

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.142 of 2019**

Mahesh Kumar Bhagat, male, aged about 64 years, S/o Late Shiv Pujan
Bhagat Vill.-Bhag Barsoi, P.O.-Barsoi, Distt.-Katihar

... .. Petitioner

Versus

1. Indrajeet Singh, male aged about 62 years, S/o Trilok Singh, resident of Mohalla-Amla Tola, Katihar, P.O. and P.S. and Distt.- Katihar
2. Binod Kumar Singh, male aged about 56 years son of Late Baijnath Sinha, resident of Vill.-Barsoi Bazar, p.o. and P.s.-Barsoi, Distt.-Katihar
3. Gour Krishna Bosak, male aged about 54 years, S/o Late Jevan Krishna Bosak Vill.-Barsoi Bazar, P.O. and P.s.-Barsoi, Distt.-Katihar
4. Prem Kumar Rai, male aged about 46 years S/o Naren Chandra Rai, resident of Vill.-Barsoi Bazar, P.S.-Barsoi, Distt.-Katihar
5. Md. Juber Alam, male aged about 46 years, son of Sah Alam, resident of Vill.-Baghwa, P.s.-Kadwa, Distt.-Katihar
6. Md. Soyeb Alam, male aged about 52 years, S/o Late Abdul Hakik Vill.-Raghunathpur, P.O. and P.s.-Barsoi Ghat, Distt.-Katihar.

Defendant 1st Party

7. Smt. Radh Meena Devi, Female aged about 48 years, W/o Prem Chand Choudhary, resident of Moh.- Teja Tola, Bangali Para, P.O. and P.S. and Distt.- Katihar
8. Dayal Meera Devi, female aged about 46 years W/o Bhupal Bhagat Vill.-Balrampur, P.O. and P.S.- Balrampur, Distt.- Katihar
9. Bagmala Devi, female aged about 50 years W/o Murari Prasad Gupta, resident of Vill.- Sithna, P.O.-Fatehpur, P.S.-Balrampur, Distt.- Katihar.

Defendant 2nd Party/Respondents

Appearance :

For the Appellant/s : Mr.Pramod Rajpati, Advocate
For the Respondent/s : Mr.

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT**

Date : 21-02-2019

The present civil misc. application under Article



227 of the Constitution of India is directed against the order dated 08.08.2017 passed by learned Sub-Judge, Barsoi, Katihar in Title Suit No. 230 of 2012 whereby counter claim filed by respondent nos. 1 to 9, who are defendants in the suit, has been admitted and the petitioner, who is plaintiff in the suit, has been directed to file rejoinder to the counter claim.

2. The petitioner has filed Title Suit No. 230 of 2012 before the learned Sub-Judge 1, Katihar against the respondents-defendants for declaration of his right, title and possession over Schedule-A property and for consequential injunction restraining the respondents from interfering into his peaceful possession over the suit land.

3. Learned counsel appearing for the petitioner submitted that the order impugned passed by the court below whereby the counter claim filed under Order VIII Rule 6A of the Code of Civil Procedure (for short 'CPC') has been admitted and the petitioner has been asked to file written statement is patently bad in law as the counter claim was filed after filing of the written statement. He submitted that the same is bad for the reason that no chance was given to the petitioner of hearing or filing rejoinder to the counter claim filed by respondents. He pleaded that counter claim of the respondents could have been



admitted only on the basis of evidence of defence, but in this case, the court below had admitted the same at the primary stage when even issues were not settled.

4. I have considered the submissions made by the learned counsel appearing for the petitioner.

5. At this stage, I think it apt to extract Order VIII Rule 6A of the CPC, which 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 a 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 on 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 plaints.”

6. A plain reading of the said provision makes it clear that a counter claim can be made by a defendant in suit before he has settled his defence or before the time limit for delivering his defence has expired.

7. Rule 6A under Order VIII clearly shows that it can be brought in respect of any claim that could be the subject of an independent suit. The very object of Rule 6A is to treat a counter claim as an independent suit to be heard together with the plaintiff's suit to enable the court to pronounce final judgment. A defendant can claim any right by way of a counter claim in respect of any cause of action accrued to him even though it is independent of the cause of action averred by the plaintiffs. It is essentially a cross-suit with all the trapping of pleadings as a plaint. The counter claim has been filed in suit for declaration of right, title and possession. Its filing after the filing of the written statement would be of no consequence. It is permissible to be filed before or after the filing of the suit. The



only prerequisite is that it should be filed before the defendant delivers his defence or before the time limited for delivering his defence expires. The law does not mandate any chance to be given to the plaintiff for hearing or filing rejoinder to the counter claim before admitting the same.

8. In view of the discussions made above, no error can be found with the order impugned whereby the application filed by respondents under Order VIII Rule 6A of the CPC has been admitted.

9. The application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.02.2019
Transmission Date	

