

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.455 of 2016

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Asha Devi & Anr

.... Appellant/s

Versus

Kamlesh Kumar & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Mrigendra Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

2 29-08-2016

Heard learned counsel Mr. Mrigendra Kumar for the
petitioners.

Perused the order dated 11.04.2016 passed by learned
Subordinate Judge-VI, Aurangabad in Partition Suit No.37 of
2006/114 of 2013.

From perusal of the impugned order, it appears that the
learned court below found that on 14.09.2006 the petitioners filed
written statement in the court below. The counter claim has been
filed in the year 2012 that too after examination of all the
witnesses on behalf of the plaintiff and defendant nos.1 to 6.

According to the learned counsel for the petitioners,
amendment application was filed in the year 2010 and thereafter
cause of action arose, as such, counter claim has been filed. So far
this argument of learned counsel for the petitioners is concerned, it
may be mentioned here that according to Order 8 Rule 6A of the

Code of Civil Procedure the cause of action must arise prior to filing of the written statement. Admittedly, in the present case, according to the learned counsel himself, the cause of action arose after the amendment application was allowed by the court below.

In such circumstances, in my opinion, the learned court below has rightly rejected the counter claim, as such, no case for interference in supervisory jurisdiction is made out. Accordingly, this civil miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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