

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12387 of 2011

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1. Ganesh Prasad Singh S/O Late Bhaso Rai R/O Vill- Harpur Jairam , P.S.- Barauni , Distt.- Begusarai.
 2. Mahesh Prasad Singh S/O Late Bhaso Rai R/O Vill- Harpur Jairam , P.S.- Barauni , Distt.- Begusarai.
 3. Pappu Kumar Singh S/O Late Bhaso Rai R/O Vill- Harpur Jairam , P.S.- Barauni , Distt.- Begusarai.
 4. Rajesh Kumar Singh S/O Late Bhaso Rai R/O Vill- Harpur Jairam , P.S.- Barauni , Distt.- Begusarai.

.... Petitioner/s

Versus

1. Sri Wakil Prasad Singh S/O Late Shree Singh R/O Vill- Singhma , P.S.- Matihani , Distt.- Begusarai.
2. Rajendra Prasad Singh S/O Late Dasrath Singh R/O Vill- Singhma , P.S.- Matihani , Distt.- Begusarai.
3. Jagdish Prasad Singh S/O Late Dasrath Singh R/O Vill- Singhma , P.S.- Matihani , Distt.- Begusarai.
4. Smt. Bachi Devi W/O Ramanand Singh R/O Vill - Deendaylapur , P.S.- Teghra , Distt.- Begusarai.
5. Akhileshwar Singh S/O Late Turantu Singh R/O Vill.- Singhma , P.S.- Matihani , Distt.- Begusarai.
6. Amashish Singh @ Ashok Kumar Singh S/O Late Turantu Singh R/O Vill.- Singhma , P.S.- Matihani , Distt.- Begusarai.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Dronacharya, Advocate Mr. Amrendra Kumar, Advocate
For the Respondent/s	:	Mr. Kaushal Kumar Singh, Advocate Mr. Ashok Kumar, Advocate Mr. Niraj Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 26-07-2018

The petitioners before this Court is defendant 2nd set in Title Suit No. 54 of 1989 pending in court of Sub Judge-V, Begusarai. They have filed this application for quashing the order dated 05.12.2007 passed by learned court below whereunder the petition filed by petitioners to admit their counter claim as presented in their written statement was rejected.

2. Heard learned counsel for the petitioners as well as learned counsel



for the respondents.

3. The respondent 1st set, i.e., respondent nos. 1, 2 and 3 filed the aforesaid suit for partition of property claiming half share besides some other ancillary reliefs. These petitioners being purchaser from the co-sharer of the plaintiffs filed written statement and prayed to dismiss the suit. These petitioners in their written statement at para-16 have stated that the defendant 1st party at the dictate of plaintiffs have assailed the deeds executed by the ancestors of the plaintiff in favour of these petitioners and so it has become necessary for them to seek relief for declaration and confirmation of their title and possession over the land mentioned in scheduled-B of the written statement. The suit was filed on 05.05.1989 and the defendant 1st set who is co-sharer of plaintiffs filed her written statement on 13.06.1990. On the basis of pleadings of the parties, the court below framed issues on 12.06.2001. After closing the evidence of both the parties, the suit was fixed for argument. In course of argument, the petitioners filed a petition on 20.07.2007 praying to cure the omission and admit the counter claim presented by them which was rejected by the court below as per impugned order dated 05.12.2007.

4. The main contention of petitioners is that the counter claim as made in the written statement is on record and the petitioners have also filed declaratory court fee of Rs.29/25 paise. The respondents did not file any written statement to contest the said counter claim. According to learned counsel for the petitioners, if the said counter claim is not taken into consideration, the petitioners would be seriously prejudiced.

5. Learned counsel for the respondents 2nd set in contra submitted that the counter claim of the petitioners is not maintainable as the same has been claimed against the co-defendants. The petitioners want declaration of their title



and confirmation of possession on the basis of registered documents which were executed in the year 1903, 1906, 1908. The plaintiffs at para-8, 9 and 10 of the plaint have admitted the sale deeds which were executed by the ancestor of the parties. The plaintiffs at para 10 of the plaint have specifically stated that they had no knowledge about the said documents and further that they have no objection if the lands which were transferred by their ancestors are allotted in the share of the parties in whose favour the documents were executed. The learned court below on the basis of pleadings of the parties has framed issues and one of the issue for consideration is as to whether the dispute between the defendants can be considered and decided in this case at the cost of plaintiffs. In this regard, learned counsel for the respondents cited in ruling reported in 2007(1) PLJR 232 wherein the Hon'ble Apex Court at para-18 has observed that the counter claim directed solely against the co-defendants cannot be maintained. The claim of the petitioners raised in the written statement was never pressed before the court below. After 13 years of filing of the suit when the case was being heard on merit, the petitioners pressed the counter claim which has rightly been rejected.

6. From the pleadings and submissions of both the parties, I find that the issues framed by the court below covers the dispute between the parties. These petitioners have filed counter claim against the defendant Ist party as pleaded by her in the written statement. They have sought relief with respect to the documents which were executed for about 100 years ago without paying advoluerum court fee. The claim of the petitioners appears beyond the scope of order 8 Rule 6-A of CPC. The Hon'ble Apex Court in 2007(1) PLJR page 238 at para-18 has observed as follows:-

“18. Normally, a counter-claim, though based on a different cause of action than the one put in suit by the plaintiff could be made. But, it appears to us that a counter-claim has necessarily to be directed against the plaintiff in the suit, though incidentally or alongwith it, it may also claim relief against co-defendants in the



suit. But a counter-claim directed solely against the co-defendants cannot be maintained. By filing a counter-claim the litigation cannot be converted into some sort of an inter-pleader suit. Here, defendants 3 to 17 had no claim as against the plaintiff except that they were denying the right put forward by the plaintiff and the validity of the document relied on by the plaintiff and were asserting a right in themselves.”

7. In view of above facts and proposition of law, I find that counter claim as made in the written statement against the co-defendants is beyond the scope of Order 8 Rule 6-A of CPC. This application being devoid of merit is accordingly dismissed.

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	N/A
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Transmission Date	N/A

(Sanjay Kumar, J)

