

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.79 of 2018

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1. Gulam Sabir Ali @ Gulam Jilani
2. Arif Raja, 1 to 2 are Sons of Late Akhtar Hussain
3. Aklima Khatoon @ Allima D/o Late Akhtar Hussain.
4. Ali Akhtar @ Md. Akhtar Hussain S/o Late Jamdar Mian.
5. Munaija Khatoon
6. Sariyam Khatoon
7. Mementara Khatoon @ Main Tara
5 to 7 are daughters of Late Jamdar Mian, All are R/o village-Girdhar Parsa, P.S.-Phulwaria, District-Gopalganj

.... Petitioner/s

Versus

1. Gyatri Devi, W/o Late Lalan Pandey.
2. Sanjay Kumar, Son of Late Lalan Pandey.
3. Lilam Kumari.
4. Punam Kumari.
5. Sandhya Kumari.
6. Rambha Kumari. 3 to 6 are Daughters of Late Lalan Pandey.
7. Rasool Mian S/o Kramdil Mian.
8. Sakina W/o Islam.
9. Gulbano Khatoon, W/o Mumtaz.
10. Saliman Nesh W/o Late Peshkar Mian.
11. Mansi.
12. Moharam.
13. Ansar.
14. Anwar.
15. Neshar. 11 to 15 are Sons of Late Peshkar Mian.
16. Khairul Neshar.
17. Sairul Neshar. 15 to 17 are Daughter of Late Peshkar Mian.
18. Gafoor Ian, Son of Sawtullah Mian.
19. Nazmullah.
20. Abdullah
21. Tahir 18 to 21 are Sons of Late Khudan
22. Chand Tara.
23. Jainab Khatoon.
24. Ajmeri 22 to 24 are Daughter of Late Khudan.
7 to 24 are Defendants-respondents 2nd set
25. Madina W/o Late Akhtar Hussain
26. Shakil Ahmad.
27. Irshad. 26 to 27 are Sons of Late Akhtar Hussain.
28. Jainab
29. Khusneja Khatoon. 28 to 29 are Daughters of Late Akhtar Hussain.
30. Shaukat Ali.
31. Amjad Ali 30 to 31 are Sons of Late Jamdar Mian, 25 to 31 are Plaintiffs-Respondents. All 1 to 31 are R/o Village-Girdhar Parsa, P.S.-Phulwaria, District-Gopalganj.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Yogendra Prasad Sinha

For the Respondent/s : Mr.

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

ORAL ORDER

2 13-07-2018 Heard both sides.

Heard Mr. Yogendra Prasad Sinha, learned counsel
appearing on behalf of the petitioners.

The petitioners-plaintiffs filed this civil miscellaneous
petition against the order dated 07.10.2017 by which the learned
Sub Judge-XII, Gopalganj allowed the format of counter claim to
be incorporated in the written statement on payment of cost of Rs.
500/-.

The learned counsel for the petitioners submits that
Title Suit No.124 of 1993 was filed for declaration of title and
confirmation of possession. The defendant nos.1 to 6 filed written
statement on 05.11.1999. Immediately thereafter, the defendant
filed petition under Order VI Rule 17 for amendment of written
statement and for incorporating counter-claim in the written
statement. The same amendment was allowed vide order dated
15.07.2000. The defendant filed format of counter-claim on
13.07.2017 but the format of counter-claim was accepted by the
impugned order dated 07.10.2017 It is submitted that acceptance
of the format was barred by law of limitation as contained in



Article 113 of the Limitation Act. It is further submitted that the order suffers from illegality and the Court should not have accepted the format of counter-claim after about 17 years but I find no force in the submission of the learned counsel for the petitioner on the simple ground that the defendant nos.1 to 6 filed written statement on 05.11.1999. Immediately thereafter, the defendant filed amendment petition seeking relief for amendment of written statement inserting the counter-claim and the same amendment was allowed vide order dated 15.07.2000. The format of counter claim means that the amended portion of the written statement was filed on 13.07.2017. There is no limitation in filling the amended written statement and it can not be said that there shall be any period for limitation for filing the performa written statement containing counter-claim.

Having considered the facts aforesaid, I do not find any jurisdictional error or illegality in the order impugned. Accordingly, this civil miscellaneous petition is dismissed.

(Prabhat Kumar Jha, J)

Saurabh/Rajan

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