

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.451 of 2016

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1. Ashok Kumar Pandey son of Late Rampujan Pandey
 2. Manjay Kumar Pandey, son of Late Rampujan Pandey Both resident of Village- Rampurva, P.O.+P.S.- Jogapatti, District- West Champaran.
 3. Durgeshwari Devi @ Durgeshwari Kuer, wife of Late Rampujan Pandey resident of Village- Rampurva, P.O.+P.S.- Jogapatti, District- West Champaran.

.... Appellant/s

Versus

1. Rama Kant Pandey, son of Late Chandan Pandey resident of Village- Rampurwa, Patkhauli, P.O.+P.S.- Jogapatti, District- West Champaran.
2. Sri Bachcha Mishra son of Late Bankey Mishra, husband of Godawali Devi, resident of Village- Darwalia, P.O.+P.S.- Jogapatti, District- West Champaran.
3. Harendra Kishore Mishra son of Bachcha Mishra
4. Devendra Mishra, son of Bachcha Mishra Both residents of Village- Darwalia, P.O.+P.S.- Jogapatti, District- West Champaran.
5. Usha Devi, wife of Bineet Tiwari, Daughter of Bachcha Mishra, resident of Village- Ganauli, P.O.+P.S.- Lauria, District- West Champaran.
6. Mamta Devi, wife of Anjani Kumar Shukla, resident of Village- Pakarihar, P.S.- Chanpatia, District- West Champaran.
7. Ayodhya Pandey, son of Late Hari Narain Pandey resident of Village- Rampurwa, P.O.+P.S.- Jogapatti, District- West Champaran.
8. Smt. Jokhan Devi, Daughter of Late Hari Narain Pandey, wife of Anjani Kumar Dwivedy, resident of Village- Rampurwa, P.O.+P.S.- Jogapatti, District- West Champaran.
9. Sri Raghaw Pandey, son of Late Panchanand Pandey
10. Sri Bechan Pandey son of Late Babu Lal Pandey
11. Sri Surendra Pandey, son of Late Babu Lal Pandey
12. Sri Narendra Pandey, son of Late Babu Lal Pandey All (9 to 12) are resident of Village- Rampurwa, Patkhauli, P.O.+P.S.- Jogapatti, District- West Champaran.
13. Smt. Nainpati Devi, Daughter of Late Chandan Pandey, wife of Babulan Tiwari resident of Village- Raibari Mahua, P.O.- Jhar Mahuwai, P.S.- Chautarwa, District- West Champaran.
14. Nirpatti Devi Daughter of Late Chandan Pandey, wife of Madan Shukla,



resident of Jhurapakar, P.O.+P.S.- Bhairoganj, District- West Champaran.

15. Meera Kuer, wife of Late Krishna Prasad Yadav, Daughter of Late Rampujan Pandey, resident of Village- Bishrampur, P.O.+P.S.- Jogapatti, District- West Champaran.
16. Kamini Devi wife of Tribhuwan Nath Tiwari, Daughter of Late Rampujan Pandey, resident of Village- Bagaha-I P.O.+P.S.- Bagaha, District- West Champaran.
17. Anita Devi wife of Pradeep Kumar Mishra, Daughter of Late Rampujan Pandey, resident of Village- Jai Manglapur, Police Station- Shikarpur, P.O.- Narkatiaganj, District- West Champaran.
18. Kanhaiya Pandey, son of Late Rampujan Pandey resident of Village- Rampurwa, P.O.+P.S.- Jogapatti, District- West Champaran.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Shiv Kumar Dwivedy, Adv.

For the Respondent/s : Mr. Lallan Kumar Verma, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 06-03-2017

Heard Mr. Shiv Kumar Dwivedy, learned counsel for the petitioners and also the learned counsel for the respondent no. 1.

The prayer on behalf of the petitioners for correction of the number of the suit as T.S. No. 32 of 1995 in the first paragraph of the application is allowed.

The present application has been filed questioning the legal acceptability of the impugned order dated 03.05.2016 by which the learned court below has admitted the counter claim filed by the defendant no. 3-respondent no. 1 in the suit.

From the perusal of the plaint (Annexure-1), it is evident



that the suit has been filed by the plaintiff claiming several reliefs against the defendants including the defendant no. 3 relating to right, title and interest over the suit land. The alternative relief has also been prayed for partition. The defendant no. 3 filed a counter claim under Order 8 Rule 6(A) C.P.C. which has been admitted by the learned court below by the impugned order.

Mr. Dwivedy, learned counsel for the petitioners has submitted that the impugned order passed by the learned court below is not sustainable in law in view of the fact that the counter claim is confined only to the relief against the other defendants in the suit and no relief against the plaintiff of the suit has been prayed by way of counter claim. It has been further also submitted by referring to the reliefs as prayed in the plaint and the counter claim that the alternative relief for partition which has been prayed by the plaintiff in the suit is the same as alternative relief in the counter claim filed by the defendant no. 3.

Learned counsel for the contesting-respondent however has supported the impugned order.

After considering the submissions and perusal of the materials on record, this Court finds substance in the submission of the learned counsel for the petitioners. From the perusal of the counter claim (Annexure-2) filed by the respondent no. 1, it is manifest that



no relief against the plaintiff has been prayed in the counter claim by the respondent no. 1. Further even in paragraph-18 of the counter claim, it has been stated that the cause of action arose only against the defendants of the suit and there is no statement that any cause of action arose against the plaintiff. In this view of the matter, this Court, in view of the provision as envisaged under Order 8 Rule 6(A), does not find that the counter claim as filed by the defendant no. 3 is at all maintainable. It also transpires that in the counter claim some persons have been made party who are not parties in the suit. The learned court below has passed the impugned order admitting the counter claim without adverting to the aforesaid facts going to the root of the matter. This Court is not persuaded after considering the submission on behalf of the respondent no. 1 that the counter claim as filed can be entertained in law. The impugned order is erroneous and deserves to be overturned.

Accordingly, the present application is allowed and the impugned order is quashed. The learned court below is directed to dispose of the suit expeditiously in accordance with law.

(V. Nath, J)

Devendra/-

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