IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Md. Shabbar Rashidi

C.O. 81 of 2026

Shri Kedar Prasad Mishra

Vs.

Basudeb Tewari & Ors.

For the petitioner	:	Mr. Debdutta Basu, Adv. Ms. Soumalika Nandan, Adv.
Heard on	:	01.10.2026
Judgment on	:	01.10.2026

MD. SHABBAR RASHIDI, J.:

1. None appears for the opposite parties.

2. The instant civil revision has been filed by defendant no. 1 in Title Suit No. 241 of 2013 being aggrieved with an order no. 5 dated 25th July, 2025 and order No. 6 dated 5th August, 2025 passed in Title Appeal No. 60 of 2025.

3. By the order dated 25th July, 2025 an application filed on behalf of the appellant in Title Appeal No. 60 of 2025 was allowed

and delay in making and filing in Title Appeal No. 60 of 2025 was condoned.

4. By order no. 6 dated 5th August, 2025 an application filed on behalf of the appellant in Title Appeal No. 60 of 2025. The judgment and decree of the counter claim passed by the learned Civil Judge, Junior Division, 4th Court, Serampore, Hooghly in Title Suit No. 241 of 2013 was stayed.

5. It is submitted by the learned advocate for the petitioner that the petitioner was the defendant no. 1 in Title Suit No. 241 of 2013 filed by one Sri Manoj Tewari. The present petitioner was defendant no. 1 in said Title Suit. The present petitioner contested the said suit and filed a written objection alongwith the counter claim as against the plaintiff of Title Suit No. 241 of 2013.

6. The learned advocate for the petitioner further submits that Title Suit No. 241 of 2013 was dismissed for non compliance of Court's order. However, the suit survived for determination of the counter claim filed on behalf of the present petitioner/defendant no. 1 in such suit as against the plaintiff in the suit.

7. The learned advocate for the petitioner further submits that the counter claim of the plaintiff was decreed in favour of the present petitioner as against the plaintiff of Title Suit No. 241 of 2013. Subsequently, the proforma defendant no. 2 filed Title Appeal

as against the judgment and decree passed in the counter claim of the present petitioner being Title Appeal No. 60 of 2025.

8. The learned advocate for the petitioner further submits that upon an application filed on behalf of the appellant in Title Appeal No. 60 of 2025, the decree of his counter claim passed in Title Suit No. 241 of 2013 was stayed, by the impugned order, at the behest of a person who was neither a party to such proceeding not such person was prejudiced by such decree.

9. Learned advocate for the petitioner submits that the decree of counter claim in Title Suit No. 241 of 2013 was passed as against the plaintiff of such suit. The appellant in Title Appeal No. 60 of 2025 was a proforma defendant in such suit and no decree was passed against him. He submits that in fact, the appellant in Title Appeal No. 60 of 2025 was not a party in the counter claim filed on behalf of the present petitioner.

10. Learned advocate for the petitioner also submits that the proforma defendant in Title Suit No. 241 of 2013 who was also not a party in the counter claim filed on behalf of the present petitioner could not have filed an appeal against the judgment and decree passed in the counter claim filed by the petitioner. To such proposition learned advocate for the petitioner relies upon a decision of the Hon'ble Supreme Court of India in the case of ***H. Anjanappa***

& Ors. –Vs.- A. Prabhakar & Ors *in Civil Appeal Nos. 1180-1181 of 2025* reported in ***2025 INSC 121***.

11. Learned advocate for the petitioner also submits that the appellant in Title Appeal No. 60 of 2025 ought to have obtained leave of the Court to file an appeal against a judgment and decree where the appellant was not a party in the original proceeding and that too, upon establishing that he had an interest in the property involved in said decree and he was prejudiced by the decree so passed.

12. From the materials on record it transpires that one Sri Manoj Tewari filed Title Suit No. 241 of 2013 as against the present petitioner as defendant no. 1. Appellant in Title Appeal No. 60 of 2025 was a proforma defendant in such proceeding. The present petitioner as defendant no. 1 entered appearance in such suit and contested the same. He filed his written statement with a counter claim as against the plaintiff in Title Suit No. 241 of 2013. Subsequently, by an order passed by the learned Trial Court being order no. 294 dated 6th December, 2021, Title Suit No. 241 of 2013 was dismissed for non compliance of Court's order. The said order also noted to the following:

> *"On careful perusal of the case record, it appears that the defendant has filed counterclaim against the*

pleading of the plaintiff and the same has been accepted by this Court and issues were also be framed in respect of the counterclaim on 06.04.2017.
To 21.12.2021 for P.H in respect of counterclaim."

13. The record also goes to show that the present petitioner/defendant no. 1 in Title Suit No. 241 of 2013 filed as counter claim with the following prayers:

"a) a Decree of recovery of possession of the "B" schedule property on revocation of the licence to plaintiff.
b) For all costs.
c) For any other relief/s as this Defendant No. 1 would be entitled to get under the law and enquiry."

14. After the dismissal of the Title Suit No. 241 of 2013, the proforma defendant no. 2 filed an application under Order I Rule 10(2) of the Code of Civil Procedure. Such application filed on behalf of the proforma defendant no. 2 was considered by the learned Trial Court by order no. 304 dated 23rd March, 2022 and the learned Trial Court refused the prayer of proforma defendant no. 1 to be a party defendant in the counter claim filed on behalf of the defendant no. 1 in the suit. Such order records that:

"Today is fixed for passing of order in respect of application U/or. 1 R. 10 (2) and Sec. 151 C.P.C. for

transposition of pro-defendant no. 1 to plaintiff category.

