

**In the High Court At Calcutta
CIVIL REVISIONAL JURISDICTION
CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

CO/70/2025

***SHRI REGGIE LAMA
VS
SMT. TARA SUBBA AND ANR.***

For the Petitioner : Mr. Ajay Singhal, Advocate
Ms. Heena Yasmin Shaikh, Advocate

For the Opposite Parties: Mr. Jorgay Namka, Advocate
Mr. Debabrata Rai, Advocate

Heard & Judgment on: November 18, 2025

Debangsu Basak, J.

1. Revisional application is directed against Order No. 57 dated February 27, 2025 passed in Title Suit No. 41 of 2019 pending in the Court of the learned Civil Judge (Senior Division) at Darjeeling.
2. Learned advocate appearing for the petitioner submits that, the petitioner filed a suit for perpetual injunction in the Court of the learned Civil Judge (Senior Division) in Title Suit No. 41 of 2019. In such suit, the Opposite Party No. 2 filed a written statement containing a counter claim. He draws the attention of the Court to the counter claim filed by the Opposite Party No. 1. He draws the

CO/70/2025

attention of the Court to the fact that, Opposite Party No. 1 made several allegations with regard to title to the immovable property concerned and enrobed various persons who are not parties to the suit. He points to the prayers made in the counter claim.

3. Learned advocate appearing for the petitioner draws the attention of the Court to the supplementary affidavit. He submits that, Opposite Party No. 1 filed a civil suit being Title Suit No. 3 of 2025 in the Court of the Principal District Judge, Gangtok. He points out that, the petitioner herein was arraigned as the defendant No. 5 in such suit. He also points out that, there are 10 defendants and one proforma defendant in Title Suit No. 3 of 2025. He also refers to the reliefs sought for in Title Suit No. 3 of 2025.
4. Referring to the reliefs prayed for by the Opposite Party No. 1 in Title No. 41 of 2019 through the counter claim as also the reliefs sought for by the Opposite Party No. 1 in the plaint being Title Suit No. 3 of 2025, learned advocate appearing for the petitioner submits that, at least one of the reliefs is a replica of the reliefs sought for by the Opposite Party No. 1 in her counter claim.
5. Learned advocate appearing for the petitioner submits that there is a possibility of conflict of judicial decision, if the counter claims in the suit being Title Suit No. 3 of 2025 are allowed to continue simultaneously. He contends that, the petitioner cannot be forced to contest two proceedings in two different fora. He refers to Order VIII Rule 6C and, submits that, the counter claim should be rejected.
6. Opposite Party No. 1 is represented.
7. Petitioner as the plaintiff filed a suit for perpetual injunction being Title Suit No. 41 of 2019. The title suit refers to an immovable

CO/70/2025

property. Petitioner claims to be the owner of such immovable property.

8. Title Suit No. 41 of 2019 was filed against a lady who expired subsequent to filing of the suit. The original sole defendant was substituted by two of her children as heirs and legal representatives. Opposite Party No. 1 is one of them.
9. Opposite Party No. 1 filed a counter claim in Title Suit No. 41 of 2019. Opposite Party No. 1 contended in such counter claim that, Opposite Party No. 1 holds appropriate title to the immovable property concerned.
10. On the Opposite Party No. 1 filing the counter claim, petitioner before Court, applied under Order VIII Rule 6C of the Code of Civil Procedure, 1908. Learned Judge by the impugned order rejected such application.
11. Order VIII Rule 6C of the Code of Civil Procedure, 1908 is as follows :-

“6-C Exclusion of counter-claim- Where a defendant sets up a counter-claim and the plaintiff contends that the claim thereby raised ought not to be disposed of by way of counter-claim but in an independent suit, the plaintiff may, at any time before issues are settled in relation to the counter-claim, apply to the Court for an order that such counter-claim may be excluded, and the Court may, on the hearing of such application make such order as it thinks fit.”

12. Order VIII Rule 6C allows the plaintiff to invite the Court to exclude the counter claim, if, the counter claim is such that, the same should not be disposed of by way of a counter claim, but in an

CO/70/2025

independent suit. The other condition that the plaintiff must satisfy is that, such an issue should be raised before the issues to the suit are settled in relation to the counter claim.

13. In the facts of the present case, the petitioner as the plaintiff applied for rejection of the counter claim prior to the settlement of issues of the counter claim. The petitioner as the plaintiff was, therefore, required to establish that the claim raised in the counter claim by the Opposite Party No. 1 should be disposed of not by way of a counter claim but in an independent suit.
14. Opposite Party No. 1 proceeded to file an independent suit, albeit, in the civil Court at Gangtok. In such suit, however, apart from the plaintiff as defendant No. 5, Opposite Party No. 1 sued various other persons. In aggregate, there are 11 defendants in such suit at Gangtok with one of the defendants being a proforma defendant.
15. The prayers in the counter claim and the new suit filed by the Opposite Party No. 1 at Gangtok, overlap each other, to the extent of one of the reliefs is concerned. One of the reliefs prayed for in the Title Suit filed at Gangtok is common with that of the reliefs sought for by the Opposite Party No. 1 in its counter claim.
16. Opposite Party No. 1 is seeking to defend the claim of the plaintiff in the suit at hand, on the basis of a title which the Opposite Party No. 1 seeks to establish as against the petitioner herein. In doing so, the Opposite Party No. 1 narrated various events in the counter claim and tried to establish title through the plaintiffs in the counter claim. The counter claim is in the nature of establishing right, title and interests in respect of the property involved in Title Suit No. 41 of 2019.

CO/70/2025

17. Opposite Party No. 1, in addition to establishing her right, title and interests over the immovable property concerned against the petitioner found it necessary to establish her right, title and interests in respect of the same immovable property as against 10 other persons who are parties to the suit filed by her at Gangtok.
18. In my view, no case stands made out by the plaintiff warranting a Court to relegate the Opposite Party No. 1 to an independent suit rather than the counter claim passed by Opposite Party No. 1 in the suit at hand.
19. In such circumstances, I find no material irregularity in the order impugned warranting an interference under Article 227 of the constitution of India.
20. CO/70/2025 is **disposed of** accordingly without any order as to costs. Interim order stands vacated.

(Debangsu Basak, J.)