

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 644 of 2018

1. Krishna S/o Shri Suklal Sahu Aged About 40 Years R/o Village Hardi, Tehsil Dhamdha, District Durg, Chhattisgarh.
2. Ramalal, S/o Shri Suklal Sahu, Aged About 40 Years R/o Kurud, Tehsil & District Durg Chhattisgarh.
3. Smt. Anita, Wd/o Late Uttam Sahu, Aged About 35 Years R/o Kurud, Tehsil & District Durg Chhattisgarh.
4. Lemanshu S/o Late Uttam Sahu, Aged About 16 Years Through Mother Smt. Anita, R/o Kurud, Tehsil & District Durg Chhattisgarh.,
5. Bhumika, D/o Late Uttam Sahu, Aged About 14 Years Through Mother (Anita Sahu), R/o Kurud, Tehsil & District Durg Chhattisgarh. (Defendants),
- Petitioners

Versus

Gonda Bai W/o Makardhwaj Verma, Aged About 55 Years R/o Village Gadabhata, Teshil Dhamdha District Durg Chhattisgarh. (Plaintiff),
District : Durg, Chhattisgarh
--- Respondent

For the Petitioner : Mr. B.P. Singh Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

30.07.2018

1. The present petition is against the order dated 20.04.2018 passed by the Addl. Judge to the Court of 1st ADJ, Durg in Civil Suit No.1236410-A/2014 whereby the application filed under Order 7 Rule 11 filed by the respondents/plaintiff has been allowed and the counter claim preferred by the defendant, petitioners herein, has been disallowed.
2. The order impugned would show that the suit was filed on 01.01.2014 wherein the written statement was filed on 12.05.2014 by the defendants. Thereafter, the counter claim has been filed on the basis of cause of action arose on 01.01.2018 which is after filing of the written statement.

3. Order 8 Rule 6-A of CPC reads as under:

“6-A. 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 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 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 the plaints.”

4. The Principle, as has been laid down, shows that the counter claim can be preferred in the same suit till the written statement is filed for the cause of action accrued prior to it. In this case, the written statement was filed in the civil suit and after filing of the written statement, the counter claim has been filed, therefore, if the defendants are aggrieved by any action, then they will have liberty to file a separate suit.

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

**Sd/-
GOUTAM BHADURI
JUDGE**