



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

SECOND APPEAL NO.25 OF 2025

APPELLANTS

Ori. Plaintiff
on R.A.

- :-** 1. Ganesh Supda Warade, Age-55 years,
Occu.: Agriculturist,
2. Pramod Ninaji Warade, Age-45 years,
Occu.: Agriculturist,
3. Vinod Ninaji Warade, Age-43 years,
Occu.: Agriculturist,
4. Nilesh Ninaji Warade,
Age-40 years, Occu.: Agriculturist,
All resident of Takarkhed, Taluka-
Nandura, District-Buldhana.

..VERSUS..

RESPONDENTS

Original respondent
on R.A.

- :-** 1. Prashant Vijay Warade, Age – 45 years,
Occu.: Agriculturist,
2. Smt. Indubai Vijay Warade, Age 70
years, Occu.: Household,
3. Shrijit Prashant Warade, Age 15 years,
Occu.: Education, Through G.A.L.
mother Sau. Deepali Prashant Warade,
All resident of Takarkhed, Taluka-
Nandura, District-Buldhana

Mr.N. S. Badhe, Advocate for Appellants.
Mr. A. J. Thakkar, Advocate for the Respondents.

CORAM : **ROHIT W. JOSHI, J.**

DATE : **10.02.2026**

J U D G M E N T :

1) Notice was issued in the present Second Appeal vide order dated 06.01.2026 on the following substantial question of law :-

“Whether the learned First Appellate Court has erred in holding that a composite appeal against a decree passed in a suit and counter-claim is not maintainable ?”

2) Heard finally with consent of learned advocates for the respective parties.

3) The present Second Appeal is preferred challenging judgment and decree dated 22.12.2023 passed by the learned Ad-hoc District Judge-1, Malkapur, District-Buldana, in Regular Civil Appeal No.46 of 2019, which has arisen out of the judgment and decree dated 09.08.2019 passed by the learned Civil Judge, Junior Division, Nandura, in Regular Civil Suit No.69 of 2011.

4) The appellants are the original plaintiffs and respondents are original defendants. The parties will be referred as “plaintiffs” and “defendants”, hereinafter.

5) The plaintiffs had filed a suit for declaration and injunction against the defendants. The defendants had filed a counter-claim for recovery of possession. The learned Trial Court decreed the suit in part and also passed a decree for possession in the counter-claim in favour of the defendants vide judgment and decree dated 09.08.2019. The plaintiffs challenged the said judgment and decree by preferring appeal, being Regular Civil Appeal No.46 of 2019. Prayer clause-(2) of the memorandum of appeal reads as under:-

“2) The impugned Judgment dated 09.08.2019 and Decree dated 19.08.2019 passed by the C.J.J.D. Court, Nandura be quashed and set aside and the suit of the plaintiff be allowed and the counter claim of the defendant be dismissed”

6) Perusal of the prayer clause will demonstrate that the plaintiffs have challenged the decree passed in their civil suit as also the decree passed in the counter-claim.

7) The learned First Appellate Court has dismissed the appeal on the ground that a composite appeal challenging the decree passed in civil suit and the counter-claim is not

maintainable. The learned First Appellate Court has placed reliance on judgment of the Patna High Court in the case of ***Smt. Kishori Devi and ors. Vs. Rameshwar Prasad***, reported in ***AIR 2017 PATNA 187***. Following the ratio of the said decision, the learned First Appellate Court has held that a counter-claim is a suit by itself and, therefore, the decree passed in a counter-claim is required to be challenged separately and not by a composite appeal in which decree passed in the civil suit is impugned.

8) Mr. Badhe, learned Advocate for the appellants, places reliance on judgment of the Hon'ble Supreme Court in the case of ***Narhari and ors. Vs. Shanker and ors***, reported in ***1953 AIR (SC) 419*** & a Single Bench judgment of this Court in the case of ***Shankar Masu Dokare Vs. Shobha Subhash Dokare***, reported in ***2015 (2) MhLJ 263*** and contends that a single composite appeal can be filed to challenge decrees passed in civil suit and the counter claim filed therein.

9) Mr. Thakkar, learned Advocate for the respondents, supports the judgment of the learned First Appellate Court by placing reliance on judgment of the Hon'ble Supreme Court

in the cases of *Sheodan Singh Vs. Daryao Kunwar*, reported in *AIR 1966 SCC 1332*, *Rajni Rani and anr. Vs. Khairati Lal and Ors*, reported in *(2015) 2 SCC 682* and the aforesaid judgment of the Patna High Court in the case of *Smt. Kishori Devi* (supra).

10) In the case of *Narhari* (supra), a suit for recovery was filed by the plaintiff, which was decreed in part. The plaintiff and defendants filed two separate appeals challenging the decree passed by the learned Trial Court. Two separate decrees were accordingly passed in the said appeals. The plaintiffs, whose first appeal was dismissed, filed appeal before the High Court. A contention was raised before the High Court that since decree passed in another appeal preferred by the defendant was not separately challenged, the said decree had assumed finality. The High Court upheld the objection. In this backdrop, the matter reached before the Hon'ble Supreme Court. The Hon'ble Supreme Court held that a composite appeal to challenge two separate decrees will be maintainable if there is one suit and one trial. The relevant observation of the Hon'ble Supreme Court is as

under:-

“ 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.”

