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Single Bench

IN THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P. (227) NO. 537 / 2013

PETITIONERS

PLAINTIFFS

- :1. Kartik Ram
S/o Samaru Yadav, 40 Years,
2. Agnu Ram
S/o Samaru Yadav, 56 Years,
Both R/o Vill. Thailitola, P.H.No.55,
R.N.M. Khujji, Post- Chirchari, P.S. -
Gendatola, Tah. - Churiya, Civil &
Revenue Distt. Rajnandgaon-(C.G.)

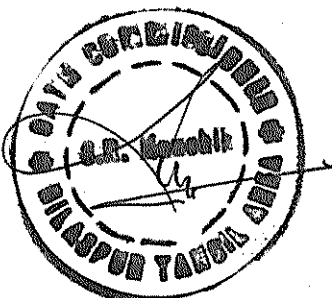
VERSUS

RESPONDENTS

DEFENDANTS

- : 1. Devalu Ram,
S/o Lachhu Ram Yadav, 50 years,
2. Bisram,
S/o Devalu Ram, 26 years,
3. Ganesh
S/o Devalu Ram, 22 years,
4. Shyam Singh,
S/o Samaru Yadav, 50 years,
Res.no.1 to 4 R/o Village Thailitola, Post -
Chirchari, P.S. - Gendatola, Tah. Churiya,
Civil & Revenue Distt. Rajnandgaon-(C.G.)
5. Mankunwar W/o Sukhu Ram
D/o Samaru Yadav, 48 years,
R/o Chunabhathi, Gudiyari, Post & P.S. -
Gudiyari, Raipur-(C.G.)
6. Manbai W/o Budhram,
D/o Samaru Yadav, 46 years,
R/o Jarhabhata, Post, P.S. & Tah. -
Churiya, Civil & Revenue Distt.
Rajnandgaon-(C.G.)
7. Kunwariya W/o Mouji Raut,
D/o Samaru Yadav, 38 years,
R/o Vill. Rewagahan, Post - Kirgi, P.S. &
Tah. Rajnandgaon, Civil & Revenue Distt.
Rajnandgaon-(C.G.)

537/13
P No.
Presented by Shri. Keshav
Dated. 26/07/13



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8. Kunti W/o Chamru Ram,
D/o Latkhor Yadav, W/o Chamru Ram, 36
years, R/o Vill. Masum, Post & P.S. -
Gendatola, Tah. - Churiya, Civil &
Revenue Distt. Rajnandgaon-(C.G.)
9. Phool Singh
S/o Latkhor Yadav, 51 years,
10. Ramdas
S/o Latkhor Yadav, 58 years
11. Ramnath
S/o Latkhor Yadav, 58 years
Res.no.9 to 11 R/o Vill. Thailitola,
P.H.No.55, R.N.M. Khujji, P.S. -
Gendatola, Post - Chirchari, Tah. -
Churiya, Civil & Revenue Distt.
Rajnandgaon-(C.G.)
12. State of C.G.
Through - Collector, Rajnandgaon,
Civil & Revenue Distt. Rajnandgaon-(C.G.)

WRIT PETITION U/A 227 OF THE CONSTITUTION OF INDIA



HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (227) No. 537 of 2013

PETITIONERS

Plaintiffs

1 Kartik Ram

2 Agnu Ram

Versus

RESPONDENTS

Defendants

1 Devalu Ram

2 Bisram

3 Ganesh

4 Shyam Singh

5 Mankunwar

6 Manbai

7 Kunwariya

8 Kunti

9 Phool Singh

10 Ramdas

11 Ramnath

12 State of C.G.

[Writ Petition under Article 227 of the Constitution of India]

Present:-

Mr. Prafull N. Bharat, Advocate for the petitioners.

Respondent Nos. 1 to 11 not noticed.

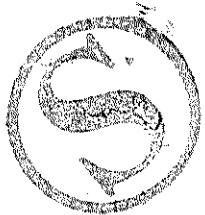
Mr. G.D. Waswani, Govt. Advocate for the respondent No.12 / State on advance notice.

(SB : Hon'ble Mr. T.P. Sharma, J.)

ORDER

(Passed on 31/07/2013)

1. By this petition, the petitioners seek to invoke supervisory jurisdiction under Article 227 of the Constitution of India and has prayed for quashment of order dated 30.04.2013 passed by the 1st Additional District Judge, Rajnandgaon Misc. Civil Appeal No. 17/2011 reversing the order dated 11.10.2011 passed by the 2nd Civil Judge, Class-II, Rajnandgaon in Civil Suit No. 16-A/2009, whereby the trial Court has dismissed the counter claim and by entertaining Misc. Civil Appeal, lower appellate Court has allowed the appeal and has quashed the order passed by the trial Court.



2. I have heard learned counsel for the parties and perused both the orders impugned.
3. Trial Court has not entertained the counter claim vide order dated 11.10.2011 which was the order of dismissal of counter claim as not maintainable. Order 43 of the Code of Civil Procedure, 1908 (for short 'the Code') does not provide any appeal against dismissal of counter claim even as not maintainable. Dismissal of counter claim even as not maintainable is a subject matter of regular appeal under Section 96 read with Order 41(1) of the Code. By entertaining the Misc. Civil Appeal, lower appellate Court has committed an illegality, even if it is considered as regular appeal then even appellate Court has not considered the counter claim especially the relief which has been claimed by the respondent Nos. 1 to 3. Other allegations were subject matter of written statement. Order impugned reveal that by entertaining the Misc. Civil Appeal and reversing the order passed by the trial Court, the lower appellate Court has committed an illegality. Order impugned is not sustainable under the law.
4. In all cases observance of procedural law is always not necessary and therefore, in the present case issuance of notice to the parties would be a futile exercise.
5. Consequently, the petition deserves to be allowed and is hereby allowed. Order impugned is hereby quashed. While passing the order, dismissing the counter claim, the trial Court has also not considered the counter claim in the light of provisions contained under Order 8 Rule 6(a) of the Code and thereby committed an illegality. Consequently, order passed by the trial Court is also quashed, trial Court is required to hear the parties in detail in terms of Order 8 Rule 6(a) of the Code especially relating to maintainability of counter claim and pass the order afresh.
6. Interim application dismissed summarily. No order as to costs.

Sd/-
T. P. Sharma
Judge