

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1108 of 2016**

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Sahadeo Paswan

.... Appellant/s

Versus

Sunil Paswan & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Tara Nath Jha

For the Respondent/s : Mr.

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

2 29-09-2016 Heard the learned counsel, Mr. Tara Nath Jha for the
petitioner.

Perused the impugned order dated 25.04.2016 passed by
Sub Judge, Banmankhi in Title Suit No.79 of 2005 whereby the
learned Court below has recalled the earlier order dated
13.01.2016 by which the counter-claim filed by the petitioner was
accepted. This counter-claim is directed against the defendant
No.4 only.

The learned counsel, Mr. Jha for the petitioner submitted
that once it was accepted then the Court below could not have
recalled the order because when the defendant No.4 filed the
written statement claiming title on the basis of registered sale
deeds, the necessity to file counter-claim arose, as such, the
defendant No.1-petitioner filed the counter-claim. According to
the learned counsel, this counter-claim is not directed against the

plaintiff rather it is against defendant No.4 only.

The Hon'ble Supreme Court in the case of **Rohit Singh & Ors. v. State of Bihar & Ors., 2007(1) PLJR 232(SC)** has held that "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 has necessarily to be directed against the plaintiff, though incidentally or alongwith it, it may also claim relief against co-defendants in the suit. A counter-claim directed solely against co-defendant is not maintainable."

In view of the above settled principles of law laid down by the Hon'ble Supreme Court, the counter-claim filed by defendant No.1-petitioner against defendant No.4 is not at all maintainable. Therefore, the learned Court below has rightly recalled the order and refused to accept the counter-claim.

Thus, there is no illegality in the order, as such, this Civil Miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

Saurabh/-

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