

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Bipti Devi & Ors.**

**vs.**

**Jitendra Singh & Ors.**

Civil Miscellaneous Jurisdiction No.827 of 2023

24 June, 2025

**(Hon'ble Mr. Justice Arun Kumar Jha )**

**Issue for Consideration**

Whether counter claim could have been admitted by the learned trial court at a much belated stage and when there has been objection to the subject matter of the counter claim?

**Headnotes**

Code of Civil Procedure, 1908—Order VIII, Rule 6A—Counter claim—petitioners have filed Title Suit—sought declaration of plaintiffs/petitioners title over Schedule 1A and Schedule 1B land; and also for recovery of possession in favour of the plaintiffs and against the defendants directing the defendants to remove their respective wall and fencing and deliver the vacant possession of Schedule 1A and 1B land to the plaintiffs apart from seeking relief of perpetual injunction—defendants in their counter claim have sought the relief that land of Schedule 1 of the counter claim be demarcated in accordance with partition deed dated 06.06.1968—plaintiffs have their claim only against certain defendants/respondents—respondents have raised a counter claim not only against the claim of the plaintiff but also with regard to certain other portions of land.

**Held:** defendants are entitled to file counter claim only against the claim of the plaintiffs/petitioners—learned trial court committed an error of jurisdiction, as it only considered ground of delay in admitting the counter claim and not the merit—impugned order set aside—petition allowed.

**(Paras 9 to 14)**

### Case Law Cited

Satyender & Ors. Vs. Saroj & Ors., **AIR 2007 SC 4732**—Relied Upon.

Rohit Singh and Ors. vs. State of Bihar (Now State of Jharkhand) & Ors., **AIR 2007 SC 10**, Ramesh Chand Ardawatiya vs. Anil Panjwani, **AIR 2003 SC 2508**; Ganesh Tiwari and Anr. vs. Ramakant Tiwari and Ors., **(2007) 1 JLJR 472 (HC)**—Referred To.

Jag Mohan Chawla & Anr. vs. Dera Radha Swami, Satsang and Ors., **AIR 1996 SC 2222**—Distinguished.

### List of Acts

Code of Civil Procedure, 1908.

### List of Keywords

stricto sensu; perpetual injunction; partition suit; counter claim.

### Case Arising From

From order dated 20.07.2023 passed by learned Munsif, Dalsingsarai in Title Suit No. 34 of 2007.

### Appearances for Parties

For the Petitioners: Mr. Vaidehi Raman Prasad Singh, Advocate.

For the Respondents: Mr. Ranjan Kumar Dubey, Advocate; Mr. Kumar Gaurav, Advocate.

Headnotes Prepared by Reporter: Abhas Chandra, Advocate

### Judgment/Order of the Hon'ble Patna High Court

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CIVIL MISCELLANEOUS JURISDICTION No.827 of 2023**

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1. Bipti Devi Wife of Late Ganga Prasad Singh Resident of Village-Goshpur P.S. Dalsingsarai, Dist. Samastipur.
  2. Abhishek Raj Son of Late Uma Shankar Prasad Singh Resident of Village-Goshpur P.S. Dalsingsarai, Dist. Samastipur.
  3. Aniket Raj Son of Late Uma Shankar Prasad Singh Resident of Village-Goshpur P.S. Dalsingsarai, Dist. Samastipur.
  4. Kumari Madhu Wife of Late Uma Shankar Prasad Singh Resident of Village-Goshpur P.S. Dalsingsarai, Dist. Samastipur.

