

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CIVIL MISCELLANEOUS JURISDICTION No.333 of 2018**

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1. Bigan Upadhyay son of Late Ramayan Upadhyay resident of Village- Panapur, Post- Panapur, Police Station- Karagahar, District- Rohtas.
2. Girish Upadhyay son of Late Karesan Upadhyay resident of Village- Panapur, Post- Panapur, Police Station- Karagahar, District- Rohtas.
3. Suryanath Upadhyay, son of Late Ram Sakal Upadhyay, resident of Village- Panapur, Post- Panapur, Police Station- Karagahar, District- Rohtas.
4. Vijay Upadhyay, son of Late Ramayan Upadhyay resident of Village- Panapur, Post- Panapur, Police Station- Karagahar, District- Rohtas.
- 5.1. Ajay Upadhyay son of Late Deomuni Upadhyay resident of Village- Panapur, P.O.- Panapur, Police Station- Karagahar, District- Rohtas.
- 5.2. Banarasi Upadhyay son of Late Deomuni Upadhyay, resident of Village- Panapur, P.O.- Panapur, Police Station- Karagahar, District- Rohtas.
- 5.3. Sita Kuer daughter of Late Deomuni Upadhyay, resident of Village- Shukalpura, P.O.- Mahuli, Police Station- Karagahar, District- Rohtas.
6. Deo Raj Upadhyay, son of Late Shiv Bachan Upadhyay. resident of Village- Panapur, Post- Panapur, Police Station- Karagahar, District- Rohtas.

... .. Petitioner/s

Versus

1. Yamuna Devi wife of Dr. Umesh Rai, resident of Village and Post- Panapur, Police Station- Karagahar, District- Rohtas, at present Mohalla- Gorakshani near Deputy Director, Consolidation Department, Sasaram Officer, Post- Sasaram, Police Station- Sasaram (T), District- Rohtas.
2. Ramashankar Rai, son of Late Kailash Rai resident of Village- Panapur, Post- Panapur, Police Station- Karagahar, District- Rohtas.
3. Dabblu Rai @ Shiv Shambhu Rai son of Late Jag Narayan Rai, resident of Village- Panapur, Post- Panapur, Police Station- Karagahar, District- Rohtas.
4. Baijnath Rai @ Babblu Rai son of Late Jag Narayan Rai resident of Village- Panapur, Post- Panapur, Police Station- Karagahar, District- Rohtas.
5. Most. Janki Kuer, wife of Late Jag Narayan Rai, resident of Village- Panapur, Post- Panapur, Police Station- Karagahar, District- Rohtas.
- 6.1. Shiv Shankar Rai son of Late Raghubansh Rai, resident of Village and P.O.- Panapur, Police Station- Karagahar, District- Rohtas.
- 6.2. Most. Pushpa Kuer, wife of Late Kamalesh Rai, daughter-in- law of Late Raghubansh Rai, resident of Village and P.O.- Panapur, Police Station- Karagahar, District- Rohtas.
- 6.3. Most. Neelam Kuer, wife of Late Bimlesh Rai, daughter-in- law of Late Raghubansh Rai, resident of Village and P.O.- Panapur, Police Station- Karagahar, District- Rohtas.
- 6.4. Jay Ranjan Rai, son of Late Kamalesh Rai, grand son of Late Raghubansh Rai, resident of Village and P.O.- Panapur, Police Station- Karagahar, District- Rohtas.



