

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3448 of 2014

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1. Shamim Ahmed Son Of Jamil Ahmed Resident Of Mohalla- Magarhatta,
P.S. Hajipur Town, District- Vaishali

.... Petitioner/s

Versus

1. Saida Khatoon Daughter Of Jamil Ahmed Wife Of Late Abdul Qayum
Resident Of Village- Bhairapur, P.S. Bidupur, District- Vaishali
2. Tanveer Akhtar Son Of Jamil Akhtar Resident Of Mohalla- Manik
Chowk, Hajipur Town, P.S. Hajipur, District- Vaishali
3. Shakeel Ahmed Son Of Jamil Ahmed Resident Of Mohalla- Magarhatta,
P.S. Hajipur Town, District- Vaishali
4. Ishteyaque Ahmed Son Of Shamim Ahmed
5. Akhlak Ahmed Son Of Shamim Ahmed
6. Imtiyaz Ahmed Son Of Shamim Ahmed Residents Of Mohalla-
Magarhatta, P.S. Hajipur Town, District- Vaishali
7. Akhtari Khatoon Daughter Of Jamil Ahmed And Wife Of Md. Chand
Resident Of Village- Sahddulapur Chakphool, P.S. Hajipur, District-
Vaishali
8. Nasima Khatoon Daughter Of Jamil Akhtar And Wife Of Md. Soyeb
Resident Of Village Bharapur, P.S. Bidupur, District- Vaishali
9. Masuma Khatoon Daughter Of Jamil Akhtar And Wife Of Md. Ekbal
Resident Of Mohalla- Nungola, P.S. Hajipur Town, District- Vaishali

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Naresh Chandra Verma
For the Respondent/s : Mr. Anisur Rahman
: Mr. Waliur Rahman

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

4 11-01-2016 Heard Mr. Naresh Chandra Verma, learned counsel for

the petitioner and Mr. Anisur Rahman, learned counsel for

respondent Nos. 1 and 2 as well as Mr. Waliur Rahman, learned

counsel for the respondent No.3.

The petitioner has filed this application under Article
227 of the Constitution of India against the order dated 21.12.2013

passed by the Sub-Judge-III, Hajipur, Vaishali in Title Suit No. 152 of 1990, whereby the court below has accepted the counter claim filed by defendant No.1 rejecting the application filed by the petitioner.

On 07.04.2014, notices were issued by this Court as it was submitted by the petitioner that a counter claim by the defendant against a defendant is not maintainable in view of the decision of the Supreme Court in the case of **Rohit Singh @ Ors. versus State of Bihar (Now State of Jharkhand) & Ors.** reported in **2007 (1) PLJR 232 SC**. A counter affidavit has been filed on behalf of the respondents annexing a copy of the counter claim.

The learned counsel for the respondents submitted that, in fact, the counter claim was filed by defendant No.1 not only against the defendants but also against the plaintiff. Therefore, it is wrong to say that counter claim is only against the defendant.

Perused the order passed by the court below and also written statement-cum- counter claim filed by defendant No.1. From perusal of the same, it is clear that, in fact, counter claim is against the plaintiff also, therefore, above decision, relied upon by the petitioner, is not helpful to the petitioner rather it is helping respondent No.1. Thus, the court below has rightly accepted the claim, which is not only against the defendant but also against the

plaintiff. Accordingly, this writ application is dismissed.

Interim order granted earlier vide order dated 07.04.2014

is vacated.

(Mungeshwar Sahoo, J.)

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