

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.23717 of 2013

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Asha Devi wife of Mahesh Yadav, resident of Mohallah- Jagannathpuri Barmsiya
Police Station- Katihar Sadar, District- Katihar.

.... Petitioner

Versus

1. Kiran Kumari wife of Shri Sanjeev Kumar Karn, resident of Mohallah- Jagannathpuri, Barmsiya Police Station and District- Katihar. At present resided at Mohallah- Emergency Colony, Org. No. 675 (H), Police Station and District- Katihar.
2. Sanjeev Kumar Karn son of Late Sabhapati Lal Karn, resident of Mohallah- Jagannathpuri, Barmsiya Police Station and District- Katihar. At present resided at Mohallah- Emergency Colony, Org. No. 675 (H), Police Station and District- Katihar.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Shekhar Kumar Singh, Advocate
For the Respondent/s : Mr. Gyan Prakash Ojha, Advocate
Mr. Ajit Kumar, Advocate
Ms. Rahi Pritam, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL JUDGMENT
Date: 07-08-2018

Petitioner is plaintiff of Title Suit No.57 of 2011 pending in the court of Subordinate Judge III, Katihar. She has filed writ application for quashing the order dated 10.09.2013 passed by learned court below whereby and whereunder the respondent nos.1 and 2 were granted leave to file counter claim against the plaintiff.

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

3. The petitioner filed the aforesaid suit for declaration of her title over the land mentioned at the foot of the plaint on the basis of her possession which was more than 12 years. According to the



petitioner, she had entered into an agreement with the defendant no.1 to purchase the land in dispute for a consideration of Rs.80,000/-. The petitioner paid an amount of Rs.20,000/- as earnest money out of Rs.80,000/- and it was agreed that the defendant no.1 would execute sale deed after receipt of balance of consideration money. The plaintiff-petitioner was put in possession over the said land in the year 1995. As the defendant did not execute sale deed as per terms of agreement, the plaintiff filed the present suit for declaration of her title on the basis of long possession. The defendant nos.2 and 3 purchased the said land from defendant no.1 by virtue of registered sale deeds dated 14.08.2009 and 13.09.2010. The plaintiff after getting knowledge about execution of two sale deeds in favour of defendant nos.2 and 3, filed the suit for declaration of her title on the basis of adverse possession and also for declaration of both the sale deeds as forged, fabricated and not binding on the plaintiff.

4. It has been submitted that the defendants appeared and filed written statement in the year 2012. In the written statement, the defendants did not put their claim against the plaintiff. The defendants filed a petition for grant of leave to file counter claim against the plaintiff. The plaintiff filed objection and after hearing both sides, the learned court below granted permission to the defendants to file counter claim.

5. The learned counsel for the respondents, on the other



hand, submitted that they purchased the suit land for a valuable consideration by virtue of two registered sale deeds dated 14.08.2009 and 13.09.2010. The plaintiff having come to know about the said purchase has fraudulently started claiming land on the basis of oral agreement which was allegedly entered into between the parties in the year 1995. The defendants got possession over the said land immediately after their purchase. The plaintiff has filed the suit beyond the prescribed period of limitation on the basis of alleged oral contract. After filing of written statement by these defendants, the plaintiff forcibly took possession over the suit land which necessitated the defendants to take leave of the court for filing counter claim against the plaintiff for recovery of possession.

6. In this regard, I would like to refer the ruling reported in A.I.R. 1997 Supreme Court 3985 (Shanti Rani Das Dewanjee Vs. Dinesh Chandra Day) wherein the Hon'ble Apex Court at paragraph 2 has held as follows:-

“.....It has been held by this court that right to file a counter claim under Order VIII Rule 6A of the Code of Civil Procedure 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 date of filing written statement or extended date of filing written statement, such counter claim can be filed even after filing the written statement.”

7. In the case in hand, I find that the defendants filed their written statement on 24.05.2012. After filing of written statement, the



defendants filed a petition before the court below alleging that the plaintiff trespassed over the disputed land and after removing the structure of the defendants, made construction over the disputed land for which a criminal case was also filed. The respondents have asserted cause of action on 29.03.2011 when they were dispossessed. They are claiming title on the basis of registered sale deed whereas the plaintiff is claiming title on the basis of oral sale. After dispossession the defendant has rightly filed counter claim.

8. For the reasons stated above I find no merit in this writ application and is accordingly dismissed.

(Sanjay Kumar, J)

Harish/-

AFR/NAFR	
CAV DATE	
Uploading Date	16.08.2018
Transmission Date	

