

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1803 of 2016

=====

Manoj Kumar Gupta & Anr

.... Petitioner/s

Versus

Meera Sahu

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Jitendra Prasad Singh

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

3 26-02-2016

Heard learned counsel Mr. Jitendra Prasad Singh for the petitioner.

By the impugned order dated 03.12.2015/04.12.2015, the learned Munsif, Katihar rejected the application filed by the petitioners to decide the question of maintainability of the counter-claim in Title Suit No.15 of 2012. The learned counsel for the petitioners submitted that in the suit filed by the petitioners the counter-claim should not have been entertained because the relief claimed by the petitioners is with respect to different land and the defendant is claiming relief in the counter claim with respect to different land.

The Hon'ble Supreme Court in the case of ***Jag Mohan Chawala v. Dera Radha Swami Satsang*** as reported in (1996) 4 699 has held as follows:-

“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 that occasioned to lay the suit. The only limitation is that the cause of action should arise before the time fixed for filing the written statement expires. The defendant may set up a cause of action which has accrued to him even after the institution of the suit. The counter-claim expressly is treated as a cross-suit with all the indicia of pleadings as a plaint including the duty to aver his cause of action and also payment of the requisite court fee thereon. Instead of relegating the defendant to an independent suit, to avert multiplicity of the proceeding and needless protraction, the legislature intended to try both the suit and the counter-claim in the same suit as suit and cross-suit and have them disposed of in the same trial. In other words, a defendant can claim any right by way of a counter-claim in respect of any cause of action that has accrued to him 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 the above, settled principle of law, I do not find any reason to interfere with the impugned order passed by the learned lower court.

Thus, the application is dismissed.

(Mungeshwar Sahoo, J)

B.Kr./-

U			
---	--	--	--