... .. Petitioner/s

Versus

1. Jitendra Singh Son of Late Ram Lalit Singh Resident of Village Goshpur, P.S.-Dalsingsarai, Dist.-Samastipur.
3. Krishnadeo Singh Son of Late Dhanraj Singh Resident of Village-Goshpur P.S. Dalsingsarai, Dist. Samastipur.
4. Ashok Kumar Son of Krishnadeo Singh Resident of Village-Goshpur P.S. Dalsingsarai, Dist. Samastipur.
5. Alok Kumar Son of Krishnadeo Singh Resident of Village-Goshpur P.S. Dalsingsarai, Dist. Samastipur.
6. Arun Kumar Son of Krishnadeo Singh Resident of Village-Goshpur P.S. Dalsingsarai, Dist. Samastipur.
7. Deo Kumari D/o Late Ganga Prasad Singh and Wife of Dhaniklal Singh R/o Village-Taraspur, P.S.-Dalsingsarai, Dist.-Samstipur
8. Rubi Kumari D/o Late Ganga Prasad Singh and W/o Saket Bihari Resident of Village-Simiri, P.S. Vidyapati Nagar, Dist. Samastipur.
9. Roji Kumari D/o Late ganga Prasad Singh and W/o Devendra Kumar R/o Village Bachhauta, P.S. Morkahi, Dist. Khagriya.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr.Vaidehi Raman Prasad Singh, Advocate  
For the Respondent/s : Mr.Ranjan Kumar Dubey, Advocate  
Mr. Kumar Gaurav, Advocate

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**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA  
CAV JUDGMENT**

**Date : 24-06-2025**

The instant civil miscellaneous petition has been filed for quashing the order dated 20.07.2023 passed by learned Munsif, Dalsingsarai in Title Suit No. 34 of 2007 whereby and whereunder the learned Munsif admitted the counter claim of defendant nos. 3 to 6.



2. The facts of the case, briefly stated, are that the petitioners are plaintiffs and the respondents are defendants before the learned trial court and the plaintiffs/petitioners have filed Title Suit No. 34 of 2007 in the Court of learned Junior Division, Dalsingsarai, *inter alia* seeking declaration of their title over Schedule 1A and Schedule 1B land of the plaint and for recovery of possession by directing the defendants to remove their respective walls and fencing from Schedule 1A and Schedule 1B land and also for grant of perpetual injunction restraining the defendants from laying any claim over the suit land and from making any encroachment over any portion of the suit land. The plaintiffs and the defendants are descendants of common ancestors and there has been a registered partition of joint family property on 06.06.1968 and C.S. Plot No. 2054 was also the subject matter of partition and from this plot, father of original plaintiff no. 1 was allotted 12 decimal in the middle of the said plot. 25 decimal from North was allotted to the family of Dhanraj Singh, ancestor of defendant 2<sup>nd</sup> party, 7 decimal, extreme South was allotted to the share of Mishri Lal Singh whose descendants are the defendant 1<sup>st</sup> party. The parties to the partition came into their exclusive possession of allotted share of their land. Subsequently, the dispute arose with regard to



ridges of the respective parties and Circle Officer, Dalsingsarai got the land measured through Anchal Amin and demarcated the land. Plaintiff/petitioner claim in September 2007, defendant 1<sup>st</sup> and 2<sup>nd</sup> parties in collusion with each other encroached upon 15 dhur and 10 dhur, respectively and fenced the said encroached portion with bamboo. The defendants appeared and filed their written statement and the defendant 2<sup>nd</sup> party(defendant nos. 3 to 6) admitted the partition dated 06.06.1968 but claimed that there was exchange of some dhurs of land amongst the parties by mutual consent and the parties constructed their residence, *dalan*, *bathan*, etc. on their respective land and the rest of the land was used for agricultural purpose. The defendant 2<sup>nd</sup> party stated that they would have no objection if land is demarcated in accordance with partition dated 06.06.1968. The defendant 2<sup>nd</sup> party further claimed that the land of 25 decimal is not the land under dispute and they filed a counter claim for measurement of the land in Schedule 1 of the written statement, which contained altogether 9 plots, measuring 68 1/2 decimals including 25 decimal of plot no. 2054 as per the partition dated 06.06.1968 and to get separate *pattis* carved out proportionately by the survey knowing pleader commissioner and to give possession of the same to the concerned parties. The learned trial court called



