

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.41 of 2018**

In

First Appeal No. 79 of 2017

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1. Bhushan Prasad, Son of Late Chhotu Mahto, Resident of Mohalla-
Mathuriya Bangani Khand near Arya Samaj Mandir, Town + P.O.-
Biharsharif, P.S.- Kaheri, District- Nalanda.

.... Petitioner/s

Versus

1. Sita Devi, Wife of Deo Nandan Prasad, D/o Chhotu Mahto, Resident of
Mohalla- Murarpur Adda Town+P.O.- Biharsharif, P.S.- Laheri, District-
Nalanda.

2. Urmila Devi, Wife of Parmeshwar Dayal, D/o Chhotu Mahto, Resident of
Mohalla- Ramchandrapur Kushwaha Colony, Town+P.O.- Biharsharif,
P.S.- Laheri, District- Nalanda.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Amar Nath Singh

For the Respondent/s : Mr.

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

4 23-04-2018

Heard both sides.

The petitioner has filed this petition against the order dated 19.01.2017 passed in Title Suit No.204 of 2013 by which the petition of the petitioner filed under Order VIII Rule 6A has been dismissed on the ground that the petitioner filed counter claim not against the plaintiff but against defendant No.2 and that too after examination of all the witnesses of plaintiff and defendant No.2 in the suit.

The petitioner is defendant No.1 in the suit. The plaintiff is the sister of defendant No.1. Defendant No.2 is the



sister of plaintiff-defendant No.1. The plaintiff filed suit for 1/3rd share in the ancestral property of the plaintiff and defendant. Both the defendants filed their written statement. When the plaintiff and defendant No.2 examined his witnesses, defendant No.1 filed a petition under Order VIII Rule 6A claiming counter claim of partition of the property standing in the name of defendant No.2 on the ground that the mother of the plaintiff and defendant purchased the property in the name of defendant No.2 and the same property has not been included in the schedule of the partition suit.

The learned counsel for the petitioner submits that Order VIII Rule 6A does not speak about the limitation of filing counter claim. The counter-claim can be filed even after filing of written statement but before the right is barred by limitation. The cause of action arose during the pendency of the suit when the defendant No.1 came to know about the fact that his mother purchased land out of her fund only in the name of defendant No.2 but the plaintiff in collusion with defendant No.2 did not include the aforesaid land in the partition suit and the learned Sub Judge has committed jurisdictional error but I find no force in the submission of the learned counsel for the petitioner. Of course, the suit is for partition but defendant No.1 filed counter-claim against



the defendant No.2 and sought partition of the property exclusively standing in the name of defendant No.2 not in the name of the plaintiff. The defendant No.2 claimed the land acquired by herself and, therefore, I find that on such facts the counter claim of the defendant No.1 has rightly been rejected.

Accordingly, I do not find any jurisdictional error in the order impugned and thus, this civil miscellaneous petition is dismissed with liberty to the petitioner to file suit, if so advised.

(Prabhat Kumar Jha, J)

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