

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 364 of 2019**

1. Anish Jacob, aged about 41 years,
2. Anju Jacob, aged about 42 years,
3. Aji Jacob, aged about 35 years,

No. 1 to 3 are son/daughter of K.C. Chako, Caste-Christian, resident of Balaji Mandir, I.T.I., Rampur, Korba, District – Korba (C.G.)

4. Rakesh Kumar, son of Krishna Dev Singh, aged about 40 years, Caste – Ghumihar, resident of Housing Board Colony, Rampur, Korba, District Korba (C.G.)

----Petitioners/plaintiffs

Versus

1. B.K. Shukla, son of Shri D.P. Shukla, aged about 62 years,
 2. Smt. Sarita Shukla, wife of B.K. Shukla, aged about 52 years,
- Both are by Caste – Bramhan, resident of Siddhi Vinayak, L.I.G. -82, Dr. Rajendra Prasad Nagar, Korba, Tahsil & District – Korba (C.G.)
3. State of Chhattisgarh, through the Collector, Korba, District – Korba (C.G.)
 4. Smt. Ramkali, widow of Prabhat Kumar Agrawal, aged about 74 years,
 5. Kailash Agrawal, aged about 49 years,
 6. Shobha Agrawal,
 7. Asha Agrawal,
 8. Rekha Agrawal,

No. 5 to 8 are son / daughter of Prabhat Kumar Agrawal,

No. 4 to 8 are resident of Agrawal Book Depot, Power House Road, near Dindayal Complex, Main Road, Korba, District Korba (C.G.)

---- Respondents

For Petitioners : Mr. Rakesh Pandey, Advocate.
For Respondent No. 3 : Mr. Sanjeev Agrawal, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal
Order On Board

23/09/2019

(1) Petitioners/plaintiffs take exception to the impugned order dated 30.01.2019, by which, the petitioners' application under Order 8 Rule 6 (C) of the Code of Civil Procedure (henceforth "CPC") for exclusion of counter claim has been rejected against which instant writ petition has been preferred.

(2) Learned counsel appearing for the petitioners/plaintiff would submit that counter claim filed by the defendant was absolutely barred by limitation as it ought to have been filed separately and it could not have been clubbed with the written statement.

(3) I have heard learned counsel appearing for the petitioners/plaintiff and perused the impugned order with utmost circumspection.

(4) Be that as it may, If the counter claim filed by the defendant is barred by limitation, the petitioner is free to take such objection in the written statement; likewise other objections relating to the maintainability of the counter claim can also be raised in the written statement. If such an objections are raised by the petitioner/plaintiff in opposition of the counter claim, the same shall be considered and decided by trial Court in accordance with law without being influenced by any of the observations made in the impugned order.

(5) With the aforesaid observations, the writ petition stands finally disposed of.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