for a report on the counter claim of defendant 2<sup>nd</sup> party /defendants 3 to 6 from the sirestedar on 16.04.2008, 22.04.2008, 29.04.2008, 13.05.2008 but the report was not received. Thereafter, the issues were framed on 02.01.2009. The plaintiff examined his witnesses and evidence of the plaintiff was closed on 21.12.2018. Thereafter examination of the witnesses of defendant no. 3 started and one of the witnesses was examined and cross examined in part on 12.04.2019 and 03.05.2019, respectively. On 24.01.2020, a petition was filed on behalf of defendant no. 3 to the effect that counter claim was filed on 28.04.2008 and on 16.04.2008 the court has called for a report from the sirestedar but the said report was not received and a prayer to call a report in the light of the order passed on 16.04.2008 was made. Vide order dated 07.02.2020, the petition dated 24.01.2020 was allowed and the sirestedar was directed to give the report on the counter claim. After report of the sirestedar, the defendant filed court fee on counter claim and the case was fixed for hearing on the point of admission of the counter claim. The learned Munsif vide order dated 20.07.2023 admitted the counter claim and the said order is under challenge before this Court.

3. Learned counsel for the petitioners submitted that



the learned trial court has passed an erroneous order without considering the fact that counter claim was sought to be brought on record after much delay and the same is not in terms or order VIII Rule 6 B of the Code of Civil Procedure (in short “the Code”). The suit property is also different. In the plaint, the property in dispute is 15 dhur of C.S. Plot No. 2054 (Schedule 1A land) and 10 dhurs of C.S. Plot No. 2054(Schedule 1B land) which the plaintiffs claimed was the allotted share of the ancestors of the plaintiffs and which were encroached upon by defendant 1<sup>st</sup> and 2<sup>nd</sup> set. The plaintiffs sought relief of declaration of their title over Schedule 1A and Schedule 1B land of the plaint and recovery of the possession of the said land. Learned counsel further submitted that, on the other hand, the land in question is 25 decimal of C.S. Plot No. 2054 allotted to the share of the ancestors of the defendant 2<sup>nd</sup> party along with eight other plots and total area being 68.5 decimal and the relief sought for is for measurement of Schedule 1 land of written statement containing 9 plots measuring 68.5 decimal as per partition dated 06.06.1968 and to carve out separate *patti* proportionately by a survey knowing pleader commissioner and to give possession of the same to the concerned parties. The learned counsel further submits that as soon as the suit property



changed, the counter claim does not remain maintainable and the option for the defendant is to file a separate suit. Learned counsel referred to a decision of the Hon'ble Supreme Court in the case of *Satyender & Ors. Vs. Saroj & Ors.* reported in *AIR 2007 SC 4732* wherein the Hon'ble Supreme Court held that a counter claim can be set up only against the claim of the plaintiffs and considering the fact of the case that there was no claim of plaintiff regarding two plots of land, the defendants were barred to raise any counter claim of these plots. Similarly, in the present case the defendants/respondents have raised a counter claim not only against the claim of the plaintiff but also with regard to certain other portions of land. Learned counsel further submitted that the Hon'ble Supreme Court further held in the aforesaid case that the Legislature permits the institution of a counter claim, in order to avoid multiplicity of the litigation. But the counter claim must not exceed the pecuniary jurisdiction of the court and such counter claim must be against the claim of the plaintiff. Learned counsel further submitted that the relief claimed by defendant 2<sup>nd</sup> party in counter claim cannot be granted without impleading the parties to the partition dated 06.06.1968. Learned counsel further submitted that once the counter claim was not sought to be brought on record prior





to the settlement of issues, the same could not be allowed at subsequent stage. Moreover in the present case, the evidence of plaintiffs has been closed and the matter has been running at the stage of evidence of the defendants. The defendant 2<sup>nd</sup> party did not take any steps for admission of counter claim for about 12 years. There was no explanation for making a prayer for report from sirestedar after so much delay.

The learned counsel next referred to the case of ***Rohit Singh and Ors. vs. State of Bihar (Now State of Jharkhand) & Ors.*** reported in ***AIR 2007 SC 10*** wherein the Hon'ble Supreme Court held that a counter claim, no doubt, could be filed even after the written statement is filed, but that does not mean that a counter claim can be raised after issues are framed and the evidence is closed. The Hon'ble Supreme Court went on to observe that the entertaining of so called counter claim of defendant nos. 3 to 17 by the trial court, after framing of issues of trial was clearly illegal and without jurisdiction. Learned counsel further submitted that a counter claim has necessarily to be directed against the plaintiff in the suit, though incidentally or along with it, it may also claim relief against co-defendant in the suit. In the instant case, the counter claim is based not only against the plaintiffs but other parties who are not even parties



