

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.2123 of 2017**

Binod Singh, S/o Late Ram Sundar Singh, resident of Village- Ishwarpura,
P.O.- Ishwarpura, Police Station- Shahpur, District- Bhojpur.

... .. Petitioner/s

Versus

1. Rajgovind Singh S/o late Dhenukdhari Singh resident of Village and P.O.-
Ishwarpura, P.S.- Sahpur, District- Bhojpur.
2. Uma Shankar Singh, S/o Late Biriginath Singh, resident of Village and P.O.-
Ishwarpura, P.S.- Sahpur, District- Bhojpur.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Sanat Kumar Mishra
For the Respondent/s : Mr.

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

Date : 07-12-2018

This civil miscellaneous petition under Article 227 of the Constitution of India has been filed for quashing the order dated 01.11.2017 passed by Sub Judge, Jagdishpur, Bhojpur in Title Suit No.184 of 2014 whereby the learned Court below rejected the counter-claim filed on behalf of defendant No.1- petitioner.

It is unnecessary to put forth the facts in detail save and except the relevant facts which can be summarised as follows:

The plaintiffs filed the suit for declaration that in absence of non-payment of consideration money by the defendant, the title of lands in question remained with the plaintiffs and during the pendency of the suit, if the plaintiff is



illegally dispossessed from the suit lands, the recovery of possession may be given to the plaintiff. Further relief is that Court may pass a decree setting aside registered sale deed dated 24.10.2011 executed by the plaintiff as per the terms and conditions of the sale deed on account of non passing of the consideration amount and for restraining the defendant from dispossessing the plaintiff from the suit lands.

The defendant filed written statement asserting that the defendant made payment of the entire consideration amount along with other expenditure at the time of registration of the sale deed on 24.10.2011 and non handing over the Rashid bechi is illegal and the defendant is always ready and willing to pay the consideration money with a condition to delete the name of defendant No.2 who was also one of the vendees of the sale deed in question.

Defendant No.2 appeared and filed written statement supporting the case of the plaintiff. The issues are yet to be settled. The petitioner in view of the statement made in para 21 of the written statement filed counter claim on affidavit on 22.11.2016 after paying ad valorem court fee praying therein that the defendant No.1 be directed to make payment of the consideration amount lying against defendant No.2 and the



plaintiff be further directed to hand over the registered sale deed in question holding that defendant No.2 shall have no title on the disputed lands by virtue of the sale deed in question. The plaintiff as well as defendant No.2 filed counter reply. The learned court below after hearing both sides held vide order dated 01.11.2017 that the defendant filed his written statement on 01.12.2015 whereas the plaintiff of the counter-claim, Binod Singh, defendant No.1 filed counter-claim against Rajgovind Singh and Uma Shankar Singh, the plaintiff and defendant No.2 on 22.11.2016. The counter-claim filed by the defendant is much after the filing of written statement by the defendant, therefore, the counter claim is not maintainable.

Mr. Anil Kumar Jha, learned senior counsel for the petitioner submits that findings of the learned Sub Judge is illegal, erroneous and not sustainable in the eye of law. Order VIII Rule 6A provides for filing of set off or counter claim by the defendant if the cause of action for such counter claim arises before the filing of written statement but it is not necessary and mandatory to file counter claim before or at the time of presenting the written statement. Learned counsel for the petitioner in support of his contention placed reliance on para 2 of the judgment of the Supreme Court in the case of Smt. Shanti



