

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1191 of 2017**

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1. Patilal Sah Son of late Doman Sah Resident of Village- Singhia, P.S. Naya Ram Nagar, District- Munger.

.... Petitioner/s

Versus

1. Sanjay Kumar Sah Son of late Rajendra Pd. Sah Resident of Village Singhia, P.O. Singhia, P.S. Naya Ram Nagar, District- Munger.
2. Bhuneshwar Sao Son of late Ganesh Sao
3. Bachan Kumar Sao
4. Shambhu Kumar Sao Both Sons of Bhuneshwar Sao All residents of Village- Singhia, Post- Singhia, P.S. Naya RamNagar, District- Munger.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Praveen Prakash

For the Respondent/s : Mr.

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

ORAL ORDER

2 27-07-2018 Heard the learned counsel for the petitioner.

Petitioner has filed I.A. No.3823 of 2018 to substitute the legal heirs of sole petitioner, Patilal Sah who died on 17.03.2018 leaving behind his legal heirs fully described in Paragraph 1 of the I.A. The substitution petition is well within time.

I.A. No.3823 of 2018 is allowed.

Let the name of sole petitioner be expunged from the cause title of the petition and in his place, name of his legal heirs fully described in Paragraph 1 of the I.A. be substituted. The substituted legal heirs have already filed vakalatnama.

The petitioner(now deceased being represented through



his heirs) filed this civil miscellaneous petition against the order dated 22.06.2017 passed by Munsif I, Munger in Eviction Suit No.1 of 2012 by which the counter-claim of the petitioner was excluded from the suit of eviction filed by the plaintiff.

The plaintiff filed the suit for eviction of the suit premises and also made the petitioner as defendant No.4 stating in the plaint that defendant No.4 filed a case before the D.C.L.R. under Land Dispute Resolution Act on 25.10.2011 claiming the house of his own but the plaintiff has not been made party to the proceeding before the D.C.L.R. The defendant No.4 appeared and filed counter-claim claiming the lands to be his own. Learned Munsif after hearing both sides excluded the counter-claim of the petitioner on the ground that in eviction suit, the question of title of the defendant cannot be considered and relegated defendant No.4 to file a separate suit.

The learned counsel for the petitioner submits that petitioner is not at all a necessary party in the eviction suit filed against the defendant No.1 but the plaintiff intentionally impleaded the petitioner as defendant No.4 so that in the garb of eviction, prima facie, the title of the plaintiff can be decided. The petitioner filed counter-claim that he is the owner of the land. The learned counsel for the petitioner further placed his reliance on



para 5 of the judgment of the Supreme Court reported in (1996) 4 Supreme Court Cases 699 (Jag Mohan Chawla and another v. Dera Radha Swami Satsang and others) in which it has been held that the words “any right or claim in respect of a cause of action accruing with the defendant” would show that the cause of action from which the counter-claim arises need not necessarily arise from or have any nexus with the cause of action of the plaintiff that occasioned to lay the suit. The only limitation is that the cause of action should arise before the time fixed for filing the written statement expires. The defendant may set up a cause of action which has accrued to him even after the institution of the suit. The counter-claim expressly is treated as a cross-suit with all the indicia of pleadings as a plaint including the duty to aver his cause of action and also payment of the requisite court fee thereon. Instead of relegating the defendant to an independent suit, to avert multiplicity of the proceeding and needless protection, the legislature intended to try both the suit and the counter-claim in the same suit as suit and cross-suit and have them disposed of in the same trial but on plain reading of the plaint as well as the case on which the learned counsel for the petitioner placed reliance, I find that of course, the defendant No.4 has been made party-defendant in the suit for eviction but the plaintiff has not stated



anywhere in the plaint that any cause of action arose against defendant No.4. Simply in para 7 of the plaint, plaintiff stated that he came to know that the petitioner filed a case under Land Dispute Resolution Act on 25.10.2011 before the D.C.L.R. claiming the house of his own but the defendant No.4 did not make the plaintiff a party in that case. Besides this fact, the plaintiff nowhere in the plaint claimed any relief against defendant No.4 nor stated about any cause of action arose against defendant No.4. Defendant No.4 filed counter-claim claiming to be the owner of the land. In an eviction suit, the title of a party cannot be looked into and much less a proforma defendant against whom plaintiff has got no cause of action, nor plaintiff sought any relief against him can file counter-claim claiming title over the land. Therefore, I find that the learned Munsif has rightly rejected the counter-claim of the petitioner and excluded the same from the purview of the eviction suit with liberty to file separate suit.

Having considered the facts aforesaid, I do not find any merit in this civil miscellaneous petition. Accordingly, the same is dismissed.

(Prabhat Kumar Jha, J)

Saurabh/-

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