

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1704 of 2018

Sachida Nand Singh S/o Late Satya Vrat Narayan Singh Vill. and P.o.-
Tehwara, P.s.- Katra, Distt.- Muzaffarpur

... .. Petitioner/s

Versus

1. Asha Kumari D/o Late Ram Biraji Singh W/o Ajay Singh, Vill.- Hariharpur, P.s.- Pupri, Distt.- Sitamarhi
2. Manju Devi D/o Late Ram Biraji Singh W/o Pradeep Singh, Vill.- Hariharpur, P.s.- Pupri, Distt.- Sitamarhi
3. Pushpa Devi D/o Late Ram Biraji Singh W/o Sanjeev Singh, Vill.- Shivanagar, P.s.- Riga, Distt.- Sitamarhi
4. Sashi Ranjan Singh @ Kamlesh Singh S/o Late Ram Biraji Singh Vill. and P.o.- Tehwara, P.s.- Katra, Distt.- Muzaffarpur
5. Bhavesh Kumar Singh @ Gullu Singh S/o Vill.- Narendrapur, P.s.- Ander, Distt.- Siwan
6. Neelam Devi W/o Suresh Singh Vill.- Sonbarsha, P.s.- Tariyani, Distt.- Sheohar
7. Usha Devi W/o Dineshwar Singh Vill. and P.o.- Khalilpur, P.s.- Karja, Distt.- Muzaffarpur
8. Ashok Kuer S/o Late Tapeswar Kuer Vill. and P.o.- Tehwara, P.s.- Katra, Distt.- Muzaffarpur
9. Pappu Kuer S/o Late Tapeswar Kuer Vill. and P.o.- Tehwara, P.s.- Katra, Distt.- Muzaffarpur
10. Ravindra Nath Singh S/o Late Ram Raja Singh, R/o Village and P.O.-Chaita, P.S.-Pakri Dyal, District-East Champaran.
10. Rinku Singh, S/o Ravindra Nath Singh, R/o Village and P.O.-Chaita, P.S.- Pakri Dyal, District-East Champaran.
10. Nehal Singh, S/o Ravindra Nath Singh, R/o Village and P.O.-Chaita, P.S.- Pakri Dyal, District-East Champaran.
10. Annu Kumari, D/o Ravindra Nath Singh, R/o Village and P.O.-Chaita, P.S.- Pakri Dyal, District-East Champaran.
11. Baby Devi @ Shyama Devi W/o Anil Kumar Singh D/o Rajput Colony Birpur, In front of IB, P.s.- Birpur, Distt.- Supaul
12. Shambhu Kumar Singh S/o Late Satyadeo Prasad Singh Vill. and P.o.- Tehwara, P.s.- Katra, Distt.- Muzaffarpur
13. Shashi Bhushan Kumar Singh @ Sanjay Singh S/o Late Satyadeo Prasad Singh Vill. and P.o.- Tehwara, P.s.- Katra, Distt.- Muzaffarpur

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Manoj Kumar Manoj, Adv.
For the Respondent/s	:	Mr. Samrendra Kumar Jha, Adv.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 14-11-2024

Heard both the parties.

2. The present petition has been filed for quashing the order dated 31.07.2018 passed in Title Suit No. 110 of 1998 by learned Sub Judge XI, Muzaffarpur whereby and whereunder petition dated 04.05.2017 filed by defendant no. 1 and 1(A) raising counterclaim has been rejected.

3. Learned counsel for the petitioner submits that the impugned order is not sustainable and has been passed without consideration of the facts of the case. The petitioners are legal heirs of one Satyavrat Narayan Singh who was original defendant no. 1. After their substitution they filed a petition for allowing their counterclaim as the plaintiffs have sought declaration of their title in confirmation of possession over the land in question as mentioned in Schedule 1, 2 and 3 of the plaint. The original defendant claimed to have purchased the suit property from the brother-in-law of petitioner no. 1 and uncle of petitioner no. 2, respectively through sale deed dated 10.10.1957 and further through sale deed dated 13.07.1974 from subsequent vendees. The original defendant no. 1 filed his written statement in 2001 and he died in the year 2009 and the

petitioners came to be substituted in his place being his heirs/legal representatives. During the pendency of the title suit, the newly added defendants felt the need for filing counterclaim to declare the sale deed dated 10.10.1957 and 13.07.1974 as fraudulent, illegal and inoperative and without consideration and not binding upon the defendants. The petitioners also sought the relief of declaration of their right title and interest towards Schedule A of the counter claim. A rejoinder was filed and the learned trial court vide order dated 31.07.2018 rejected the counter claim of the defendants/petitioner.

4. Learned counsel further submits that the counter claim was rejected merely on the ground that sale deeds of the year 1953 and 1957 were challenged by way of counterclaim and are beyond the period of limitation and the same has been filed after filing of the written statement of the original defendants. But the learned trial court did not consider the fact that limitation is a mixed question of law and fact and the original defendant filed the written statement and only while making preparation for contesting the case of the plaintiffs, the substituted defendants felt the necessity for filing the counterclaim against the sale deeds dated 10.10.1957 and 13.07.1974, respectively as fraudulent, illegal and inoperative.

