22. Following the *ratio decidendi* as expounded by Hon'ble Supreme Court in case of **Satyadhyan Ghosal** (*supra*), recently in an another case of **B.S. Lalitha** (*supra*), the Hon'ble Supreme

Court held that the principle of *res judicata* rests upon the salutary doctrine that there must be a finality to litigation and that a party, which has once succeeded or failed on an issue, should not be permitted to reagitate the same issue at a subsequent stage in the same proceedings. The Hon'ble Supreme Court clearly held that "*the principle of res judicata applies not only between two separate suits but also between two stages of same litigation what is referred to as 'interlocutory res judicata'*".

23. In the light of legal proposition as expounded by Hon'ble Supreme Court in the two judgments cited hereinabove, this Court is of the considered opinion that the order dated 26.05.2015 operates against petitioners to reagitate the same issue of seeking to strike out the counter claim of defendants No.1, 3 & 4, at a subsequent stage in the same suit and therefore Issue No.(ii) is answered accordingly against petitioners.

24. After discussion and enunciation made hereinabove, this Court finds that the trial Court has rightly dismissed the application of petitioners and has rightly declined not to strike out the counter claim of defendants No.1, 3 & 4 in the present civil suit, which is in the nature of partition. The order impugned is well within jurisdiction and parameters of law and therefore, does not warrant any interference by this Court. Hence, as a final result, instant writ petition is hereby dismissed.

25. Stay application & other pending application(s), if any, stand disposed of.

(SUDESH BANSAL),J