Parties are represented by their respective hazira.

Hd. Perused. Considered.

Let the case record be taken up for passing order.

By filing the instant application, the pro-defendant no. 1 claiming himself as the legal heir of the original owner/ claimant of the suit schedule property has intended to be transposed in the plaintiff's category from the pro-defendant category.

Defendant by vehemently denying the averment of the pro-defendant no. 1 has contended that the instant application is liable to be rejected with exemplary costs as the pro-defendant had never resided over the suit property and the instant suit has already been dismissed.

Having heard both sides, perusing the application, w/o and the entire case record, this Court is of the consideration tht the instant title suit had already been dismissed against the plaintiff and at present without setting aside the dismissal order of this Court, the pro-defendant has no locus standi to file the instant application. Moreover, when this Court goes through the plaint, it appears that plaintiff has never denied the co-ownership of pro-defendant in his pleading. Thus, this Court does not find it necessary to implead to pro-defendant no. 1 as plaintiff to the suit as it is apparent that his interest would not be prejudiced if he were not impleaded as plaintiff to the suit.

Hence, it is,
ordered,

that the instant application U/or 1 R. 10(2) and Sec. 151 C.P.C. be and the same is rejected without any order as to costs.
To 25.04.2022 for P.H. in respect of the counterclaim."

15. The counter claim filed on behalf of the defendant no. 1 was taken up for consideration by the learned Trial Court and by an order no. 339 dated 30th April, 2025, the counter claim filed on behalf of the present petitioner/defendant no. 1 was allowed in the following manner:

"That the counter-claim be and the same is decreed exparte against the defendant of the counter-claim without any order as to cost.

The defendant of counter-claim is hereby directed to vacate and deliver the B schedule suit property in the counter-claim in favour of the plaintiff of the counter-claim within period of 60 days, failing which the plaintiff of the counter-claim shall be at liberty to execute the same as per law.

DA is directed to do the needful."

16. Therefore, from perusal of the decree passed in the counter claim filed by the present petitioner it appears that the counter claim filed by the defendant in Title Suit No. 241 of 2013 was allowed exparte. The defendant of the counter claim was directed by

such order to vacate and deliver the B schedule property in the counter claim to the plaintiff in the counter claim within a specified time. The said order clearly goes to show that there was no order as against proforma defendant no. 2 i.e. appellant in Title Appeal No. 60 of 2025.

17. In ***H. Anjanappa*** (supra) it was held by the Hon'ble Supreme Court of India that:

> *"25. Sections 96 and 100 respectively of the Code of Civil Procedure, 1908 (for short, the "CPC") provide for preferring an appeal from any original decree or from decree in appeal respectively. The aforesaid provisions do not enumerate the categories of persons who can file an appeal. However, it is a settled legal proposition that a stranger cannot be permitted to file an appeal in any proceedings unless he satisfies the court that he falls within the category of aggrieved persons. It is only where a judgment and decree prejudicially affects a person who is not a party to the proceedings, he can prefer an appeal with the leave of the appellate court.*
> *[see : Sri V.N. Krishna Murthy and another vs. Sri Ravikumar and others (Civil Appeal Nos. 2701-2704 of 2020, decided on 21st August 2020)]*
>
> *26. A five-Judge Bench of the Privy Council in Nagendra Nath Dey vs. Suresh Chandra Dey, AIR 1932 PC 165, speaking through Sir Dinshaw Mulla observed that there is no definition of appeal in the CPC, but there is no doubt that any application by a party to an appellate Court, asking it to set aside or revise a*

decision of a subordinate Court, is an appeal within the ordinary acceptation of the term, and that it is no less an appeal because it is irregular or incompetent.

27. A party to a suit adversely affected by a decree or any of his representatives-in-interest may file an appeal. But a person who is not a party to a decree or order may, with the leave of the court, prefer an appeal from such decree or order if he is either bound by a decree or order or is aggrieved by it or is otherwise prejudicially affected by it."

18. In the impugned order the learned First Appellate Court has noted that the appellant had not received any notice from the Court regarding the Title Suit so he could not contest the counter claim. Such finding of the learned First Appellate Court appears to be perverse and passed without taking into consideration of the fact that an application under Order I Rule 10(2) of the Code of Civil Procedure filed by the appellant/proforma defendant no. 2 (in Title Suit No. 241 of 2013) was considered and rejected by the learned Trial Court.

19. Apparently the appellant in Title Appeal No. 60 of 2025 was not a party in the counter claim filed by the present petitioner/defendant no. 1 in Title Suit No. 241 of 2013. There is nothing on record to show that the appellant in Title Appeal No. 60 of 2025 had demonstrated that he was in any way prejudiced by the

decree passed in the counter claim filed by the defendant no. 1 in such suit and that he was an interested party. No leave was taken by the appellant for filing Title Appeal No. 60 of 2025 to justify his interest in the properties involved in the counter claim filed by the present petitioner.

20. Therefore, on the basis of discussions made hereinbefore and applying the ratio laid down in ***H. Anjanappa*** (supra) the impugned orders passed in Title Appeal No. 60 of 2025 are hereby set aside.

21. The admissions of appeal on the basis of the impugned order dated 25th July, 2025 cannot stand without the specific leave granted by the learned First Appellate Court. The Title Appeal No. 60 of 2025 stands dismissed.

22. With the aforesaid observations and directions **C.O. 81 of 2026** is disposed of.

23. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon compliance with all necessary formalities.

(MD. SHABBAR RASHIDI, J.)

B.K.N.
A.R. (Court)