

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.706 of 2016**

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Balindra Yadav

.... Appellant/s

Versus

Jairam Yadav & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Bishwajeet Singh

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER**

2 26-09-2016 Heard the learned counsel, Mr. Vijay Shanker Tiwary, for
the petitioner.

Perused the impugned order dated 24.05.2016 passed by
Sub Judge IIIrd, Siwan in Title Suit No.205 of 2013 whereby the
learned Court below has admitted the counter claim of the
defendant respondent.

The learned counsel for the petitioner relying on a decision
of this Court in the case of ***Ramji Singh Vs. Kapildeo 2000 (1)***
PLJR 545 submitted that the counter claim must have some nexus
with the subject matter of the suit property. Property if any is not
connected with the subject matter of the suit and the stand is quite
different from the nature of the suit, the counter claim cannot be
entertained.

It appears that the plaintiff petitioners filed the suit for
declaration of title on the basis of settlements with respect to 8



katha only. Prayer has been made for recovery of possession of the said 8 katha land. The defendant filed counter claim praying for declaration that the defendant has not acquired any title on the basis of a sale deed with respect to another land which is not the subject matter of the suit and prayed for declaration that the sale deed is null, void and illegal.

The Hon'ble Supreme Court in the case of **Jag Mohan Chawla Vs. Dera Radha Swami AIR 1996 2222 SC** has held that **'a defendant can claim any right by way of a counter-claim in respect of any cause of action that has accrued to him even though it is independent of the cause of action averred by the plaintiff and have the same cause of action adjudicated without relegating the defendant to file a separate suit. In sub-rule (1) of Rule 6A, the language is so couched with words of wide width as to enable the parties to bring his own independent cause of action in respect of any claim that would be the subject matter of an independent suit. Thereby, it is no longer confined to money claim or to cause of action of the same nature as original action of the plaintiff. It need not relate to or be connected with the original cause of action or matter pleaded by the plaintiff. The words "any right or claim in respect of a cause of action accruing with the**

defendant" would show that the cause of action from which the counter-claim arises need not necessarily arise from or have any nexus with the cause of action of the plaintiff.'

From perusal of the decision of this Court relied upon by learned counsel, i.e., Ramji Singh (Supra), it appears that the decision of Hon'ble Court has not been considered and, therefore, in my opinion, the decision relied upon by learned counsel for the petitioner is per incuriam.

Thus, I find that the Court below has rightly admitted the counter claim and accordingly, this Civil Misc. application has got no merit.

Accordingly, this Civil Misc. application is dismissed.

(Mungeshwar Sahoo, J)

Sanjeev/-

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