in the present case. In ***Rohit Singh*** (supra), the Hon'ble Supreme Court further held that after the evidence was closed, there was no occasion for impleading the intervenors. Thus learned counsel submitted that in the given facts of the case, the learned trial court has exercised its jurisdiction illegally in admitting the counter claim as the same would result in prolonging the trial of the suit which is already more than 16 years old. In support of his contention the learned counsel relied on the case of ***Ramesh Chand Ardawatiya Vs. Anil Panjwani*** reported in ***AIR 2003 SC 2508*** wherein the Hon'ble Supreme Court held that if the consequence of permitting a counter claim either by way of amendment or by way of subsequent pleading would be prolonging of the trial, complicating the otherwise smooth flow of proceedings or causing a delay in the progress of the suit by forcing a retreat on the steps already taken by the court, the court would be justified in exercising its discretion not in favour of permitting a belated counter claim. Learned counsel next submitted that the admission of counter claim of the defendant 3<sup>rd</sup> party after 15 years of its filing and after closure of evidence of the plaintiffs and after starting of the evidence of defendants is unjustified and illegal and is fit to be set aside.

4. Learned counsel appearing on behalf of the



respondent nos. 3, 5 & 6 vehemently contended that there is no infirmity in the order of the learned trial court and the same does not need any interference by this Court. The learned counsel further submitted that the counter claim was filed with the written statement on 18.03.2008, but for some reason, counter claim could not be admitted. The sirestedar report was called for and it appears the said report was not furnished till 2020 and when the report was furnished, the same was found to be defective and another report was called for and the said report was submitted on 16.09.2021. In the light of sirestedar report, the defendants paid Rs.2,830/- as court fee. Learned counsel further submitted that if the sirestedar report was not submitted within reasonable time, the answering defendants/respondents are not at fault and it is only due to the fault of the Court that no orders could be passed on admission of counter claim though the same has been pending since 2008. Learned counsel for the respondents referred to the decision of ***Jag Mohan Chawla & Anr. Vs. Dera Radha Swami, Satsang and Ors.*** reported in ***AIR 1996 SC 2222*** submitting that the counter claim need not relate to or be connected with the original cause of action or matter pleaded by the plaintiff. The learned counsel submitted that in the aforesaid case, the learned Supreme Court held that a



defendant can claim any right by way of a 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. The learned counsel next referred to the decision of the learned Single Judge of Jharkhand High Court in the case of ***Ganesh Tiwari and Anr. Vs. Ramakant Tiwari and Ors.*** reported in ***(2007) 1 JLJR 472 (HC)*** wherein the learned Single Judge held that the defendant can claim any right by way of counter claim in respect of any cause of action even though independent of the cause of action averred by the plaintiff and further held that merely because of separate suit for declaration in respect of the property sought to be included by way of counter claim in joint family property would be maintainable, that cannot be a ground for rejection of the counter claim made by the defendants for deciding the question in the same suit.

5. Learned counsel appearing on behalf of the respondent no. 8 submitted that this respondent also has a share in the suit property and if the counter claim is allowed to remain on record, she would be entitled to one share in the property held by her father Ganga Prasad Singh who is since dead.



6. I have given my thoughtful consideration to the rival submission of the parties and perused the record.

7. The issue before this Court is whether counter claim could have been admitted by the learned trial court at a much belated stage and when there has been objection to the subject matter of the counter claim.

8. In *Satyender* (supra) the Hon'ble Supreme Court in paragraph no. 16 held as under:-

*"16.....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! Evidently, in the present case the counter claim was not against the plaintiffs. Moreover, as the plaintiffs had not claimed any right over the property and the Killa Nos. 6//8 and 23 are not even a part of the suit property described in the plaint by the plaintiffs. Despite the same, such a claim has been allowed against the plaintiffs. In fact, we do not find on record any reply submitted by the plaintiffs against the counter claim. To be fair, such a counter claim should have been excluded in terms of [Order VIII, Rule 6C of the CPC](#). Suffice it to state here that the counter claim set up by the defendants has been rightly rejected by the High Court. "*

9. From the facts of the case, it transpires the



plaintiffs/petitioners have filed the suit seeking declaration of plaintiffs title over Schedule 1A and Schedule 1B land and also grant of relief for recovery of possession in favour of the plaintiffs and against the defendants directing the defendants to remove their respective wall and fencing and deliver the vacant possession of Schedule 1A and 1B land to the plaintiffs apart from seeking relief of perpetual injunction.

