HIGH COURT OF UTTARAKHAND
AT NAINITAL

Second Appeal No. 76 of 2022

Ghanshyam Singh and others … Appellants/defendants

Vs.

Narendra Singh … Plaintiff/Respondent

Advocate: Mr. Rajesh Pandey, Advocate, for the appellants
Mr. S.K. Mandal, Advocate, for the respondent

Hon'ble Sharad Kumar Sharma, J.

This is a defendants' Second Appeal, wherein they have put a challenge to the judgement dated 11th April 2022 and the consequential decree rendered thereto i.e. dated 18th April 2022, passed by the Court of 3rd Additional District Judge, Rudrapur, District Udham Singh Nagar in **Civil Appeal No. 40 of 2018, *Ghanshyam Singh and other Vs. Narendra Singh,*** as well as the judgement and decree dated 2nd May 2018 passed by the learned Court of Civil Judge (Junior Division), Rudrapur District Udham Singh Nagar in **Civil Suit No. 85 of 2007, Sri Narendra Singh Vs. Ghanshyam Singh and others**.

2. A very peculiar situation, which has chanced to be considered in the present Second Appeal is, that the plaintiff (respondent herein), when on 24th May 2007, had instituted the Suit, in relation to the property, which has been described in para 1, 2 and 3 of the plaint, had sought a decree as against the defendants, by modulating the relief therein in the following manner:-

"(अ) यह कि डिकी बहक वादी खिलाफ प्रतिवादीगण इस आशय की सादिर फरमा दी जावे कि प्रतिवादीगण व उनके वारिसान तथा नौकर चाकर ऐजेन्ट्स वादी की उपरोक्त भूमि जिसका विवरण वाद पत्र के पद सं0 1,2,3 व संलग्न नजरी नक्शा में दिया गया है मैं किसी भी प्रकार का बेमागदाखलत करने, व किता प्रकार का नया निर्माण कच्चा व पक्का करने से व विवादित भूमि की मूल प्रकृति को बदलने से हमेशा हमेशा के लिए बाज रहे।

"अ अ" यह कि प्रतिवादीगण को विवादित भूखण्ड से बेदखल कर उसका कब्जा वादी को दिलाये जाने हेतु निषेधाज्ञा का आदेश पारित कर विवादित भूखण्ड से प्रतिवादीगण से वादी को लाइसेन्स समाप्त होने की तिथि से वास्तविक कब्जा दिलाये जाने की तिथि तक 3050 / रूपये प्रति माह की दर से हर्जा इस्तेमाल बेजा भी दिलाये जाने का आदेश पारित करने की कृपा करे ।
(ब) यह कि अन्य अनुतोष जो न्यायालय श्रीमान उचित समझे वादी को प्रतिवादीगण से दिलाया जाये।
(स) यह कि खर्चा मुकदमा वादी प्रतिवादीगण से दिलाया जाये ।"

3. The nature of decree which was prayed for in the suit in fact it would amount to be a decree for the grant of a decree of permanent injunction, praying for not to change the nature of the property in question and to hand over the vacant possession of the property in question. Apart from that, the nature of injunction, which was sought for directing the defendants to pay the lease rent @ Rs. 3050 per month as would be payable to the plaintiff, as a consequence of the expiry of the terms of the lease.

4. What would be culled out from the nature of relief, which has been prayed for, it was rather a decree of permanent injunction which was prayed for by the plaintiff/respondent, as well as a decree of mandatory injunction, directing the defendants not to evict the plaintiff from the property in question, as described in the plaint. But, if the relief clause itself is taken into consideration, the reference of the disputed property which has to be read in

correlation to the pleading as raised in para 1, 2 and 3 of the plaint, it has been qualified with the plaint map, which was annexed with the plaint, which unfortunately is not the part of the records of the present Second Appeal.

5. The Suit proceeded; notices were issued to the defendants, and the defendants, apart from denying the plaint allegations, have prayed for a relief by way of a counterclaim praying for the grant of a decree of permanent injunction in relation to the nature as prayed for that the plaintiff/respondents may be restrained from evicting the defendant/appellants from the property in question, except in accordance with the provisions of law and not to interfere in their peaceful possession over the property in question.

6. Though, apparently it seems that the nature of relief, if it is comparatively read as that it was claimed in the Suit and that as claim in the counterclaim though it was in relation to the same set of property, which was described in the plaint, as well as in the written statement, which was more particularly dealt in para 20 and 21 of the counterclaim, that is the land lying in khata khatauni No. 119 khet No. 217(ka), having an area of 0.0700 hectares over which the defendants/appellants claimed to be in possession for more than thirty years.

