

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.665 of 2016**

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Smt. Urmila Devi & Ors

.... Appellant/s

Versus

Smt. Rekha Devi & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Shiv Kumar Dwivedy

For the Respondent/s : Mr. Kaushlendra Kumar Sinha

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

2 22-09-2016

Heard the learned counsel, Mr. Shiv Kumar Dwivedy for
the petitioners.

Perused the impugned order dated 15.03.2016 passed by
Sub Judge II, Bettiah, West Champaran in Title Suit No.14 of
1996 whereby the Court below rejected the application filed by the
petitioner for passing judgment under Order XII Rule 6 of the
Code of Civil Procedure.

It appears that the plaintiffs-respondents filed the suit for
declaration that the plaintiffs-respondents are entitled for 1/3rd
share in the rent amount which is being paid by the tenant,
respondent No.2-State Bank of India. In the suit, the plaintiff
claimed the said relief alleging that 1/3rd share has been gifted by
registered gift deed in the year 1974. The present petitioners
appeared in the suit and filed written statement on 10.11.2003. At
that time, no counter-claim was filed. In the year 2005, counter-



claim was filed by the petitioners before the Court below claiming relief to the effect that to declare the gift deed in favour of the plaintiff as void document. Thereafter, application has been filed by the present petitioners for passing the judgment on the basis of admission under Order XII Rule 6 C.P.C. as no reply to the counter-claim has been filed. Another application was filed for passing the judgment on the basis of counter-claim under Order VIII Rule 6E C.P.C. because no reply has been filed by the plaintiff to the counter-claim.

From perusal of the impugned order, it appears that the Court below has considered all these aspects of the matter and then has rejected both the applications by the impugned order.

Order VIII Rule 6A provides that “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.”

Admittedly, in this case, written statement was filed in the year 2003. The gift deed is of the year 1974. It is not the case of the defendant-petitioner that he has no knowledge about the gift

deed. Whatever relief is sought for by the counter-claim regarding the gift deed will be barred by law of limitation in view of Article 58/59 of the Limitation Act.

The Hon'ble Supreme Court in AIR 2010 Supreme Court 211 has held that "a suit for cancellation of transaction whether on the ground of being void or voidable would be governed by Article 59 of the Limitation Act." Petitioners by filing counter-affidavit in the year 2005 are now seeking a relief with respect to the gift deed of the year 1974. It is not their case that the cause of action arose after filing the suit and prior to filing the written statement and within three years from filing the counter-claim.

So far the other application that the counter-claim be allowed under Order XII Rule 6E C.P.C. as it may be mentioned here that the counter-claim itself prima facie appears to be barred by law of limitation and further, till today, the same had not been admitted. The Court below considered these aspects of the matter and held that the petitioners are trying to overreach the order of the High Court and are delaying the disposal of the suit. The Court below also noted the order of the High Court passed in MJC No.1558 of 2005 directing the Court below to dispose of the suit within one year considering the fact that the suit is of the year

1996. Now, therefore, it appears that the petitioners are adopting dilatory tactics with a view to delay the disposal of the suit of the year 1996.

From the facts stated above, in my opinion, the applications are vexatious and frivolous applications and the petitioners are adopting dilatory tactics by abusing the process of the Court.

The Hon'ble Supreme Court in the case of **Ram Rameshwari Devi and others v. Nirmala Devi and others, (2011) 8 Supreme Court Cases 249** has given guidelines for shortening the civil litigation vide paragraph 52(c). The Hon'ble Supreme Court held that **“imposition of actual, realistic or proper costs and/or ordering prosecution would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties.** At paragraph 54, the Hon'ble Supreme Court has held that **“while imposing cost, we have to take into consideration pragmatic realities and be realistic as to what the defendants or the respondents had to actually incur in contesting the litigation before different Courts. We have to also broadly take into consideration the prevalent fees**



structures of the lawyers and other miscellaneous expenses which have to be incurred towards drafting and filing of the counter affidavit, miscellaneous charges towards typing, photocopy, court fee etc.” At paragraph 55, again it has been held “the other factor which should not be forgotten while imposing costs is for how long the defendants or respondents were compelled to contest and defend the litigation in various Courts.”

Again, the Patna High Court also in the case of **Gyan Infra Build Private Limited v. Smt. Mamta Sinha** reported in **2016(3) PLJR 1022** has held that the delaying tactics which is being adopted by the party for getting benefit should be dealt with strongly from the very beginning by the Court so that it will be a lesson to the others and in future the same dilatory tactics for the purpose of getting benefit and harassing the other party by abusing the process of court would not be adopted. Unless this message is given to the litigants, who are trying to misuse the process of court, the disposal of civil cases cannot be shortened and wrongdoer will always try to harass the helpless litigant.

In the present case at our hand also, I find that the plaintiff-respondent No.1 is a lady and she has filed the suit for her 1/3rd share in the rent. The petitioners instead of helping the Court

in deciding the suit expeditiously, as directed by this Court, are adopting dilatory tactics.

From perusal of the impugned order, it appears that the Court below has passed the reasoned order and, therefore, it cannot be said that the order passed by the Court below is arbitrary, without jurisdiction or it has been passed in the manner not permitted by law or it occasion failure of justice.

Therefore, this Civil Miscellaneous application is dismissed with cost of Rs.5,000/- to be paid by the petitioners to the plaintiff-respondent within two months from today failing which the plaintiff-respondent No.1 shall be entitled to realize the same through the process of the Court. If the amount is deposited by the petitioners, the plaintiff-respondent shall withdraw the same from the Court.

(Mungeshwar Sahoo, J)

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