

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15265 of 2012

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1. Rama Shankar Singh Son of late Ram Das Singh, Resident of Village Barka Lauhar, Police Station Barhara, P.O. Mauhar Farna, District- Bhojpur.

.... Petitioner

Versus

1(a) Prashant Bhushan Singh @ Chintu

(b) Ravi Bhushan Singh @ Vishal

both are Sons of late Uma Shankar Singh, Resident of Village- Barka Lauhar , P.S. Barhara, P.O. Mouhar Farma, District Bhojpur.

2. Uma Shankar Singh Son of late Ram Dayal Singh

3. Kanhaiya Singh Son of late Shivraj Singh

4. Dhananjay Singh Son of late Ram Kikar Singh

5. Surendra Singh, Son of late Baban Singh

6. Bharat Singh Son of late Ram Kikar Singh

7. Lakhan Ray Son of late Ram Kikar Singh

8. Siripati Singh Son of late Bhuneshwar Singh

9. Bijay Singh Son of late Bhuneshwar Singh

10. Tribhuwan Singh Son of late Bhuneshwar Singh

11. Kailashpati Singh Son of late Bhuneshwar Singh

12. Banke Bihari Singh Son of late Bhuneshwar Singh

13. Omkar Singh Son of late Shiv Mangal Charan Singh

14. Gupta Singh Son of late Udho Singh

15. Shailendra Singh Son of late Udho Singh

16. Chaturbhuj Singh Son of late Ram Adhin Singh

17. Sidhnath Ram Son of late Ram Adhin Singh

18. Chandeshwar Singh Son of late Ram Adhin Singh

19. Ramendra Singh Son of late Ram Adhin Singh

20. Satyendra Singh @ Timil Kaka Son of late Ram Adhin Singh

21. Binod Singh

22. Santosh Kumar Singh

Both Sons of late Damodar Ray

23. Satish Singh Son of late Damodar Singh

24. Girdhari Ray Son of late Sangram Ray,

All resident of village Baraka Lahaur Police Station Barhara, P.O. Mauhar Farana, District Bhojpur.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Sidhendra Narayan Singh, Advocate

For the Respondent/s : None

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 11-10-2018

Petitioner is plaintiff in Title Suit No.250 of 2008 pending in the court of Subordinate Judge I, Ara. He has filed the aforesaid suit



against his only brother seeking partition of suit property mentioned in Schedule I of the plaint claiming $\frac{1}{2}$ share therein. In course of trial, both the parties adduced evidence and when the case was pending for argument, the defendant filed counter claim with respect to a house standing in the name of plaintiff at Allahabad. The learned court below after hearing both sides, allowed the counter claim subject to payment of cost of Rs.500/-.

2. Heard learned counsel for the petitioner and perused the record.

3. It has been submitted that the petitioner retired from Air Force Service and during his service period he constructed a house at Allahabad from his personal income and so the said property is his self acquired property. The defendant, who is full brother of this petitioner, was also in job at Bokaro. The defendant, who was plaintiff in Title Suit No.325 of 1999 was examined as plaintiff's witness no.4 on 31.07.2009 and in course of his cross-examination at paragraph 17 has stated that his brother Rama Shankar Singh has his own house at Allahabad. He has further stated that he has no concern with the house of his brother which was constructed by him at Allahabad. The plaintiff at paragraph 6 of the plaint has stated that he had constructed the house at Allahabad after his retirement from his own income.

4. Thus I find that the defendant is aware of the said acquisition of the plaintiff. So in view of his admission in evidence on



oath as regards personal acquisition of the petitioner, he has no right to file any counter claim against the plaintiff particularly at the stage of argument and so the impugned order is not sustainable.

5. Nobody appeared for the respondents.

6. On going through the documents on record, I find that the counter claim has been filed by the defendant at the time of argument. The defendant has claimed share in the house of plaintiff which is not the subject matter of partition. The said house situates at Allahabad. The defendant in his evidence in Title Suit No.325 of 1999 before the court of Sub-Judge 6, Ara admitted that he has no concern with the said house. There is nothing in the pleading of defendant filed before court below as regards the house of Allahabad and so the counter claim filed by defendant after closing the evidence of both parties is legally not sustainable.

7. In view of the above discussions, the impugned order accepting the counter claim of the defendant at the time of argument is set aside and this writ application is allowed.

(Sanjay Kumar, J)

Harish/-

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CAV DATE	
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