7. The learned trial Court proceeded with the Suit, and ultimately, after the exchange of the pleadings, the learned trial Court had framed the issues on 19th November 2010 as referred to in para 6 of the impugned trial Court's judgement, which is extracted hereunder:-

> ''(1) क्या वादी विवादित भूमि का भूमिधर काबिज काश्तकार हैं ? यदि हॉ तो प्रभाव।
> (2) क्या वादी खाता संख्या 199 खेत न ं0 217क रकबा 0.0700 है0 भूमि पर क्रय शुदा काबिज है? यदि हॉ तो प्रभाव।
> (3) क्या वाद अल्पमूल्यांकित है?
> (4) क्या प्रदत्त न्यायशुल्क कम है?
> (5) क्या वादी के वाद में पक्षकारों के असंयोजन का दोष विद्यमान है ?
> (6) क्या वर्तमान वाद के श्रवण की अधिकारिता इस न्यायालय को प्राप्त है ?
> (7) क्या काउन्टर क्लेम/प्रतिवादी संख्या 1 गांव की आबादी के अन्तर्गत खसरा संख्या 223क रकबई 0.3630 है0 भूमि मध्ये प्रतिवादी संख्या 1 व 3 का मकान बना है, जिसमें प्रतिवादी संख्या 1 व 3 अपने स्वर्गीय पिता के जीवन काल से काबिज चले आ रहे हैं ?
> (8) क्या प्रतिवादीगण/काउन्टर क्लेम द्वारा विवादित भूमि पर 30 वर्ष से अधिक समय से काबिज चले आ रहे हैं ? यदि हॉ तो प्रभाव।
> (9) क्या प्रतिवादी के द्वारा काउन्टर क्लेम का मूल्यांकन कम किया गया है ?
> (10) क्या प्रतिवादी के द्वारा काउन्टर क्लेम का कम न्यायशुल्क अदा किया गया है ?
> (11) क्या वादी वादपत्र में याचित अनुतोष प्राप्त करने का अधिकारी है?
> (12) क्या प्रतिवादी काउन्टर क्लेम में याचित अनुतोष को प्राप्त करने का अधिकारी है ?''

8. Thereafter, on the request of the parties to the proceedings of the Suit, being Suit No. 85 of 2007, the learned trial Court had framed the additional issues on 24th May 2015, as referred to in para 7 of the judgement of the learned trial Court, which is extracted hereunder:-

> ''(13) क्या वादी द्वारा याचित क्षतिपूर्ति का अनुतोष काल बाधित है ?
> (14) क्या वादी द्वारा संशोधन के माध्यम से जोड़े गये अनुतोष पर न्यायशुल्क देय है, जिसे वादी ने अदा नहीं किया है ?''

9. Parties to the proceedings led their respective evidences and particularly, the plaintiff/respondent, apart from producing himself in the witness box as PW1, had also filed an affidavit in examination in chief as paper No. 202 (ka), and had also examined an independent witness i.e. PW2 i.e. Bhupendra Chaudhari and the evidence of PW3 being paper No. 105 (ka), Mr. Dharmendra Nainwal, who supported the statement by an affidavit which was filed being paper number 206 (ka).

10. Plaintiff had further placed on record the original copy of the sale deed i.e. paper No. 175 (ka), on the basis of which they contended, that they would be the exclusive owner of the property in question over which the defendants/appellants contended that they had been in possession over the property for the last over 30 years and hence the plaintiff/respondent may be restrained from interference in the possession itself except with the due process of law.

11. In response to the evidences led by the plaintiff/respondents, the defendants/appellants, too had adduced oral evidence of DW1 Ghnashyam Singh and the evidence of DW2 Ranjit Singh, as well as the affidavits which were filed in support thereto. But so far as the question of title of the land is concerned, in fact, the details of the documents which were filed by the defendants/appellants

by way of a list paper No. 77(ga), the only document, which was placed on record was khasra dated 29th May 2007, i.e. being paper No. 79 (Ga), meter sealing certificate, electricity bills, the notice which was issued and various such other documents, which the defendants contended that it rather shows, that they had been in possession over the property in question. None of the document as described in para 11 of the plaint shows that the defendants/appellants were ever recorded as to be the owner of the disputed property, which could entitled them to get the nature of decree which was sought in their counterclaim or to oppose the nature of decree which was sought by the plaintiff/respondents in their plaint, because their status of occupancy would be that of being in possession exclusively based upon the Khatauni i.e. dated 29th May 2007.

