

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7294 of 2012

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Suresh Mishra

.... Petitioner/s

Versus

Sri Maheshwar Mishra & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Binod Kumar Singh, Advocate.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

5 11-09-2017 Heard learned counsel Mr. Binod Kumar Singh for the petitioner and learned counsel Mr. Ashok Kumar Sinha for respondent nos.1 and 4.

2. The writ application under Article 227 of the Constitution of India has been filed by the plaintiff-petitioner against the order dated 15.12.2011 passed by Subordinate Judge-VIII, Muzaffarpur in Partition Suit No.431 of 2006 whereby the learned court below rejected the objection to the counter claim filed by defendant nos.1 and 4-respondent nos.1 and 4 herein.

3. The short ground raised by the petitioner is that the order passed by the court below is cryptic order and without considering the submission of learned counsel for the plaintiff-petitioner and without considering the legal position the learned



court below has arbitrarily rejected the objection petition.

4. On the other hand, the learned counsel for respondent nos.1 and 4 submitted that the counter claim can be filed even after filing the written statement if cause of action arose prior to filing the written statement.

5. Perused the impugned order dated 15.12.2011 passed by the Subordinate Judge-VIII, Muzaffarpur in Partition Suit No.431 of 2006.

6. From perusal of the order, it appears that what is the case of plaintiff, what is the case of defendant and what is the nature of counter claim filed by the defendant and what is the objection has not at all been mentioned in the impugned order nor the court below considered the objection and the argument of the learned counsel for the plaintiff-petitioner to the counter claim and only it is mentioned that on the basis of the Sirestedar's report the objection to the maintainability of the counter claim is not sustainable. Since the trial court has onerous duty to consider the case of the parties and the submissions and the reason has to be assigned for either allowing or rejecting the submissions, in my opinion, the order impugned is not a judicial order.

7. Thus, this writ application is allowed. The impugned order is set aside and the matter is remanded back to



the court below for passing a fresh order according to law after hearing the parties.

(Mungeshwar Sahoo, J)

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