- 6.5. Shashi Ranjan Rai, son of Late Kamalesh Rai, grand son of Late Raghubansh Rai, resident of Village and P.O.- Panapur, Police Station- Karagahar, District- Rohtas.
7. Surya Bansh Rai son of Late Paras Rai resident of Village- Panapur, Post- Panapur, Police Station- Karagahar, District- Rohtas.
8. Most. Batmati Kuer, wife of late Rajbansh Rai, resident of Village and Post- Panapur, Police Station- Karagahar, District- Rohtas.
9. Ramanuj Rai son of late Rajbansh Rai, resident of Village and Post- Panapur, Police Station- Karagahar, District- Rohtas.
10. Jaishankar Rai, son of Late Rajbansh Rai resident of Village and Post- Panapur, Police Station- Karagahar, District- Rohtas.
11. Satyendra Pandey son of Late Kesho Pandey, resident of Village- Delahuan, Post- Baraki Kharari, Police Station- Karagahar, District- Rohtas.
12. Bijendra Pandey son of Late Kesho Pandey, resident of Village- Delahuan, Post- Baraki Kharari, Police Station- Karagahar, District- Rohtas.
13. Jitendra Pandey, son of Late Kesho Pandey resident of Village- Delahuan, Post- Baraki Kharari, Police Station- Karagahar, District- Rohtas.
14. Rajbansh Pandey, son of Late Bindhyachal Pandey, resident of Village- Delahuan, Post- Baraki Kharari, Police Station- Karagahar, District- Rohtas.
16. Ram Pratap Pandey, son of Late Shyam Narayan Pandey, resident of Village- Delahuan, Post- Baraki Kharari, Police Station- Karagahar, District- Rohtas.
17. Sita Ram Prasad, son of Late Shiv Pujan Prasad. resident of Village- Delahuan, Post- Baraki Kharari, Police Station- Karagahar, District- Rohtas.
18. Phula Devi, wife of Sita Ram Prasad, resident of Village- Delahuan, Post- Baraki Kharari, Police Station- Karagahar, District- Rohtas.

... .. Respondent/s

**Appearance :**

For the Petitioner/s : Mr. Surendra Kumar Choubey, Advocate  
For the Respondent/s : Mr. Manoj Kumar, Advocate

**CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA**  
**CAV JUDGMENT**

**Date : 15-02-2023**

Heard learned counsel for the parties.

2. This Civil Miscellaneous Application is directed against the order dated 01.12.2017 passed in T.S. No. 170/13 by the learned Sub Judge-3, Sasaram, Rohtas whereby and where under he has rejected the petition dated 22.01.2014 filed by the



petitioners under Order VIII Rule 6 C of Code of Civil Procedure.

3. The facts, in brief relevant for decision of this case, are that the petitioners who are the plaintiffs filed a Title Suit bearing Title Suit No. 170/13 seeking relief inter alia for declaration of their title over the Schedule A property mentioned in the plaint and restoration of their position of the suit property if they have been dispossessed by the defendants during the pendency of the suit.

4. On summon, the defendants/respondents appeared on 14.05.2013 in the case and filed their written statement cum counter claim on 24.09.2013 in which they have opposed the prayer of the plaintiff in the plaint and claimed their title over the lands mentioned as Schedule A property in their written statement cum counter claim. Thereafter on 24.03.2014, the petition dated 28.10.2013 for condonation of delay in filing written statement of defendants/respondents has been rejected by the learned Court below due to not pressed and thereafter again they made an application dated 16.04.2014 for accepting the written statement filed by defendants/respondent Nos. 1 to 10 after condonation of delay in filing written statement which was allowed on 20.06.2014.



5. The petitioners filed a petition dated 22.01.2014 under Order VIII Rule 6 C of Code of Civil Procedure to reject the counter claim filed by the defendants/respondent Nos. 1 to 10 and a rejoinder dated 05.07.2017 filed on behalf of the defendants/respondent Nos. 1 to 10. The learned Court below rejected the petition dated 22.01.2014 filed by the petitioners vide the impugned order dated 01.12.2017 holding that the counter claim of defendants/respondents was already admitted on 20.06.2014.

6. Learned counsel for the petitioners submits that the learned Court below wrongly and illegally dismissed the petition filed by the plaintiffs/petitioners under Order VIII Rule 6 C of the Code for exclusion of the counter claim of the defendants without deciding the objection of the plaintiffs that defendants may file a separate suit because of the fact that the property mentioned in the counter claim was not in any manner related to suit property, as such was not the subject matter of the present suit. Further, it is stated that the learned Court below wrongly and illegally asked the defendants to pay the Court fee on the amount of counter claim.

7. Learned counsel for the petitioners has further submitted that the petition of defendants/respondent Nos. 1 to 10 dated



16.04.2014 was only related to condonation of delay and for accepting the written statement which was admitted on 20.06.2014 but the matter related to admission of counter claim and objection petition of petitioners under Order VIII Rule 6 C of C.P.C. filed by the petitioners on 22.01.2014 was pending which was not decided by order dated 20.06.2014 or prior to depositing the Court fee by defendant/respondent but the learned Court below wrongly rejected the petition of the petitioners on misappreciation that counter claim of the defendants was admitted by order dated 20.06.2014.