12. Be that as it may. The suit proceeded and the learned trial Court by a composite judgement dated 2nd May 2018, had rendered the following decrees, which is extracted hereunder:-

"आदेश

40. वादी का वाद प्रतिवादीगण के विरूद्ध वास्ते बेदखली तथा हर्जा इस्तेमाली सव्यय **आज्ञप्त** किया जाता है।

प्रतिवादी संख्या 1 का काउन्टर क्लेम वास्ते स्थाई निषेधाज्ञा **खारिज** किया जाता है।

प्रतिवादीगण को आदेशित किया जाता है कि वादग्रस्त सम्पत्ति खाता संख्या 119 खेत नम्बर 217क रकबा 0.0700 है० का अध्यासन निर्णय की तिथि से 30 दिन के अन्दर वादी को प्रदान किया जाना सुनिश्चित करें तथा दिनांक 01.04.2007 से वादग्रस्त सम्पत्ति का कब्जा प्रदान करने की तिथि तक 50/- रुपये प्रतिमाह की दर से हर्जा इस्तेमाली अदा करना सुनिश्चित करें।"

13. Though it's a composite judgement in relation to the plaint, and in the counterclaim; but the suit of the plaintiff/respondent since was decreed and so far as the defendants/appellants' counterclaim for grant of decree of permanent injunction was rejected. It was a composite judgement in relation to two independent proceedings i.e. the plaint as contemplated under Section 9 of the Code of Civil Procedure, and the counterclaim, as contemplated under Order 8 Rule 6A, which has to be treated as to be an independent plaint; in the light of the provisions contained under Order 8 Rule 6(4). Because of a simpliciter reading of Order 8 Rule 6A(4), it has laid down that the counterclaim would be treated as an independent plaint, and would be governed by the procedural Rules applicable to the plaints.

14. Meaning thereby, the procedure of determining the rights claimed under the counterclaim would be governed by the procedure, as it has been equally made applicable while deciding suits and as a consequence thereto, this Court is of the view, that when the counterclaim is to be treated as an independent plaint, any judgement, which is rendered on it, though may be on the basis of a composite judgement, it will be treated as to be an independent judgement and decree qua the two plaints i.e. one by way of a regular suit, under Section 9 of the C.P.C, and the second as a counterclaim decided by the learned trial Court under

Order 8 Rule 6A of the C.P.C. As soon as the legislature by virtue of an insertion by Act No. 104 of 1976, as an effect of Section 58 of the amendment carried w.e.f. 1st February 1977, whereby Order 8 Rule 6A, was for the first time inserted in the Code of Civil Procedure, this Court is of the view, that merely because of the fact that the learned trial Court, has compositely for the purposes of convenience has decided the counterclaim and the plaint by a common judgement, that in itself may not be inferred to constitute a single decree, against which one appeal could be preferred particularly, when the nature of decree, which was rendered by the learned trial Court, in the instant suit on 2nd May 2018 was much in contradistinction to the claim raised by the plaintiff/respondents and the defendants/appellants, hence the two shape of decrees rendered by the judgement dated 2nd May 2018, are distinct to one another even in these judicial operation and merely because of the fact that it has been decided by a common judgement, it cannot be substitutively read as to be a common decree for the purposes of preferring a one appeal against the judgement dated 2nd May 2018 deciding two independent proceedings by the judgement dated 2nd May 2018, thereby rendering two independent decrees, determining independent rights of the parties to the proceedings.

15. Hence, this Court is of the view, that the nature of decree, which has been rendered on 2nd May 2018, in fact, it

would be treated to be two independent proceedings, which were decided against the defendants/appellants and hence the Civil Appeal, which was preferred being Civil Appeal No. 40 of 2018, the challenge, which was given therein, was confined to the judgement dated 28th May 2018, but in the Memorandum of Appeal, if it is considered, the principle relief, which was sought by the appellants was by way of compositely modulated putting a challenge to the decree of decreeing the plaint of the plaintiff, as well as the rejection of their counterclaim, which are decrees which are absolutely separate in nature as formulated under Order 20 of the C.P.C.

