

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1580 of 2017

1. Panchdeo Rai @ Panchdev Yadav, Son of Ram Das Rai Yadav
2. Nagendra Rai, Son of late Sheoji Rai.
3. Rajesh Rai Son of Yogendra Rai
4. Badri Nath Prasad, Son of Late Ram Barai Sah Residents of Village & P.O. Kanhi, P.S. Jalalpur, District-Saran.
5. Amit Kumar Singh, Son of Madan Singh, Resident of Village & P.O. Chaukhara, P.S. Kopa, District-Saran.
6. Bindeshwari Mishra
7. Ramanand Mishra, Sons of Late Kapildeo Mishra, Residents of Village-Kanhi, Mishrawaliya, P.O. Kanhi, P.S. Jalalpur, District-Saran.

... .. Defendants/Petitioners

Versus

1. Shyama Nand Mishra
2. Rameshwar Mishra Sons of Late Kapildeo Mishra, Residents of Village-Kanhi Mishrawaliya, P.O. Kanhi, P.S. Jalalpur, District-Saran.

... ..Plaintiffs/Respondents 1st Set

3. Ramawati Devi Wife of Dhrup Nath Rai Resident of Village & P.O. Kanhi, P.S. Jalalpur, District-Saran.
4. Most. Sheo Kumari Kuer, Wife of Late Mahendra Prasad Yadav.
5. Matendra Kumar Singh, Son of Khedan Singh Residents of Village & P.O. Chaukhara, P.s. Kopa, District Saran.
6. Gayatri Devi, Wife of Bachan Ojha & Daughter of Late Vindhyachal Mishra, Resident of Village-Phulwariya, P.O. Khaira, District-Saran.

... .. Defendants/Respondents 2nd Set

Appearance :

For the Petitioners	:	Mr. Nagendra Rai, Advocate
For the Respondents	:	Mr. S.S. Dwivedi, Senior Advocate

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

3 13-12-2018 Heard Mr. Nagendra Rai, the learned counsel appearing on behalf of the petitioners and Mr. S.S. Dwivedi, the learned senior counsel appearing on behalf of the respondents.

The petitioners have filed this civil miscellaneous petition under Article 227 of the Constitution of India for setting



aside the order dated 08.06.2017, passed by learned Sub-Judge-4, Chapra in Title Suit No.1151 of 2013.

The petitioners are defendants no.9 and 10 in the suit. Petitioners filed W.S. on 14.12.2015 and thereafter filed counter claim on 11.05.2017 for declaration that the gift deed executed by Kapildeo Mishra and his wife in favour of the plaintiffs are illegal, null and void and not binding on the defendants. The plaintiff in the suit prayed for declaration of the five sale deeds executed by defendants no.9 and 10 in favour of defendant 1st set as illegal, void and without any title. The counter claim of the petitioners has been rejected by the court mainly on the ground; (i) the defendant should have stated about the counter claim in his Written Statement in view of the provisions under Order VIII Rule 6-B of the Code of Civil Procedure and (ii) the defendants have already stated in the plaint about the cancellation of the deed of gift dated 31.08.1984 on 16.10.1984 and on such the relief for cancellation of such gift deed is not maintainable as the cancelled deed does not require to be cancelled by the court.

Mr. Nagendra Rai, the learned counsel for the petitioners submits that defendants no.9 and 10 have stated the entire facts in their Written Statement filed on 14.12.2015 but



due to ignorance/inadvertence the facts of counter claim have not been mentioned but that does not mean that if the defendants did not state the facts of counter claim in Written Statement, the defendants shall be precluded from filing counter claim after filing the Written Statement. It is submitted that the reason on which the counter claim of the petitioners has been rejected is illegal. The counter claim can be filed even after filing of the Written Statement as has also been held by the Hon'ble Supreme Court in the case of Mahendra Kumar v. State of M.P., reported in AIR 1987 SC 1395, Shanti Rani Das Dewanjee v. Dinesh Chandra Day, reported in AIR 1997 SC 3985.

Contending the submissions of the learned counsel for the petitioners, Mr. S.S. Dwivedi, the learned counsel appearing on behalf of the plaintiffs-respondents no.1 and 2 submits referring the provisions of Order VIII Rule 6-B which says that the defendant should at least state the grounds as supporting a right of counter claim in his Written Statement and such statement should be specially made that he does so by way of counter claim but no such statement is made. Mr. S.S. Dwivedi has placed reliance on the judgment of the Hon'ble Supreme Court in the case of Ramesh Chand Ardawatiya v. Anil Panjwani, reported in (2003) 7 SCC 350 particularly on para 28



of the judgment in which it has been held that the scheme of Order 8 as amended by Act 104 of 1976, there are three modes of pleading or setting up a counter-claim in a civil suit. Firstly, the Written Statement filed under Rule 1 may itself contain a counter-claim which in the light of Rule 1 read with Rule 6-A would be a counter-claim against the claim of the plaintiff preferred in exercise of legal right conferred by Rule 6-A. Secondly, a counter claim may be preferred by way of amendment incorporated subject to the leave of the court in a written statement already filed. Thirdly, a counter-claim may be filed by way of a subsequent pleading under Rule 9. In the latter two cases the counter-claim though referable to Rule 6-A cannot be brought on record as of right but shall be governed by the discretion vesting in the court, either under Order 6 Rule 17 CPC if sought to be introduced by way of amendment, or, subject to exercise of discretion conferred on the court under Order 8 Rule 9 CPC if sought to be placed on record by way of subsequent pleading. The purpose of the provision enabling filing of a counter-claim is to avoid multiplicity of judicial proceedings and save upon the court's time as also to exclude the inconvenience to the parties by enabling claims and counter-claims, that is, all disputes between the same parties being



decided in the course of the same proceedings. It is submitted that no such pleading or averment is made in the counter claim. Mr. Dwivedi, the learned senior counsel further submits that in view of the averment made in the Written Statement about the execution of the gift deed and its cancellation by a registered deed on 16.10.1984 on persuasion of the defendant, the counter claim is barred by limitation.

Having considered the submissions of both sides and on perusal of the records, the only question arises for consideration in this case is whether the counter claim filed by the defendants no.9 and 10 after filing of the Written Statement is maintainable without going into the other aspects whether the counter claim is barred by limitation, I am of the view that the learned Sub-Judge has committed illegality holding that the defendants have not stated about the cause of action of filing the counter claim in the Written Statement, therefore, the counter claim is not maintainable and on the second ground that the defendants sought relief for declaration of the gift deed which has already been cancelled by another registered deed, therefore, the prayer for cancellation the deed is not maintainable. I find that the counter claim can be filed even after filing the Written Statement as has also been held in the case of Mahendra Kumar



(supra) in paragraph-15 and similarly in the case of Shanti Rani Das Dewanjee (supra) in paragraph-2. Thus, I find that the order rejecting the counter claim on the aforesaid two grounds not sustainable. Accordingly, the order dated 08.06.2017, passed by learned Sub-Judge-4, Chapra in Title Suit No.1151 of 2013 is set aside. Matter is remitted to the learned Sub-Judge to hear both parties and pass order on the acceptability of the counter claim of the defendants afresh in accordance with law.

The civil miscellaneous petition is thus allowed.

(Prabhat Kumar Jha, J)

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