

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CIVIL MISCELLANEOUS JURISDICTION No.547 of 2016**

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1. Mohd. Sarfuddin  
2. Mohd. Rejhan  
3. Mohd. Kalim @ Md. Kalimuddin All are sons of late Mohd. Fakruddin,  
resident of Khasganj, P.O. & P.S. Sohسرائ, District Nalanda.

.... .... Petitioner/s

Versus

1. Mohamad Numan, son of late Fakruddin, resident of Khasganj, P.O. & P.S. Sohسرائ, District Nalanda.  
2. Sanjida Khatoon, wife of late Rakib Ahmad.  
3. Guria.  
4. Rajiya Khatoon  
5. Anguri Khatoon Serial 3 to 5 are the daughters of late Rakib Ahmad.  
6. Mohd. Arman  
7. Mohd. Rijwan  
8. Mohd. Ahshan  
9. Mohd. Raja  
10. Mohd. Aligan Serial 6 to 10 are the sons of late Rakib Ahmad.  
11. Mohd. Khurshid Ahmad, son of late Rasidul Haque.  
12. Saida Khatoon, daughter of late Rasidul Haque.  
13. Bibi Mursida Khatoon, daughter of Aisa Khatoon, wife of late Altaf Hussain.  
14. Mohd. Sakil Ahmad, son of late Rasidul Haque. All are resident of Khasganj, P.O. & P.S. Sohسرائ, District Nalanda.  
15. Mohd. Abuzar, son of late Fakruddin, resident of Khasganj, P.O. & P.S. Sohسرائ, District Nalanda- at present residing at Sabjibagh, Dariyapur, P.S. Pirbahore, District Patna.  
16. Mohd. Erfanul Haque  
17. Mohd. Ahsanul Haque  
18. Mohd. Burhamul Haque  
19. Mohd. Amamul Haque Serial 16 to 19 are the sons of late Samima Khatoon  
20. Bibi Israt  
21. Bibi Nuzhat  
22. Bibi Nusrat  
23. Bibi Hasmat  
24. Bibi Nahid  
25. Bibi Rahat Serial 20 to 25 are the daughters of late Samima Khatoon  
26. Bibi Nudrat, wife of late Emranul Haque  
27. Mohd. Rayyan  
28. Mohd. Afan Both are sons of late Emranul Haque (pre-deceased son of Samima Khatoon). Serial 16 to 28 are resident of Khasganj, P.O. & P.S. Sohسرائ, District Nalanda.

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Nilanjan Chatterjee  
For the Respondent/s : Mr. Raj Nandan Prasad  
Mr. Abhimanyu Vatsa



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**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR**  
**JHA**  
ORAL ORDER

7      31-08-2018              Petitioners filed petition on 07.05.2018 that respondent Nos.1, 7, 10 and 13 are not joint with respondent No.14.

It appears from office note that respondent No.7 has refused to accept the notice. Accordingly, the service of notice on respondent No.7 shall be deemed to be validly served. Respondent No.1, 10 and 13 are reported to be out of their residential house but respondent No.14 received notice on their behalf. Respondent No.14 has appeared.

In this view of the fact, there is no need of issuance of notice on respondent No.1, 10 and 13.

Heard both sides.

The petitioners filed this civil miscellaneous petition against the order dated 12.04.2016 passed in Title Suit No.2 of 2001 by which Sub Judge VIII, Nalanda rejected the written statement-cum-counter claim of the petitioners on the ground that the counter-claim against the defendants are not maintainable.

The petitioners are the defendant Nos.4, 6 and 8. The petitioners filed written statement and also put forth counter-claim against other defendants under Order VIII Rule 6 C.P.C. that the passage as mentioned in the plaint is available for egress and



ingress of the defendants and the plaintiffs have also got share in the land.

Learned counsel for the petitioners submits that the counter-claim against the other defendants is not maintainable, the written statement of the petitioners should not have been rejected.

Learned counsel for the respondent Nos.2 to 6, 8, 9, 11, 12 and 14 submits that from the petition of the petitioners, it would appear that the written statement itself is filed under Order VIII Rule 6 C.P.C. Learned Sub Judge has rightly rejected the counter-claim of the petitioners made against the defendants.

Having heard the submissions of both sides and on perusal of records, I do not find the submission of the learned counsel for the respondents acceptable. The petitioners, who are defendant Nos.4, 6 and 8 in the suit, of course, stated in their written statement that the written statement-cum-counter claim is filed under Order VIII Rule 6 C.P.C. but in sum and substance, the petitioners filed written statement supporting the case of the plaintiffs that the petitioners have also got right over the lands which the plaintiffs have claimed and in view of the fact, I find that the learned Sub Judge has committed jurisdictional error by rejecting the written statement of the petitioners. Even if the counter-claim is not maintainable against other defendants, the



written statement of the petitioners should not have been rejected and thus, I find that the order dated 12.04.2016 is not sustainable, accordingly, the same is set aside. The written statement of the petitioners is accepted and this civil miscellaneous petition is accordingly allowed.

**(Prabhat Kumar Jha, J)**

Saurabh/-

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