16. Hence, the Memorandum of Appeal, as instituted on 22nd May 2018, I am of the view that since on a simpliciter interpretation to be given to Section 9 of the CPC, to be read with Order 8 Rule 6A(4) as inserted in 1977, they would take the shape of being an independent decree formulated under Order 20 and one composite appeal, where two rival but independent claims of the parties were decided against the defendants, could not have been instituted by way of institution of a common appeal.

17. In relation thereto, the learned counsel for the appellant has submitted that filing of a composite appeal would be justified for the reason being that in view of the ratio laid down by the Hon’ble Apex Court in the judgement

as reported in **AIR 1953 SC 419, Narhari and others Vs. Shankar and Others.** Particularly, he has made reference to para 5 of the said judgement, in fact, if the implications of para 5 of the said judgment are taken into consideration, which is extracted hereunder, it was only permitting the institution of a one composite appeal on the premise, that it was decided by a common judgement resulting into deciding the suit, as well as the counterclaim.

> "5. The plaintiffs in their appeal to the High Court have impleaded all the defendants as respondents and their prayer covers both the appeals and they have paid consolidated court-fee for the whole suit. It is now well settled that where there has been one trial, one finding, and one decision, there need not be two appeals even though two decrees may have been drawn up. As has been observed by Tek Chand J. in his learned judgment in Mst. Lachmi v. Mst. Bhuli(1) mentioned above, the deter- mining factor is not the decree but the matter in controversy. As he puts it later in his judgment, the estoppel is not created by the decree but it can only be created by the judgment. The question of res judicata arises only when there are two suits. Even when there are two suits, it has been held that a decision given simultaneously cannot be a decision in the former suit. When there is only one suit, the question of res judicata does not arise at all and in the present case, both the decrees are in the same case and based on the same judgment, and the matter decided concerns the entire suit. As such, there is no question of the application of the principle of res judicata. The same judgment cannot remain effective just because it was ap- pealed against with a different number or a copy of it was attached to a different appeal. The two decrees in sub- stance are one. Besides, the High Court was wrong in not giving to the appellants the benefit of section 5 of the Limitation Act because there was conflict of decisions regarding this question not only in the High Court of the State but also among the different High Courts in India."

18. Hence, on that pretext of para 5 of the said judgment it has laid down that rather since it is a common judgement deciding two independent proceedings and one trial was

conducted; one finding was recorded; but herein there would be a slight difference that in para 5, it refers to one decision.

19. My view is that the term used of one decision in para 5 of the Supreme Court's judgment would be in distinction to the facts of the present case, because one decision herein would be read in the context in the decision taken in the suit and the decision which had been taken in the counterclaim, which will be distinct to one another, as they take the shape of an independent determination, of independent rights in the proceedings instituted by the plaintiff/respondents and that all the proceedings instituted by the defendants/appellants in the counterclaim. Hence merely because of the decision being a one decision, deciding two independent proceedings, one appeal as per the opinion of this Court, would not be maintainable.

20. Apart from it, the judgement in Narhari (supra), relevant para 5, which has been extracted hereinabove, cannot be attracted to be made applicable in the instant case, because the introduction of the principle preposition of treating the counterclaim, as to be an independent suit was for the first time introduced by way of an insertion made with effect from 1st February 1977.

21. At the stage, when the Hon'ble Apex Court has decided the matter of Narhari and others (supra), and the newly inserted provision of Order 8 Rule 6A(4), was not the subject matter of consideration in the said case, as to what implications would it have in deciding the counterclaim, which as per the insertion is directed to be treated as to be an independent plaint. Hence, this judgement will have no relevance and any bearing to be made applicable in the present Second Appeal, because this aspect of the matter about the effect of subsequent insertion has not been considered in the matters of Narhari and others(supra).

22. The learned counsel for the appellants had subsequently referred to yet another judgement, on which he wants to place reliance, as that in the matters of **Pampara Phillip Vs. Koorithottiyil Kinhimohammed,** reported in **2007 (2) Civil Court Cases 9,** as rendered by the coordinate Bench of Kerala High Court, the learned counsel for the appellants has yet again referred to the contents of para 5 of the said judgement, which is extracted hereunder, the principle, which has been laid down therein in the said judgment, that what would be the impact of the suit and the counterclaim being decided together in a proceedings involving the unified proceedings, therefore the unified proceedings if it is disposed of by a common decree the subject matter of the appeal would be the consequence of combination of the suit plus counterclaim, and therefore

one appeal would be perfectly maintainable, as per the opinion of the co-ordinate bench of the Kerala High Court. Para 5 of the said judgment is extracted hereunder:-

