

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 229 of 2019

1. Santosh, S/o Ramhaiya Aged About 48 Years Caste Chandranahu, R/o Village Bhothiya, Tahsil Jaijaipur, District- Janjgir-Champa, Chhattisgarh.
2. Raj Kumar, S/o Sadanand Aged About 46 Years Caste Yadav, R/o Village-Bhothiya, Tahsil- Jaijaipur, District- Janjgir-Champa, Chhattisgarh.
3. Chherkin (Wrongly Written As Ferkin), W/o Bharat Lal (Wrongly Written As Lapal) Aged About 45 Years R/o Village-Bhothiya, Tahsil- Jaijaipur, District- Janjgir-Champa, Chhattisgarh.
4. Mattu Lal, S/o Bihari Lal Aged About 47 Years Caste Chandranahu, R/o Village Bhothiya, Tahsil- Jaijaipur, District-Janjgir-Champa, Chhattisgarh.

---- Petitioners

Versus

1. Kanhaiya Lal, S/o Parsadi Caste Panika, R/o Village Bhothiya, Tahsil Jaijaipur, District- Janjgir-Champa, Chhattisgarh.
2. Mangali Bai, Wd/o Parsadi Caste Panikar, R/o Village Bhothiya, Tahsil- Jaijaipur, District- Janjgir-Champa, Chhattisgarh.
3. Ram Bai, Wd/o Shankar Caste- Panika, R/o Village Bhothiya, Tahsil- Jaijaipur, District- Janjgir-Champa, Chhattisgarh.
4. Namita, Wd/o Om Prakash Aged About 30 Years, Caste- Chandranahu, R/o Village Bhothiya, Tahsil-Jaijaipur, District- Janjgir-Champa, Chhattisgarh.
5. State of Chhattisgarh Through- The Collector, Janjgir, District- Janjgir-Champa, Chhattisgarh.

---- Respondents

For petitioners :Mr. Ishwar Jaiswal, Advocate.

For respondents No.1 to 4: Mr. Deepak Kumar Singh and Mr. Abhishek Saraf, Advocates.

For Respondent/State :Mr. Arijit Tiwari, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order On Board

15/10/2019

1. This petition under Article 227 has been brought challenging the order dated 2.2.2019 passed by the Civil Judge Class-II, Jaijaipur, District- Janjgir-Champa in Civil Suit No.19A/2014 rejecting the application for filing counter claim under Order 8 Rule 6A of CPC.
2. It is submitted that the impugned order passed by the Court below rejecting petitioner's application for permission to file counter claim is the outcome of wrong interpretation of the judgment of Supreme Court in the matter of Rohit Singh & others vs State of Bihar & others, reported in (2006) 12 SCC 734. Defendants No.1 & 6 / respondent No.1 & 6 herein are in collusion with the plaintiffs. As per ratio laid down in Rohit Singh's case (supra), the counter claim filed by the petitioners was maintainable, therefore, a wrong conclusion has been drawn by the Court below. Hence, it is prayed that the impugned order be set aside.
3. Despite service of notice, respondents No.1 & 2 have neither appeared personally before this Court nor engaged any counsel to represent them.
4. Learned counsel appearing for respondent No.3 has made formal objection.
5. The petition is opposed by the counsel appearing for respondent No.4

by submitting that there is no error in the order passed by the trial Court as the counter claim was not maintainable under the provision of Order 8 Rule 6A of CPC. It is further submitted that the order passed by the Court below is an appealable order, therefore, the petition under Article 227 of Constitution of India cannot be entertained.

6. I have heard both the parties and perused the documents on record.
7. Respondents No.1 & 2 have filed civil suit praying for relief of declaration of title in respect of the suit land. The petitioners, who are defendants No.2 to 5, have contested the civil suit by filing written statement. They have also filed a counter claim against the plaintiffs as well as co-defendants No.1 & 6 praying for reliefs of permanent injunction and in the alternative possession of the suit land.
8. Respondent No.4, who is defendant No.6 filed an application making a prayer that the counter claim filed by the petitioners/defendants No.2 to 5 seeking reliefs against the co-defendant i.e. respondents No.3 & 4 is not maintainable and praying that the counter claim be heard as a separate suit. The trial Court while passing the impugned order has placed reliance on the judgments of Uttranchal High Court passed in *Jaiwant Singh Negi vs Man Mohan Singh & Ors.*, reported in AIR 2010 Uttarakhand 100 and on the judgment of *Rohit Singh & others vs State of Bihar & others*, reported in (2006) 12 SCC 734 by Supreme Court and rejected the counter claim filed by the petitioners.
9. On perusal of the judgment of Uttranchal High Court in *Jaiwant Singh Negi's case* (supra), it is found that in the said judgment itself the judgment of Supreme Court in *Rohit Singh's case* (supra) has been followed by the learned Single Judge of Uttranchal High Court wherein

it has been clearly held that in a counter claim, relief can be claimed against the plaintiff as well as the co-defendants. A clear distinction has been made that a counter claim directed solely against co-defendant without involving the plaintiffs is not maintainable. Therefore, the conclusion drawn by the trial Court needs to be examined.

10. On the perusal of the copy of counter claim filed along with the petition, it is found that prayer for relief of declaration & permanent injunction and relief of possession has been claimed as an alternative relief, which appears to be a only against the plaintiffs. The only relief prayed against respondent No.3 & 4, who are defendants No.5 & 6, is that the costs of litigation be ordered against respondents No.3 & 4 and that if the Court finds it fit to order then after reliefs may also be granted against the respondents No.3 & 4. As it is clearly laid down in Rohit Singh (supra) that a counter claim in which prayer for relief is against the plaintiff as well as defendant, such a counter claim is maintainable. Present is not a case where the relief has been claimed only against co-defendants, therefore, there was nothing wrong with the counter claim which was filed by the petitioners.

11. No provision has been quoted in the application filed by respondent No.4/defendant No.6 although it may be considered as an application under Order 7 Rule 11 of CPC praying for rejection of plaint, which was considered and allowed by the trial Court. However, there is a finding against that order in the present order, but the objection raised by the counsel for respondent that this order is appealable is a submission made without any force of law. Order 43 Rule 1 of CPC provides for the appeals which can be preferred against the orders passed. List of orders against which appeal can be filed is given in

Order 43 Rule 1, which does not include any order passed under Order 7 Rule 11 of CPC, therefore, the objection raised by respondent No.4 is not sustainable.

12. After considering on the facts, circumstances and the submissions made by the counsel for both the parties and on the basis of discussions made herein above, I find that this petition deserves to be allowed.

13. Accordingly, the petition is allowed. The impugned order passed by Civil Judge Class-II, Jaipur, District-Janjgir-Champa on 2.2.2019 is hereby set aside.

Sd/-

(Rajendra Chandra Singh Samant)
Judge