

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16790 of 2014

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1. Bhol Singh
 2. Mukh Narain Singh
 3. Sakaldeo Singh All S/o Late Shivchand Singh Resident of Village parsurampur,
P.O. Parsurampur, P.S. Manjha, District Gopalganj.

.... Petitioner/s

Versus

1. Rameshwar Singh
2. Ramashish Singh
3. Ram Surat Singh
4. Bachchan Singh All S/o Late Ramjeet Singh
5. Sitapati Devi
6. Babuuti Devi
7. Laljhari Devi All D/o Late Ramjeet Singh All Resident of Village Sadarpur,
P.S. Barharia, District Siwan, Presently residing at Village & P.O. Parsurampur,
P.S. Manjha, District Gopalganj.
8. Smt. Samrajia Devi W/o Deodhari Singh
9. Kali Charan Singh S/o Late Shivchand Singh Both Resident of Village + P.O.
Parsurampur, P.S. Manjha, District Gopalganj.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Devendra Kumar Singh, Advocate

For the Respondent/s : Mr. Harendra Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 24-04-2018

This application has been filed for setting aside the order dated 05.02.2014 passed by Sub Judge-III, Gopalganj in Title Suit No.511 of 2007 whereby and whereunder the learned court below rejected the petition filed by the petitioners.

2. Heard learned counsel for the petitioners and the respondents.

3. The respondents filed the aforesaid suit for declaration of their title over the land in question. The plaintiffs claim title by



virtue of registered deed of gift. The petitioners appeared and filed written statement. The court below framed issues and proceeded for trial. When the case was pending for evidence, the defendants filed application claiming his title over 12 dhurs land out of the suit land. The learned court below after hearing both sides dismissed the counter claim observing that the claim of defendant/petitioners is barred by limitation. It has been submitted that the petitioners and respondents are descendants to common ancestors and both of them claim right and title over some of the portion of the suit property. The plaintiffs have forcibly encroached and constructed the house over some of the portion and so the defendants are entitled to recovery of possession. The learned counsel for the respondents on the other hand supported the impugned order by stating that the petitioners have not filed any counter claim at the initial stage when they appeared and filed written statement and so the court below has rightly rejected the prayer of the defendants.

4. On perusal of documents on record, I find that the plaintiffs filed the suit on 08.11.2007 and after filing written statement, the court below framed issues for determination of suit. The defendant has not produced the copy of written statement to show as to what defence was delivered by him at the time of filing of written statement. The petitioner filed counter claim after six years,



i.e., on 14.03.2013. The provision of putting counter claim is provided in Order 8 Rule 6-A of CPC which runs as follows:-

“6-A. Counter-claim by defendant.—(1) A defendant in a suit may, in addition to his right of pleading a set-off under rule 6, set up, by way of counter-claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not:.....”

5. The above provision shows that a right to file counter claim is an additional right. It may be filed in respect of any right or claim, the cause of therefore, however must accrued either before or after filing of the suit but before the defendant has raised his defence. The petitioners have not produced copy of written statement to show his defence. The claim of respondents/plaintiffs is based on registered deed of gift executed by one of the co-owner. The petitioners on the other hand alleges that respondents have forcibly constructed the structure over some of the portion of the suit land on 07.03.2007, i.e., much before filing of the suit. The petitioners have come with case of encroachment by plaintiffs after six years of filing of the suit. There does not appear any nexus of counter claim with the cause of action of plaintiff for the suit. The court below in its order has observed that the defendants have not disclosed their case of dispossession by the



plaintiffs from any portion of the suit land.

6. In view of aforesaid discussions, I do not find any merit in this application and the same is accordingly dismissed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	03.05.2018
Transmission Date	03.05.2018