> "5. On the other hand, learned Counsel for the appellant would argue that the suit and the counter-claim in a proceeding wherein Order VIII, Rule 6-A is involved are a unified proceeding and therefore when the unified proceeding is disposed of, the subject-matter of appeal would be the combination of suit plus counter-claim and therefore the appeal would be perfectly maintainable before the High Court. The counsel also would contend that under Order VIII, Rule 6-A what is contemplated by the Code is to dispose of the matter pronouncing a single judgment. Similarly what is to be drafted is a single decree wherein mention will be made of regarding the suit claim as well as the counter-claim. Now I will refer to a decision of this Court reported in A.Z. Mohammed Farooq v. State Government where incidentally the question arose and there was a preliminary point raised regarding the maintainability. But in that case the subject-matter of the counterclaim was above Rs. 10,000/- and therefore the Court did not decide the question, but had made references to the point at issue. The Full Bench of this Court considered the implication of Order VIII, Rule 6-A to 6G and in paragraph 17 refers to the fact that the counter-claim should be treated as a plaint and governed by the rules applicable to plaints. In paragraph 18 this Court observed that "having regard to the aforesaid provisions, it is possible to hold that the 'subject-matter' of the suit would be the aggregate of the amounts claimed on the plaint and in the written statement by way of counter-claim". But did not proceed to decide the same on the ground that the counter-claim itself exceeds Rs. 10,000/-. So the subject-matter of an appeal to be preferred under Section 52 of the Court Fees Act, would be the aggregate of the amounts claimed on the plaint and written statement. It is this 'subject -matter' that will govern the jurisdiction. Whether suit claim and counter-claim are independent proceedings or unified proceedings had been considered by the Madras High Court in T.K.V.S. Vidyapoornachary Sons v. M. R. Krishnamachary , which reads as follows:

> Order 8, Rule 6-A speaks of a counterclaim as a plaint in one place and as a cross-claim in another place. Nevertheless, in its most operative provision, it lays down that the Court shall pronounce a single judgment in the suit, both on the original claim and on the counter-claim. The susceptibility of a counter-claim to be dealt with in a single judgment along with a suit claim, runs counter to the idea of the two being regarded as things apart. It is not merely that the Code provides for a single judgment to dispose of, at one stroke, the suit claim as well as a counter-claim, like hitting two birds with one stone. But Rule 6-C specifically lays down a special procedure to separate the suit claim from the counter-claim, wherever the separation is called for. This provision emphasises by implication that as a general rule a suit claim and a counter-claim ought properly to be regarded as constituting a unified proceeding. The rule, however, makes for an exception, and it is this; should the plaintiff in a given case desire that the counter-claim filed by the defendant in answer to his suit claim be dealt with as a separate suit in itself, he ought to apply for that relief before the trial Court and it should be done before the issues are settled. On his application for amending his suit claim and the counter-claim, the Court will have to consider whether the counter-claim should be dealt with as part and parcel of the suit or whether the defendant should be referred to a separate suit. These exceptional provisions in Rule 6 C only illustrate the homogeneity of the suit claim and the counterclaim as a single proceeding."

23. In fact, the principle, which has been dealt with by the Kerala High Court, in the aforesaid judgment, it was an argument, which was extended by the then counsel for the applicant therein, wherein he has made reference to a judgement of the Full Bench judgement of the Kerala High Court, as reported in **AIR 1984 Kerala 126 (FB),** ***A.Z. Mohammed Farooq Vs. State Government,*** which has dealt with the question, which arose then, that when there was a preliminary point raised, in regard to the maintainability of a

common appeal, and in that cases, it was held that when the subject matter of the counterclaim and as that of the suit is same, therefore the Court didn't decide two distinct questions, but rather had made a reference to the different points of issues which were involved therein.

24. In the said case, the analogy of implications of Order 8 Rule 6A, was based upon the observations which was made by the Full Bench of Kerala High Court in para 17 of the judgment, which in fact, para 17 has observed that the counterclaim should be treated as an independent plaint and would be covered by the Rules as it is applicable to the suit and in para 18 of the Full Bench judgement, the Court has rather observed that having regard to the aforesaid provision, it was held that when the subject matter of the suit would be the adequate amount claimed therein in the said suit, which was an amount involved in the subject matter in the counterclaim, it didn't proceeded to decide the claim on the ground that the counterclaim itself exceeded Rs. 10,000/-.

