

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15194 of 2014

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1. Mahesh Jha
 2. Ganesh Jha
 3. Govind Mohan Jha
 4. Ajay Krishna Jha
All sons of late Kameshwar Jha, resident of village and P.O. Majholia, P.S. Ashok Paper Mill, District Darbhanga.
 5. Meera Jha daughter of late Kameshwar Jha, wife of Jitendra Choudhary, R/o Village Govindpur, P.O. Laheriasarai, P.S.- Laheriasarai, District- Darbhanga
 6. Meena Jha, daughter of late Kameshwar Jha, wife of Jiwan Kishore Jha, resident of village Sobhapatti, P.S. Ashok Paper Mill, District Darbhanga.
 7. Moti Devi, daughter of late Kameshwar Jha, wife of Pradeep Choudhary, R/o village- Bhalpatti, P.S. Sadar Darbhanga, O.P. Bhalpatti, District Darbhanga.

.... Petitioner/s

Versus

1. Ashok Chandra Choudhary son of Sri Satyadeo Choudhary of Mohalla Bangali Tola, P.O. Laheriasarai, District- Darbhanga.
2. Ram Babu Thakur son of late Sadanand Thakur, resident of village Madhopur, P.O. Siso, District Darbhanga, at present mohalla Bangali Tola Ward No. 31, P.O. and P.S. Laheriasarai, District Darbhanga.
3. Punam Choudhary wife of Kalika Choudhary, resident of village and P.O. Majholia, P.S. Ashok Paper Mill, District Darbhanga, at present mohalla Bangali Tola, Ward No. 31, P.O. and P.S. Laheriasarai, District Darbhanga.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shivnandan Prasad Singh, Adv.

For the Respondent/s M/s Baidyanath Thakur and Ranjan Kr. Dubey, Advs.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 09-03-2018

Petitioners are the legal heirs of defendant no. 3 of Title Suit No. 25 of 2007 pending in the court of learned Sub-Judge-IV, Darbhanga. They have filed this application for setting aside the order dated 01.03.2014 passed in the aforesaid suit.

2. Heard learned counsels for the petitioners as well as the respondents.



3. The respondent 1st party filed the aforesaid Title Suit No.25 of 2007 against the remaining respondents and the ancestor of these petitioners for declaration of title and recovery of possession over the land mentioned in schedule-II of the plaint and also for damages for illegal possession of the defendants at the rate of Rs.1,000/- per month. The defendant no. 3 appeared and filed a written statement and sought relief by way of counter claim. The respondent no. 1 (plaintiff) filed a petition on 20.03.2013 under Order 8 Rule 6 of Code of Civil Procedure for exclusion of counter claim made by the defendant no.3 from paragraphs 17 to 30 of the written statement and relief A.B.C. of paragraph 30 of the written statement. The defendant filed rejoinder to the said petition and the court below after hearing both sides, rejected the counter claim of the petitioners as per impugned order dated 01.03.2014.

4. Learned counsel for the petitioners submits that the claim of these petitioners is genuine and bona fide and is not against the statement made in the written statement. The court below without considering the merit in the claim of the petitioners, has allowed the petition of the plaintiff and excluded the counter claim made in the written statement.

5. The learned counsel for the respondents on the other hand submits that the counter claim is not sustainable. In the present



suit, the plaintiff claimed the said property by virtue of registered sale deed dated 21.07.2005 which was executed by Ramesh Chandra Chakravarty, who is not party to the present suit. Petitioners want relief against a person who is not on record. Petitioners further want relief with respect to revisional survey entry in the name of vendor of the plaintiff as not binding on them. The court below finding the claim of the petitioners beyond the scope of suit between the parties, has rightly rejected their counter claim. The court has no jurisdiction to decide the counter claim of the petitioners which relates to a person who is not party to the suit. The revisional survey entry stands in the name of vendor of the plaintiff, but the vendor of the plaintiff is not party to the suit and so in absence of vendor of the plaintiff, the matter cannot be adjudicated.

6. In view of above facts, I do not find any merit in this application and is accordingly dismissed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	17.03.2018
Transmission Date	