8. Lastly, learned counsel for the petitioners submits that the impugned order was passed without giving any valid and cogent reasons for rejection of the petition of the petitioners which is not proper and also not in accordance with law which is liable to be set aside.

9. On the other hand learned counsel for the respondents supported the impugned order and submitted that the Court after appreciating the facts and the law rightly passed the impugned order and the petition of the petitioner is misconceived and liable to be rejected.

10. The provisions with respect to counter claim have been discussed by the Hon'ble Apex Court in many cases. The



Hon'ble Supreme Court in **Jag Mohan Chawla & Anr. Vs.**

**Dera Radha Swami Satsang and Ors. (1996) 4 SCC 699**

observed that:-

“The counter-claim expressly is treated as a cross-suit with all the indicia of pleadings as a plaint including the duty to aver his cause of action and also payment of the requisite court-fee thereon. Instead of relegating the defendant to an independent suit, to avert multiplicity of the proceeding and needless protraction, the legislature intended to try both the suit and the counter-claim in the same suit as suit and cross-suit and have then disposed of in the same trial. In other words, a defendant can claim any right by way of counter claim in respect of any cause of action that has accrued to him even though it is independent of the cause of action averred by the plaintiff and have the same cause of action adjudicated without relegating the defendant to file a separate suit. Opportunities also has been provided under Rule 6 C to seek deletion of the counter claim.”

11. The Hon'ble Supreme Court in **Satyender and Ors.**

**Vs. Saroj and Ors. (2022 Live Law (SC) 679)** observed that:-

“The Legislature permits the institution of a counter claim, in order to avoid multiplicity of litigation. But then it has certain limitations such as that the counter claim cannot exceed the pecuniary limits of the jurisdiction of the court, and that such counter claim must be instituted before the defendant has delivered his defence or before the time limit for delivering his defence has expired. More importantly, such a counter claim must be against the plaintiff.”

12. The Bombay High Court (Nagpur Bench) vide the

**Judgment dated 24.06.2016 Abhishek Vs. Dr. Ashwini**



**Kumar Arvind Deshmukh** (Writ Petition No. 1722/2010)

observed that:-

“The intention of the Legislature in incorporating Rule 6 C of Order 8 of the Code of Civil Procedure is clear and suggests that the request made on behalf of the plaintiff to exclude the counter-claim, has to be given due weightage. It is the cardinal principle in judicial proceedings that the party to the proceedings has the inherent right to oppose any claim made by the other party, even if there is no provision in the statute providing a right to the party to oppose the claim of the other party. Therefore, when Rule 6 C is incorporated in Order 8 of the Code of Civil Procedure, It is clear that the Court is bound to consider the request of the plaintiffs. Though the latter part of Rule 6 C of Order 8 of the Code of Civil Procedure gives discretion to the Court to pass appropriate orders on the application made by the plaintiffs requesting that the counter-claim be excluded, the discretion will have to be exercised in favour of the plaintiff. The object of Rule 6 C of Order 8 of the Code of Civil Procedure appears to be based on the cardinal principle that the plaintiff is dominus litis and it is the right of the plaintiff to proceed with the civil suit in the manner he feels proper and best suited for proving his case. If the defendant is permitted to make counter-claim, he gets the right to steer the civil suit as per his wishes and in certain situations there may be a conflict between the plaintiff and the defendant on the point as to how the civil suit should proceed.”

13. Having heard the learned counsel for the parties and on perusal of the impugned order and the materials available on record, it appears that the trial court in the impugned order stated that Written Statement cum counter claim was admitted on 20.06.2014 and the same order has not been challenged.



Accordingly, the petition of the petitioners dated 22.01.2014 had been rejected.

14. It appears that vide order dated 20.06.2014, the condonation of delay in filing the written statement was allowed with cost of Rs. 1,000 and the written statement was taken on record. However, from perusal of the order-sheets of the Court below it is clear that the application of the plaintiff under Order VIII Rule 8 C of the Code was not decided. It appears that learned Court below on misappreciation of the fact that counter claim has already been admitted has passed the impugned order.

15. In view of the aforesaid facts and circumstances of this case and the law discussed above, the impugned order dated 01.12.2017 passed in T.S. No. 170/13 by the learned Sub Judge-3, Sasaram, Rohtas is hereby set aside and the learned trial court is directed to decide the application 22.01.2014 afresh in accordance with law.

**(Sunil Dutta Mishra, J)**

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