24. In fact, the subject matter therein, which was before the Full Bench of Kerala High Court, was in relation to the suit for recovery of money, as involved therein, but however, much scrutiny or a finding cannot be recorded by this Court on the basis of aforesaid judgement of Full Bench of Kerala High Court, in the absence of the same being

placed on record before this Court by the learned counsel for the appellants.

26. The reference made to para 6 of the said judgement, as argued, if that is taken into consideration, the Kerala High Court has taken a view that the suit claim and counterclaim, are only one single proceeding and as far as para 6 of the said judgement referred to that Rule 6C of Order 8 illustrates, the homogeneity of the suit claim and the counterclaim as to be a single proceedings or a unified proceedings and which necessary takes the shape of a common adjudication over a common subject matter. But, unfortunately, the judgement and the findings which has been recorded in paras 5 and 6, have not made any observations in the context, as to whether at all even if the subject matter i.e. the property in dispute is common, and it has been commonly decided by the same judgement, whether what effect would Order 20, would have, as to whether it will result into a formulation of a common decree or it would result into a formulation of a different independent decree, because the plaint and the counterclaim as per law are to be treated as an independent suit.

27. In that eventuality, the view expressed by the co-ordinate Bench of the Kerala High Court, in the matters of Pampara Phillip (supra), with all due respect and reverences

at my command, I am not in agreement with the ratio laid down therein that merely on the pretext, that since it was a common judgement, in a common proceeding, once single appeal would suffice the purpose, to put a challenge to a two distinct decree formulated under Order 20, the coordinate Bench of the Kerala High Court has not considered the controversy from the conspicuous of the implications of Order 20, hence, I am not in agreement with the view taken by the Kerala High Court that a composite Appeal would be tenable as per the procedure prescribed under Order 41 of the Code of Civil Procedure.

28. The learned counsel for the respondent has made reference to a judgement reported in **2015 (4) Supreme, 298, Rajni Rani and Another Vs. Khairati Lal & Others,** and while refuting the arguments as extended by the learned counsel for the appellant he has referred to para 12 of the said judgement, which is extracted hereunder:-

> "12. On a plain reading of the aforesaid provisions it is quite limpid that a counter-claim preferred by the defendant in a suit is in the nature of a cross-suit and by a statutory command even if the suit is dismissed, counter-claim shall remain alive for adjudication. For making a counter- claim entertainable by the court, the defendant is required to pay the requisite court fee on the valuation of the counter-claim. The plaintiff is obliged to file a written statement and in case there is default the court can pronounce the Judgment against the plaintiff in relation to the counter-claim put forth by the defendant as it has an independent status. The purpose of the scheme relating to counter-claim is to avoid multiplicity of the proceedings. When a counter-claim is dismissed on being adjudicated on merits it forecloses the rights of the defendant. As per Rule 6A(2)

> the court is required to pronounce a final judgment in the same suit both on the original claim and also on the counter-claim. The seminal purpose is to avoid piece-meal adjudication. The plaintiff can file an application for exclusion of a counter-claim and can do so at any time before issues are settled in relation to the counter-claim. We are not concerned with such a situation."

29. The Hon'ble Apex Court, in Rajni Rani (supra), while dealing with the implications of Order 8 Rule 6A, in relation to the counterclaim preferred by the defendant in a suit, it has observed that it will take shape of a cross-suit and even if the suit is dismissed, once the law provides that the counterclaim would still prevail to survive to be adjudicated on its own merit, unaffected by the dismissal of the suit, in that eventuality, the counterclaim, as well as the plaint, would have an independent procedural and adjudicatory status resulting into an independent formulation of a decree, in that eventuality, two different appeals are required to be preferred.

30. In this case, it has been a consistent issue of debate as to when there is a composite decree, which deals with the plaint allegations, as well as that of a counterclaim, whether as a consequence of the remittance of a composite decree, whether there has had to be two independent appeals, to be challenged, when the composite judgement and decree are having an effect of a decision to be rendered in two independent proceedings under law and two independent nature of decrees have been granted by the Court, whereby

the suit has been decreed and the counterclaim has been rejected.