Rani Das Dewanjee v. Dinesh Chandra Day(dead) by LRs., AIR 1997 Supreme Court 3985. Learned counsel further placed reliance on a Single Bench judgment of this Court in the case of Asha Devi v. Kiran Kumari & Anr., 2018(4) PLJR 234 in which this Court placed reliance on the judgment of the Hon'ble Supreme Court reported in AIR 1997 Supreme Court 3985(supra). Learned senior counsel further submits that in the case of Vijay Prakash Jarath v. Tej Prakash Jarath, (2016) 11 Supreme Court Cases 800, the Hon'ble Supreme Court held that the plaintiff filed suit on 09.11.1992 in which defendant(appellant before the Supreme Court) filed written statement on 11.11.1992. Thereupon issues came to be framed on 18.10.1993. After which appellants-defendants of the suit filed counter-claim on 17.06.1996 almost 2 ½ years after framing of issues. The trial court accepted aforesaid counter claim but the High Court held that counter-claim was not legally acceptable. Hon'ble Supreme Court held that undisputedly cause of action on the basis of which counter-claim was filed by the appellants accrued before their written statement was filed on 11.11.1992. The respondent's(plaintiff in the suit) evidence was still being recorded by trial court when counter-claim was filed. Hon'ble Supreme Court held that no serious or irreparable



loss would be suffered by the respondents(plaintiff in the suit) and it was held that the defendants(appellants) were well within the right to file counter-case.

Mr. Sandeep Kumar Shahi, learned counsel for the respondents vigorously argued that the plain reading of Order VIII Rule 6A C.P.C. makes it crystal clear that if the cause of action for the counter claim arises before filing of the suit or before filing of the written statement the counter-claim shall be along with the written statement and after filing of the written statement, the counter claim by defendants is not maintainable.

On submissions of both sides, one and only one question arises for consideration “whether the counter-claim filed after filing the written statement can be held to be bad and not maintainable or ex facie barred?”

It is relevant to reproduce Order VIII Rule 6A C.P.C.:

“6A. 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:



Provided that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the Court.

(2) Such counter-claim shall have the same effect as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and on the counter-claim.

(3) The plaintiff shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the Court.

(4) The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints.

The plain reading of Order VIII Rule 6A C.P.C.

shows that the counter-claim filed under Order VIII Rule 6A can be filed even after filing of the written statement provided that the cause of action for filing the counter-claim has arisen before or after the institution of the suit and such cause of action has continued till the filing of the written statement. This question also came up for consideration in the case of Mahendra Kumar v. State of M.P., AIR 1987 Supreme Court 1395 and Hon'ble Supreme Court held that the right to file counter-claim under Order VIII Rule 6A C.P.C. is referable to the date of accrual of the cause of action. If the cause of action had arisen before or after the filing of the suit and such cause of action continued upto the filing of written statement or extended date of filing written statement, such counter claim can be filed even after filing the written statement. The limitation for counter claim



shall be reckoned from the date of arising the cause of action and if such counter-claim is filed even after filing the written statement that cannot be held to be ex facie barred under Order VIII Rule 6A C.P.C. Similar view has also been reiterated in the case of Smt. Shanti Rani Das Dewanjee v. Dinesh Chandra Day(dead) by Lrs., AIR 1997 Supreme Court 3985.

In the case of Vijay Prakash Jarath v. Tej Prakash Jarath, (2016) 11 Supreme Court Cases 800, plaintiff filed the suit on 09.11.1992 in which defendant Nos.3 and 4 in the original suit filed written statement on 11.11.1992. Thereupon issues came to be framed on 18.03.1993 after which the defendants(appellants before the Hon'ble Supreme Court) filed counter-claim on 17.06.1996 i.e. almost 2 ½ years after framing of issues. It has been held that the counter-claim filed by the defendants is maintainable. Therefore, I find that the order of the learned Sub Judge holding that the counter-claim filed by the defendant No.1 on 22.11.2016 against the plaintiff and the defendant No.2 of the original suit is not maintainable because defendant No.1 filed written statement on 01.12.2015, is erroneous and illegal and not sustainable in the eye of law.

In view of the discussion made above, order dated 01.11.2017 passed by Sub Judge, Jagdishpur, Bhojpur in Title



Suit No.184 of 2014 is set aside. The counter-claim of the petitioner-defendant No.1 is admitted. This civil miscellaneous petition is accordingly allowed.

(Prabhat Kumar Jha, J)

Saurabh/-

AFR/NAFR	NAFR
CAV DATE	N/A
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