

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.381 of 2017

- =====
1. Rajeshwar Pandey
 2. Barmeshwar Pandey ,Sons of Late Ramanuj Pandey Both resident of Deuriya, P.S.-Itarhi, District-Buxar.

.... Petitioners

Versus

1. Kishun Pandey
 2. Janardan Pandey
 3. Anil Pandey sons of late Raj Kishor Pandey
 4. Om Prakash Pandey Son of Late Rajgrihi Pandey
 5. Most. Hasmukhiya Widow of Late Rajgrihi Pandey
 6. Mira Devi Wife of Gauri Shankar Pandey
 7. Pramila Devi Wife of Nirmal pathak Respondent No. 6 and 7 both are daughter of Late Rajgrihi Pandey,
- All Resident of Village-Deuriya, P.S. Itahi, District-Buxar.

.... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Lala Sachindra Kumar Mr. Abhitabh Kumar Mr. Anil Kumar, Advocates
For the Respondent/s	:	Mr. T.N.Maitin, Sr. Advocate Mr. Rajeev Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 25-04-2017

Heard Mr. Lala Sachindra Kumar, learned counsel
appearing for the petitioners.

By the impugned order the learned court below has
accepted the counter claim filed by the defendants in the suit for
partition filed by the petitioners.

The matrix of facts discloses that a suit for partition
has been filed by the plaintiffs-petitioners. A written statement
was filed by the defendants wherein they also came out with the



case that certain properties, which had not been included as subject-matter of suit for partition, were also joint family properties which should be partitioned. The suit proceeded and during the pendency of the suit the plaintiff-petitioners prayed for amendment in the plaint praying for exclusion of the properties mentioned by the defendants in the written statement as subject-matter of partition stating that the plaintiffs no more want the partition of those properties (lands mentioned in the written statement). The ground was taken by the plaintiff-petitioners that those lands had already been partitioned during the consolidation proceedings. The defendants thereafter filed additional written statement which included a counter claim for partition of the properties mentioned in the written statement. The learned court below by the impugned order, after considering the facts and circumstances of the case, has accepted the counter claim for consideration and directed the office to submit a report on the counter claim.

Mr. Kumar, learned counsel appearing for the petitioners submits that the learned court below has committed illegality in accepting the counter claim as filed by the respondents ignoring the express provisions as contained in Order 8 Rule 6A CPC. It has been propounded that the



counter claim cannot be entertained in view of the limitation enshrined in the said provision and at the late stage when the issues have been framed and suit has proceeded upto the stage of argument. Reliance has been placed on the decision of the Apex Court in Rohit Singh & Ors. Vs State of Bihar (now State of Jharkhand): AIR 2007 SC 10, in support of the contention that the counter claim cannot be entertained after framing of the issues in the suit. It has been next contended that the counter claim could not have been entertained in absence of the purchasers having been made party who are necessary parties in view of the principle acknowledged in Mulla's Hindu law in Article 333.

After considering the submissions and perusal of the materials on record including the impugned order, it is manifest that it is only after the prayer for amendment on behalf of the plaintiffs has been allowed that the defendants have come out with the counter claim as incorporated in their additional written statement.

It is not disputed on behalf of the petitioners that by the amendment the plaintiffs have sought to exclude the properties mentioned in the written statement from partition. The said amendment has been allowed on 1.2.2016 and



thereafter the additional written statement was filed which contained the counter claim of the defendants. It is, therefore, demonstratively clear that till the stage when the plaintiffs had chosen to amend the plaint, for excluding the properties mentioned in the written statement from partition, the plaintiffs had no objection to the partition of those properties as such. The cause of action therefore, has manifestly arisen to the defendants for filing a counter claim only after the plaintiffs' prayer for amendment has been allowed. The decision in the case of Rohit Singh (supra) has been rendered in different set of facts in view of the provisions as contained in Order 8 Rule 6A CPC. However, in the present case there is no doubt that it is only after the amendment by the plaintiffs that the cause of action for partition of those properties has arisen to the defendants.

So far as the next contention regarding non-impleadment of the purchasers as parties in the counter claim, it is apparent that those purchasers have also not been impleaded in the plaint of the suit for partition even though till amendment the plaintiffs had expressed no objection to partition of those properties. Even otherwise also non-impleadment of the purchasers as parties may result in dismissal of the counter claim but so far as the issue relating to the maintainability of the



counter claim, it cannot be said that in absence of the purchasers as parties in the suit for partition in the counter claim, the said counter claim cannot be maintained.

In the aforesaid background of facts, this Court is not inclined to interfere in the matter under Article 227 of the Constitution of India. This application is, accordingly, dismissed.

(V. Nath, J)

S.Pandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.6.2017
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