31. Another question of law, which would emanate as to whether in an event if there is non-challenge of the part of the composite decree, which had been decided against the defendants/appellants herein, where no separate Appeal was filed by the defendants/appellants, before the Court below, whether the judgement and decree, which has been passed in the counterclaim, which is available to be challenged as an independent appeal in accordance with law, after the payment of the requisite Court fees. One appeal couldn't have been filed as against decreeing the suit, because admittedly, that would be a separate decree in favour of the plaintiff. For filing of an appeal against the dismissal of a counterclaim, there has to be a different appeal, because it will entail remittance of different set of Court fees, qua the relief which has been denied by the learned trial Court which has to be claimed in the appeal preferred by the defendants/appellants. In that eventuality, in an event, if a composite appeal is filed, with remittance of the Court fees, while giving a challenge to the dismissal of the counterclaim, this Court is of the view that the issue of the bar of *res judicata* against the defendants/appellants will come into play, when there is no independent challenge given to the judgement and decree of the counterclaim after the payment of the requisite Court fees.

32. This Court is of the view that in the instant case while dismissing the counterclaim, the relief claimed by the defendants/appellants in the counterclaim, would be separately appellable, because there are two different set of decrees, where the suit has been decreed and the counterclaim has been dismissed.

33. This issue could also be looked into from the perspective that as per the provisions contained under Order 8 Rule 6A(2), the Court has been empowered to pronounce a final judgement in the same suit; independently both on the original claim of suit, as well as on the counterclaim, and in that view of the matter, when the suit is decided by a separate decree and is against the defendants/appellants resulting into a dismissal of the counterclaim, the person aggrieved by the judgement and decree in the counterclaim; though it might have been under the same set of facts which was decided by a common decree, it would be appellable by filing a separate appeal. The issue of maintainability of a composite Appeal of decreeing of the suit and dismissal of the counterclaim in view of the principles of the Hon'ble Apex Court, as rendered in **Rajni Rani's case** reported in **2014 AIR SCW 6187.** In fact, the principles laid down therein, there has had to be an independent appeal, against the decree of the counterclaim and the suit itself. The relevant part of the

judgment i.e. para 44 of Rajni Rajni's case (Supra) is extracted hereunder:-

> "44. Consequently, in view of the detailed discussion made hereinabove, this Court is of the view that the learned lst appellate **court erred in entertaining the composite appeal having been preferred on behalf of the appellant/defendants laying challenge therein to the judgment passed by the learned trial court decreeing the suit of the plaintiffs as well as dismissing the counterclaim preferred on behalf of the appellant/defendant.** In view of the latest law laid down by Hon‟ble Apex Court as well as the provisions contained in the law as discussed above, the Patna High Court SA No.274 of 2002 dt.24-07-2017 9 appellant/defendant being aggrieved with the dismissal of the counterclaim ought to have filed separate appeal by affixing separate court fee and composite appeal, as has been preferred in the present case, was not maintainable."

34. A counterclaim is by way of raising an independent claim though in the same proceedings, which is taken in the written statement and it takes the shape of a suit and is filed by the defendants/appellants, seeking an independent relief and a decree against the plaintiff, on a cause of action, which they have against the plaintiff, and in view of the simpliciter language of the provisions contained under Order 8 Rule 6A(4), since it is an independent cause of action, which is agitated in a separate suit, to avoid the multiplicity of the proceedings, the defendants/appellants have been given liberty to file counterclaim and get an independent adjudication done, but, since the counterclaim has been treated as to be a separate suit, if a non-challenge of the same by filing an independent appeal, the principles of *res judicata* will apply; when the suit of the plaintiff is decreed

in view of the explanation (1) to Section 11 of the Code of Civil Procedure.

35. If the decision in one suit has become final, in which the issue, which has to be decided in the Appeal was heard and finally decided, the connected suit in the shape of a counterclaim, cannot be appealed again, as it would be barred by the principles of *res judicata*.

36. This Court is of the view, that if the wider principles of **Ramnath Exports Private Limited (supra)** is taken into consideration, as reported in **2022 SCC OnLine SC 788**, in fact, the principal ratio, which has been laid down is that a common judgement the, appellants who had preferred a First Appeal before the High Court by commonly challenging both the decrees, it was a case, in which the Hon'ble Apex Court, in para 3 has observed, that there has had to be two separate Appeals, and in the said case, the appellants of the First Appeal had preferred a Miscellaneous Application, seeking permission to file a single appeal assailing the common judgement against two separate decrees. Hence, the judgement of Ramnath Exports Private Limited (Supra), which was dealing with this issue, was in the context where the appellants had sought a permission or leave of the Court to challenge the composite decree by filing a single appeal. Para 3 of the said judgment is extracted hereunder:-

> "3. Being aggrieved by the common judgment, appellant preferred First Appeal No.50 of 2008 before the High Court

> challenging both the decrees. On filing appeal, at the initial stage, appellant also preferred an application being CLMA No.4365 of 2008 (in short be referred as "CLMA") and sought permission to file a single appeal assailing the common judgment dated 16.04.2008 alongwith two separate decrees dated 30.04.2008. The first appeal was admitted by High Court vide order dated 18.07.2008 and by the same order, two weeks' time was granted to file objections on CLMA and further two weeks to file rejoinder. It was further directed to list the application after lapse of the said period.

