

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.684 of 2016

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1. Radhe Shyam Singh Son of Late Mahendra Singh resident of Village-
Sharsti Dera, P.O. P.S. Itarhi, District-Buxar

.... Petitioner

Versus

1. The State of Bihar the Collector. Buxar P.O.& P.S. and District-Buxar
2. The Anchal Adhikari Itarhi P.O. & P.S. Itarhi District- Buxar
3. The Mukhiya, Gram Panchayat Itarhi through Geeta Devi wife of Ras
Bihari Gupta at P.&P.S. Itarhi District- Buxar
4. Bhirgunath Singh son of Late Mahendra Singh resident of Village-
Sarastidera, P.O. & P.S. Itarhi District Buxar
5. Nand Lal Singh Son of Late Mahebdra Singh resident of Village-
Sarastidera P.O. & P.S. Itarhi District- Buxar
6. Parmeshwar Singh son of Ghurhu Singh Died
7. Mohan Singh
8. maniram Singh
9. Hareram Singh
10. Paras Nath Singh Son of Hira Man Singh Died. Respondent no. 6 to 10
resident of village- Sarestidera P.O. & P.S. Itarhi District-Buxar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Arun Kumar

For the Respondent/s : Mr. Smt.Namrata Mishra-Ga

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 23-09-2016

Heard learned counsel for the petitioner and the State.

It appears that the plaintiff-petitioner filed a suit for declaration that the entry of the name of the State of Bihar in the record of right is wrong. The defendants-respondents filed written statement in the suit alleging that the suit property is the joint family property. Subsequently counter claim was filed by the private defendants-respondents. The said counter claim was dismissed by the trial court on the ground that after filing the written statement the counter claim has been filed. The private respondents filed writ application before the High Court. The High



Court set aside the order of the trial court and remanded the matter for a fresh decision on the ground that counter claim also can be filed after filing of the written statement if the cause of action prior to filing the written statement is not barred by law of limitation. After hearing both parties the court below by the impugned order dated 6.11.2015 accepted the counter claim for final hearing prima facie recording the finding that it appears to be correct.

According to learned counsel for the petitioner, the suit has been filed by the plaintiff for only declaration to the effect that the entry of the name of the State of Bihar in the record of right is wrong. Therefore, the counter claim wherein the defendants are claiming for declaration that the suit property is a joint family property and they have got share in the same is not maintainable. Over and above the same, they would have filed separate suit but the learned court below without considering this aspect of the matter accepted the counter claim for final hearing.

On the other hand, the learned counsel for the State submitted that there is no irregularity or jurisdictional error in the impugned order.

Perused the impugned order. Admittedly, the plaintiff has filed a suit for declaration that the entry in the record of right in the name of State of Bihar is wrong whereas in the counter

claim the private respondents have claimed for declaration that the suit property is the joint family property. In view of the submission made by the learned counsel for the petitioner the question is whether in this suit filed by the plaintiff the relief claim in the counter claim can be said to be maintainable.

The Hon'ble Supreme Court in the case of Jagmohan Chawla & Anr. Vs. Dera Radha Swami Satsang, & Ors., A.I.R., 1996 Supreme Court 2222 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 view of settled principle of law, the learned lower court has rightly accepted the counter claim filed by the defendant. In my opinion, this is not a case for interference of supervisory jurisdiction. However, if any observation is made by the court below in the impugned order on merit, this order of the High Court will not prejudice the parties in any way in the court below.

Accordingly, this Civil Miscellaneous Application is dismissed.

(Mungeshwar Sahoo, J)

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