10. Now Schedule 1A and 1B land have been described as under:-

Schedule I :- Village-Goshpur under P.S.-Dalsingsarai, Dist.-Samastipur

Schedule 1A land:-

Khata No.	C.S.P. No.	Area	Boundary
189	2054(P)	15 dhur	N- Plaintiff undisputed portion of land S- Defendants Ist party and is other co-sharer E- Defendants 2nd party W-Road

Schedule I B land:-

Khata No.	C.S.P. No.	Area	Boundary
189	2054(P)	10 dhur	N-Defendants 2nd party S- Plaintiff undisputed



			portion of land E- Defendants 2nd party W-Road
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On the other hand, the defendants in their counter claim have sought the relief that the land of Schedule 1 of the counter claim be demarcated in accordance with partition deed dated 06.06.1968 and after appointment of survey knowing pleader commissioner, the *patti* of the concerned party be carved out proportionately and the parties concerned be put into possession of the respective shares. Now, Schedule 1 of the counter claim reads as under:-

Mauza-Goshpur Inayat, Thana-Dalsingsarai, Thana No. 70,  
Pargana-Saraisa, District-Samastipur

Khata No.	Khesra No.	Rakwa/Area Acre-Dismal
102	2054	0-25
18	2029	0-11
189	2027 667 668 669	0-11 0-3 0-3 0-5 from North
154	742	0-5 from South
211	666	0-3 from South
126	662	0- 2 1/2

11. From bare perusal of the claims of the plaintiffs as



well as defendants it is apparent that as the plaintiffs have their claim only against certain defendants who he claims, have encroached upon the land which the plaintiffs got in partition deed dated 06.06.1968, the defendants in their counter claim want to bring all the land for which partition dated 06.06.1968 took place in dispute seeking appointment of survey knowing pleader commissioner to carve out their separate *patti* in accordance with the partition deed dated 06.06.1968. Evidently, the counter claim of the defendants/respondents is not only against the claim of the plaintiffs/petitioners but much beyond that. Further, the claim is not only against the plaintiffs and the defendants but might also be against the persons who were not made parties as defendants by the plaintiffs.

12. Further, Order VIII Rule 6A of 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. "*

Reading the statutory provision along with the decision of the Hon'ble Supreme Court in the case of **Satyender** (supra), it leaves no doubt that the defendants are entitled to file counter claim only against the claim of the plaintiffs. If the suit property has been completely changed and instead of asserting their right and interest over the suit property and seeking relief for the same, the defendant nos. 3 to 6 have made a claim for demarcation of the land as mentioned in their counter claim and also carving out of their separate *patti* by appointment of survey knowing pleader commissioner. It is also pertinent to note here that the plaintiffs claim that there has already been separation between different branches and the co-sharers have already come into possession of their shares and there is no case that separate *pattis* are yet to be carved out. Therefore, the counter claim of the defendants cannot be stated to be a counter claim



*stricto sensu* in terms of Order VIII Rule 6A and as clarified in the case of **Satyender** (supra). In the light of distinguishable facts, the reliance placed by the learned counsel for the respondents on the case of **Jag Mohan Chawla** (supra) is not of much help.

13. Having regard to the discussion made hereinabove, I am of the considered opinion that the learned trial court committed an error of jurisdiction as it only considered the ground of delay in admitting the counter claim whereas it ought to have considered the merits of the counter claim, a duty in which it has failed. Therefore, the impugned order dated 20.07.2023 cannot be sustained and hence the same is set aside.

14. Accordingly, the present petition stands allowed.

**(Arun Kumar Jha, J)**

Anuradha/-

AFR/NAFR	AFR
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