37. From the submission, as it has been made by the learned counsel for the appellants/defendants, this Court is on the opinion, that on perusal of the decree and judgement passed by the Court below, it could be noticed that the nature of relief, which has been set-up by the appellants/defendants; in the counterclaim, even if it is read in correlation to the nature of decree, which has been set-up by the plaintiff in the suit, since being absolutely distinct to one another, and after being considered on merits when the claim of the plaintiff was decreed and the counterclaim of the defendants was negatived by the Court, there has to be a separate Appeal, in view of the provisions of Order 8 Rule 6A(4).

38. The aforesaid principles in the matters of Rajni Rani (Supra) has been discussed by the Hon'ble Apex Court in para 9 of the said judgement, as to what implications Order 8 Rule 6A(4), would have if it is read along with Order 8 Rule 6A(3) and ultimately the Hon'ble Apex Court has arrived to a conclusion that on the plain reading of the aforesaid provisions, with a counterclaim preferred by the defendants

in a suit is in the nature of cross suit by statutory command of law and even if the suit is decreed or it is dismissed, since the counterclaim under law is being permitted to be kept alive, without being affected by the decision of the suit, it will be treated as to be an independent suit altogether, which could be decided even despite dismissal of the suit. Para 9, 11 and 13 of the said judgement is extracted hereunder:-

> "9. To appreciate the controversy in proper perspective it is imperative to appreciate the scheme relating to the counter-claim that has been introduced by CPC (amendment) Act 104 of 1976 with effect from 1.2.1977. Order 8, Rule 6A deals with counter-claim by the defendant. Rule 6A(2) stipulates thus:-
>
> > "(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."
>
> 11. Rule 6A(4) of the said Rule postulates that the counter-claim shall be treated as a plaint and governed by rules applicable to a plaint. Rule 6B provides how the counter-claim is to be stated and Rule 6C deals with exclusion of counter-claim. Rules 6D deals with the situation when the suit is discontinued. It is as follows:-
>
> > "R. 6D. Effect of discontinuance of suit. – If in any case in which the defendant sets up a counter-claim, the suit of the plaintiff is stayed, discontinued or dismissed, the counter-claim may nevertheless be proceeded with."
>
> 13. In the instant case, the counter-claim has been dismissed finally by expressing an opinion that it is barred by principles of Order 2, Rule 2 of the CPC. The question is what status is to be given to such an expression of opinion. In this context we may refer with profit the definition of the term decree as contained in section 2(2) of CPC:-
>
> > "(2) "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the

> parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within [1][* * *] Section 144, but shall not include – any adjudication from which an appeal lies as an appeal from an order, or any order of dismissal for default.
>
> Explanation- A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final;"

39. The judgement relied by the learned counsel for the appellants as aforesaid, it was altogether under a different set of facts where the distinction has been dealt with in para 15 and 16 of the judgement, which entailed the consideration of the controversy pertaining to the money recovery from either of the parties and hence under sub Rule (2) of Rule 19 of Order 20, the decree passed in a suit in which the set off or a counterclaim shall be subject to the same set of provision as applicable in respect of an appeal. They take the shape of independent suit unaffected by the decision taken in either the proceedings i.e. the suit or the counter, as their legal existence is independent to one another, and consequential decision since it results to formulation of a separate decree.

40. In that eventuality, given by the logic assigned in para 16 of the judgment, a decree rendered in set off or counterclaim, will be subject to the proceedings as applicable in respect of an Appeal as provided under Section 108 of the CPC.

41. Hence, for the aforesaid reasons, this Court is of the view that one composite Appeal as against the two independent and distinct decrees, rendered in an independent proceeding where the counterclaim has to be treated as an independent suit would not be tenable.

42. Accordingly, the Second Appeal lacks merit and the same is hereby dismissed.

(Sharad Kumar Sharma, J.)
22.07.2022

Mahinder/