

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 320 of 2018

Santosh Sahu S/o Late Shri Uderam Sahu Aged About 50 Years
R/o Village Jenjara, Tahsil Rajim District Gariyaband Chhattisgarh.

---- Petitioner

Versus

1. Smt. Anoopee Bai Sahu W/o Shri Asharam Sahu Aged About 70 Years R/o Village Beltukari, Tahasil Rajim District Gariyaband Chhattisgarh.
2. Smt. Ganga Bai Sahu W/o Shri Pusauram Sahu Aged About 55 Years R/o Village Kumhi, Tahsil - Rajim District Gariyaband Chhattisgarh.
3. State Of Chhattisgarh Through Collector , Gariyaband District Gariyaband Chhattisgarh.

---- Respondents

For petitioner –Shri J.N. Nande, Advocate.
For State- Smt. Astha Shukla, PL.

Hon'ble Shri Justice Goutam Bhaduri

Order

13/04/2018

Heard.

1. Instant petition is against the order dated 3/01/2018 whereby an application to make amendment in written statement whereby counter claim was prayed for by way of amendment was dismissed on the ground that no provision exist to raise counter claim in the written statement by way of amendment.
2. Learned counsel for the petitioner would submit that still issues are not framed and on the preliminary stage suit is pending. Suit is for declaration and possession. After filing of the written statement the learned court below adjudicated an application under Order 39 Rule 1 & 2 of CPC and the plaintiff was dispossessed thereafter by force. Therefore, by way of counter claim amendment was proposed which was dismissed on the ground that counter claim cannot be brought in by way of

amendment.

3. Perused the order. It appears that the trial court has failed to take into consideration provisions of Order 8 Rule 6(b) of CPC. There is no specific provision exist that counter claim cannot be brought by way of amendment. Order of the learned court below cannot be appreciated.

4. In the result, the part of the order whereby application under Order 6 Rule 17 CPC was dismissed moved by the petitioner/defendant is set aside. Consequently, application filed by the petitioner/defendant under Order 6 Rule 17 CPC is allowed. Petitioner/defendant is allowed to amend the written statement to bring his counter claim.

5. With such observation, the petition stands disposed of.

Sd/-

(Goutam Bhaduri)

JUDGE