

**Bhagmati Devi Vs. Anandi Devi and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/129691](http://sooperkanoon.com/129691)

**Court :** Patna

**Decided On :** Jan-21-2008

**Judge :** S.N. Hussain, J.

**Appellant :** Bhagmati Devi

**Respondent :** Anandi Devi and ors.

**Disposition :** Petition dismissed

**Judgement :**

**S.N. Hussain, J.**

1. Heard learned Counsel for the petitioner and learned Counsel for opposite parties No. 6 and 7. No one appears for other opposite parties although repeated notices have been validly served upon them.

2. I.A. No. 456 of 2005 has been filed on behalf of the petitioner for condoning the delay in the filing of the civil revision. Learned Counsel for the petitioner submits that against order dated 5-8-2004 this civil revision has been filed on 28-1-2005 although according to stamp report the period of limitation expired on 3-11-2004 and hence there was a delay of about 85 days. Considering the averments made on behalf of the petitioner and the statements made in the interlocutory application, it appears that genuine reasons have been shown due to which the petitioner was prevented from filing the civil revision earlier. In the said

circumstances, this interlocutory application is allowed and the delay in the filing of the civil revision is condoned.

3. This civil revision has been on behalf of defendant No.5 petitioner against order, dated 5-8-2004 passed in Title Suit No. 8 of 2000 by which learned Subordinate Judge, VI, Saran rejected her petition for recall of order dated 11-12-2003 by which counter claim filed by defendant Nos. 6 and 7 (opposite party Nos. 6 and 7) was allowed.

4. The aforesaid title suit was filed on behalf of the plaintiff. opposite party No. 1 for declaration of her title over Schedule V of the plaint and for partition of her 1/5th share in Schedule I, II, III and IV of the plaint. It is not in dispute that defendant Nos. 6 and 7 were not parties to the suit and were impleaded subsequently, whereafter they filed their written statement on 14-3-2001. Subsequently they filed their counter claim on 14-8-2003 before the evidence of the parties could start which was allowed by the Learned court below on 11-12-2003. It appears that thereafter on 1-5-2004 a petition was filed by defendant No. 5 (petitioner) for recall of the aforesaid order dated 11-12-2003, but the said petition was dismissed by the learned court below by the impugned order dated 5-8-2004.

5. The law in this regard is well settled. The Hon'ble Apex Court in case of Mahendra Kumar and Anr. v. State of Madhya, Pradesh and Ors. reported in : [1987]3SCR155 has specifically held in paragraph 13 thereof that the counter claim filed by the appellant after filing of the written statement cannot be said to be not maintainable as the cause of action of the counter claim had arisen before the filing of the written statement. Under Article 113 of the Limitation Act. 1963, the period of limitation of three years from the date the right to sue accrues has been provided for any suit for which no limitation has been provided elsewhere in the Schedule. It is not disputed that a counter claim which is treated as a suit under Section 3(2)(b) of the Limitation Act had been filed. It is also held by the Apex Court in case of Ramesh Chand Ardawatiya v. Anil Panjwani reported in : [2003]3SCR1149 that it is difficult to conceive the defendant being conferred with the right to attack the plaintiff by way of a counter claim in that very suit in which

he has been held entitled not even to defend himself by filing a written statement and pleading a positive defence to defend himself against the relief.

6. Furthermore, this Court in case of *Rajendra Upadhyay v. Madan Rai and Ors.* reported in 2007 (4) PUR 705 in paragraph 5 thereof has held that the counter claim has necessarily to be directed against the plaintiff in the suit and incidentally or along with the plaintiff, it may also claim relief against the co-defendant in the suit. The same view has been taken in another decision of this Court in case of *Rohit Singh and Ors. v. State of Bihar (now State of Jharkhand)* reported in 2007 (1) BBCJ page 248 (Paragraph 18).

7. From the counter claim Annexure-3) it appears that defendants Nos. 6 and 7 have filed their counter claim in which they have specifically asserted their own title over the suit premises against the claim of the plaintiff (opposite party No. 1) as well as of defendant No. 5 (petitioner) and has also sought for recovery of possession from them. In the said circumstances, it is quite apparent that defendant Nos. 6 and 7 (opposite party Nos. 6 and 7) have not raised any counter claim only against any co-defendant, rather they have raised their claim against the plaintiff of the suit and also claimed relief against a co-defendant in the suit which, in my view, is quite proper.

8. In the aforesaid facts and circumstances, I do not find any illegality or any jurisdictional error in the impugned order. Accordingly, this civil revision is dismissed.

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