Learned counsel further submits that in these circumstances, the learned trial court was required to allow the counterclaim of the defendants/petitioners. Learned counsel relied on a decision of this Court in the case of *Sri Parmendra Nath Singh Vs. Smt. Anila Jain and Anr.* reported in *(2006) 3 PLJR 282* and submitted that while considering the claim of the defendants to raise counterclaim, the question of limitation is to be decided by the trial court in the suit itself and the learned Single Judge, relying on the decision of Hon'ble Supreme Court in the case of *Ragu Tilak D. John Vs. S. Rayappan and Ors.* reported in *(2001) 2 SCC 472*, has further held whether the suit is barred by limitation or not is a mixed question of fact and law to be decided in course of trial. Thus, learned counsel submits that the impugned order needs interference by this Court and the same be set aside.

6. Perused the record.

7. Having regard to the submission made on behalf of the petitioner and in the light of facts and circumstances of the case, I am of the considered opinion that the petition of the petitioners must fail for the reasons mentioned hereinafter.

8. Order 8 Rule 6A of the Code of Civil Procedure (in short "the Code") reads as under:-

"6A. 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."

It is evident from the reading of the provision that counterclaim could be raised by the defendant against the plaintiff before the defendant has delivered his defence or before the time limit for delivering his defence has expired.

9. The Hon'ble Supreme Court in the case of ***Ashok Kumar Kalra Vs. Wing CDR. Surendra Agnihotri and Ors.*** reported in ***(2020) 2 SCC 394*** has held that though counterclaim is designed to avoid multiplicity of proceedings, legislative

intention is to impose restrictions on belated filing of written statement/counterclaim cannot be obviated.

The Hon'ble Supreme Court further held that in the name of substantive justice, providing unlimited and unrestricted rights in itself will be detrimental to certainty and would lead to the state of lawlessness. The Hon'ble Supreme Court further held that though wide discretion has been given to the civil court regarding procedural elements of a suit, procedural rules should not be interpreted so as to defeat justice. It would be apposite to remember that equity and justice should be the foremost considerations while construing procedural rules, without nullifying the object of the legislature in totality and thus held that rules under the Limitation Act which may allow for filing of a belated counterclaim up to a long period of time, should not be used to defeat the ends of justice. The Hon'ble Supreme Court referred to the decision of ***Ramesh Chand Ardawatiya Vs. Anil Panjwani*** reported in (2003) 7 SCC 350 wherein it has been held as follows:

“Generally speaking, a counterclaim not contained in the original written statement may be refused to be taken on record if the issues have already been framed and the case set down for trial, and more so when the trial has already commenced. ... A refusal on the part of the court to entertain a belated counterclaim may not prejudice the defendant because in spite of the

counterclaim having been refused to be entertained he is always at liberty to file his own suit based on the cause of action for counterclaim.”

10. Further, the case of **Rohit Singh Vs. State of Bihar** reported in **(2006)12 SCC 734** has also been referred where it has been held that a counterclaim, no doubt, could be filed even after the written statement is filed, but that does not mean that a counterclaim can be raised after issues are framed and the evidence is closed.

Thus, it has been observed that even though Rule 6A of the Code permits filing of a counter claim after the written statement, the Court has the discretion to refuse such filing if it is done at a highly belated stage and it has further been held that to ensure speedy disposal of the suit, propriety requires that such discretion should only be exercised till the framing of issues for trial. Allowing counterclaims beyond this stage would not only prolong the trial, but also prejudice the rights that may get vested with the plaintiff over the course of time.

11. Applying the principles enunciated in **Ashok Kumar Kalra** (Supra) to the facts of the present case, the written statement was filed by the original defendant in the year 2001. Thereafter, the petitioners stepped into the shoes of the original defendant no. 1 and tried to raise a counterclaim at a

very belated stage. There are two striking aspects of the matter. It goes without saying that the substituted defendants would have the same right which was available to the original defendant and they cannot be claim any rights over and above what was available to the original defendant. If the original defendant failed to raise any counterclaim, the petitioners who have been substituted as party in the case cannot be allowed to raise any counterclaim. Further, the counterclaim is with regard to certain documents of the year 1957 and 1974, respectively and these documents were mentioned in the plaint. So the knowledge to the defendants was from the date of receipt of the notice after which the defendants first appeared in the case. Therefore, the substituted defendants cannot claim lack of knowledge to take advantage of the legal position about limitation being a mixed question of fact and law. The claim raised against the documents of year 1957 and 1974, respectively are hopelessly time barred and could not be allowed in the garb of counterclaim. Moreover, the counter claim have been raised at a very belated stage of the trial and could not be allowed in the light of the proposition of law in *Ashok Kumar Kalra* (Supra). Moreover, refusal to allow counterclaim may not prejudice the defendants as they are

always at liberty to file their own suit based on the cause of action for counterclaim.

12. In the light of the discussion made hereinabove, I do not find any error of jurisdiction to interfere with the impugned order dated 31.07.2018 and hence, the same is affirmed and accordingly, the present petition stands dismissed.

(Arun Kumar Jha, J)

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AFR/NAFR	NAFR
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