

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20255 of 2012

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Bachi Devi W/O Sri Dashrath Yadav Resident Of Village Sirdalla Tola,
Babni Nagma, P.S. Sirdalla, District Nawadah.

.... Petitioner/s

Versus

Sudama Devi W/O Shri Jagdish Prasad Yadav Resident Of Village
Sirdalla, Tola Babni Nagma, P.S. Sirdalla, District Nawadah.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ray Shivaji Nath, Sr. Advocate,
Mr. Ray Saurabh Nath, Advocate.
Mrs. Manjari Nath, Advocate
For the Respondent/s : Mr.S.S.Dwivedi, Sr. Advocate
Mr. Gauri Shankar Prasad

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

4 08-11-2016 Heard Mr. Ray Shivaji Nath, learned senior counsel
appearing for the petitioner and Mr. S.S.Dwivedi, learned senior
counsel appearing for the sole respondent.

The legal acceptability of the impugned order by
which the learned court below has rejected the petition filed by the
plaintiff petitioner, purported to be under Order 8 Rule 6C,
praying for rejection of the counter claim as raised by the
defendant in the suit, has been questioned in the present
application under Article 227 of the Constitution of India.

There is no dispute to the fact that the parties to the
suit are descendants of Guru Sahay Mahto. The plaintiff Bachi
Devi being the daughter of Guru Sahay Mahto has filed the suit



for partition of the property left behind by her father. Subsequently, after filing of the written statement by the defendant, the prayer of the plaintiff for amendment in the plaint for incorporating the relief against the gift deed executed by the defendant no.1 Ghauli Devi (now deceased) in favour of the defendant no.2 Sudama Devi was allowed. In view of the liberty granted for filing additional written statement, the defendant no.2 filed the additional written statement wherein besides other pleas, a counter claim was sought to be raised against the alienation by gift deed by Guru Sahay Mahto on 22.02.1969 in favour of Ravindra Prasad who is son of the plaintiff. It would be pertinent to notice here that the said Ravindra Prasad is not a party to the suit and during the course of submission, Mr. Nath, learned senior counsel of the petitioner, has pointed out that the property which was gifted to Ravindra Prasad is not the subject matter of the partition suit. The plaintiff raised the objection to the maintainability of the counter claim and prayed for rejection of the said counter claim. The learned court below by the impugned order has turned down the prayer as made by the plaintiff and has decided to entertain the counter claim as made by the defendant in the additional written statement.

Mr. Nath, learned senior counsel for the



plaintiff/petitioner has propounded that under the scheme of Order 8 Rule 6A to 6G C.P.C., the right of the defendant to raise a counter claim is not absolute but is circumscribed by the limitations envisaged therein. Elaborating the submissions, it has been contended that the defendant by filing additional written statement in the suit has also sought to raise a counter claim with regard to the gift deed executed by Guru Sahay Mahto in favour of Ravindra Prasad but the said Ravindra Prasad is not a party to the suit and the property of the subject matter of the gift in his favour is also not the subject matter of the suit. It has been canvassed that the defendant, in the facts and circumstances, might have a cause of action against Ravindra Prasad but his counter claim as referred could not have been entertained as it was not in respect of a cause of action against the plaintiff.

Mr. Dwivedi, learned senior counsel appearing for the respondent, however has supported the impugned order and has also submitted that a petition for impleading Ravindra Prasad as a party to the suit has been filed by the defendant and is pending.

After considering the submissions and the materials on record, it is evident that the suit has been filed by the plaintiff for partition of the property left by the deceased Guru Sahay



Mahto claiming her to be one of his heirs. The relief by way of amendment has also been incorporated regarding the gift deed executed by the defendant no.1 Ghauli Devi, widow of Guru Sahay Mahto, in favour of the defendant no.2 Sudama Devi. The property which has been gifted by Guru Sahay Mahto on 22.02.1969 in favour of Ravindra Prasad is admittedly not the subject matter of the partition suit and the donee Ravindra Prasad is not a party to this suit. In the background of these facts, the assail by the defendant to the gift deed by Guru Sahay Mahto in favour of Ravindra Prasad, by way of counter claim, cannot be encompassed within the provisions of Order 8 Rule 6A CPC which read as follows:-

“6A.Counter-claim by defendant.—(1) 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 has expired, whether such counter-claim is in the nature of a claim for damages or not:

Provided that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the Court.

(2) Such counter-claim shall have the same effect as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and on the counter-claim.

(3) The plaintiff shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the Court.

(4) The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints.”



(emphasis supplied)

It is plain and patent from the aforesaid provision that a defendant can raise a counter claim only with regard to a cause of action which has accrued to such defendant against the plaintiff of the suit. The defendant is not legally entitled to raise a counter claim with regard to a cause of action which has not arisen against the plaintiff but might have arisen against a stranger to the suit. The provision of Order 8 Rule 6C fortifies this legal position when the plaintiff in a suit has been given a right to apply to the court praying for an order for exclusion of a counter claim raised by the defendant on the ground that such a claim by the defendant cannot be disposed of by way of counter claim but in an independent suit.

In view of the facts that the property which has been gifted by Guru Sahay Mahto to Ravindra Prasad by gift deed dated 22.02.1969 is not the subject matter of the partition suit and further also in view of the fact that Ravindra Prasad is not a party to the suit, the learned court below has definitely committed error of jurisdiction as well as material irregularity in passing the impugned order entertaining the counter claim as raised by the defendant after dismissing the objection by the plaintiff/petitioner as raised under Order 8 Rule 6C, by the impugned order.



The present application is, accordingly, allowed and the impugned order is set aside. The plaintiff objection as raised under Order 8 Rule 6(c) CPC is sustained and the counter claim as raised by the defendant in the additional written statement pertaining to the gift deed dated 22.2.1969 in favour of Ravinda Prasad and Guru Sahay Mahto is excluded from consideration in the suit.

This order however, shall not prejudice the right of the defendant respondent to seek appropriate remedy against the gift deed dated 22.2.1969 in favour of Ravindra Prasad and Guru Sahay Mahto in accordance with law.

(V. Nath, J)

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