11) This decision is followed by this Court in the case of ***Shankar Dokare*** (supra), wherein decrees passed in suit and counter-claim were subjected to challenge in a common appeal. This Court has held that a common appeal will be maintainable in order to challenge decree passed in a civil suit and a counter-claim. The relevant observations in the said judgment are reproduced herein-below:-

“12. Now coming to the judgment of the Apex Court in Narhari and others' case (supra), the Apex Court in paragraph 5 has observed that 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. The observation of the Apex Court in Narahari's case therefore applies in all fours to the facts of the instant case wherein there was one trial, one finding and one decision as regards the

property and therefore the Appellants were not required to file separate Appeals.

13. In so far as the provision of Order XLI Rule 1 of the Code of Civil Procedure is concerned, the same can be said to be in the nature of enabling the provision which obviates the need to file separate copies of the judgment and decree. In so far as the provision of Order XX Rule 19 of the Code of Civil Procedure is concerned, what is posited therein cannot be extended so as to contend that there is a requirement of filing of two Appeals.”

12) In the case of ***Shiv Dhan Singh***, in all four civil suits were filed which culminated into four separate decrees. Four separate appeals were filed challenging the said decrees. In all these four suits, there was a common issue pertaining to title. Two of these appeals came to be dismissed without adjudication on merits, one on the ground that it was barred by limitation and second on account of failure on the part of applicant to deposit printing fees for paper book. In such situation, issue arose as to whether the other two appeals should be heard on merits. The Hon'ble Supreme Court has held that since common issue of ownership was involved in

all four suits and decrees passed by the learned Trial Court in two suits had attained finality, it was not possible to hear the other two appeals on merits. The decision by the learned Trial Court in the suits, appeals arising out which were dismissed on account of limitation and failure to deposit printing charges, had assumed finality between the parties and on this ground, the other two appeals, were also dismissed holding that the decrees by Trial Court would operate as *res-judicata*.

13) The ratio of decision cannot be applied in the facts of the present case where the appellant has challenged the decree passed in civil suit as also the decree passed in the counter claim, although in a common appeal.

14) In the case of ***Rajni Rani***, the counter claim was dismissed under Order II Rule 2 of the CPC. This order, dismissing the counter-claim was subjected to challenge in a revision filed before the High Court. The issue which arose was as to whether dismissal of counter claim under Order II Rule 2 amounted to a decree which needed to be assailed in an appeal. Consequently, question of maintainability of

revision also fell for consideration. The Hon'ble Supreme Court has ruled that an order dismissing a counter claim under Order II Rule 2 of CPC results in dismissal of the same finally and as such, such order will assume status of a decree. Having held so, the Honb'le Supreme Court ruled that the remedy of filing appeal was available and as such the revision preferred was not maintainable. With respect, the said judgment does not advance the argument of advocate for the respondent. It is not in dispute that the appellant has impugned decree in the counter claim, although in a consolidated appeal, in which decree passed in the suit is also impugned.

15) Thus issue of maintainability of a common composite appeal to challenge decrees passed in a suit and a counter-claim was not subject matter of the said cases and, therefore, the ratio of the said cases is not applicable to the present case.

16) As regards the judgment of the Patna High Court in the case of *Kishori Devi* (supra), the said decision indeed holds that a common appeal will not lie in order to challenge

decrees passed in civil suit and the counter-claim. However, in view of direct decision of this Court on the point, I am unable to follow the judgment of the Patna High Court.

17) It may be stated that although right to appeal is a substantive right, the mode and manner in which appeals are to be presented is purely a matter of procedure. The appellants in the present case, although have filed one appeal, they have raised separate grounds of challenge in the memorandum of appeal in order to challenge the decrees passed against them in the civil suit as also in the counter-claim. Likewise, the prayer clause also includes a challenge to the decree passed in the civil suit as also in the counter-claim. Although numbered and registered as an one unified appeal, it is, for all practical purposes, two separate appeals, if one may so say. The learned First Appellate Court has dismissed the appeal on pure technicalities and that too without noticing the judgment of this Court in the case of ***Shankar Dokare*** (supra).

18) In view of the aforesaid, the substantial question of law framed vide order dated 06.01.2026 is answered in

favour of the appellants and against the respondents.

19) In view of the aforesaid, Second Appeal is **allowed** in the following terms:-

i. Judgment and decree dated 22.12.2023 passed by the learned Ad-hoc District Judge-1, Malkapur in Regular Civil Appeal No.46 of 2015 is quashed and set aside.

ii. The said appeal is remitted to the learned First Appellate Court for adjudication of the same on merits.

iii. Parties shall appear before the learned First Appellate court on **16.03.2026**.

iv. Parties to note that separate notice for appearance will not be issued.

20) In the event the Court fees are found to be deficit, having regard to challenge to the decree in counter-claim, it will be open for the Court to direct payment of the deficit Court fees.

(ROHIT W. JOSHI, J.)

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