



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

MISC. CIVIL APPLICATION (REVIEW) NO.155 OF 2026
IN
SECOND APPEAL ST. NO.4292 OF 2025 (D)
WITH
MISC. CIVIL APPLICATION (REVIEW) NO.156 OF 2026
IN
SECOND APPAL NO.275 OF 2022

Rupchand Kundalik Kadu and ors.

Vs.

Mrs. Bhagiratha W/o Santoshji Gaurkar and ors.

*Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order*

Court's or Judge's Order

Mr. M. G. Bhangde, Senior Advocate a/b. Dr. R. I. Agrawal and Mr.
S. S. Chauhan, Advocates for applicants/appellants.

CORAM : ROHIT W. JOSHI, J.

DATE : 11.03.2026.

. The present applications are filed under Section 114 read with Order 47 Rule 1 of the Code of Civil Procedure, 1908 (for short, "the CPC"), seeking review of the judgment dated 11.02.2026 passed by this Court in Second Appeal St. No.4292 of 2025. It needs to be stated that Second Appeal No.275 of 2022 and Second Appeal St. No.4292 of 2025 were filed by the non-applicants No.1,2, 4, 5 and 6.

2. The said appeals are filed challenging common judgment and decree dated 04.03.2022 passed by the learned District Judge-4, Nagpur in Regular Civil Appeal Nos.16 of 2021, 159 of 2019 and 169 of 2019. These three appeals were filed by the original plaintiff,

defendant Nos.1 and 2 and legal representatives of deceased defendant No.3.

3. The original plaintiff is son of defendant No.1. He filed a suit for partition and separate possession seeking share in the property of his grand-father. Since the plaintiff's grand-father died after commencement of Hindu Succession Act,1956 and the properties were found to be self acquired properties of the grand-father, the learned Trial Court dismissed the suit on the ground that during the lifetime of his father (defendant No.1), the plaintiff could not claim any share in the properties of his deceased grand-father.

4. Defendant Nos.1, 2 and 3, who are sons and widow respectively of the original owner of the suit properties had sold two of the suit properties bearing Survey Nos.160 and 202 to defendant No.6 vide Sale Deed dated 29.01.2014.

5. Daughters of original owner and defendant No.3 were not initially joined as parties to the civil suit. Defendant No.3 expired during the pendency of the suit. Her two sons were already on record as defendant Nos.1 and 2. After her demise, her daughters were brought on record as her legal representatives.

6. The daughters filed a counter-claim seeking partition and separate possession with respect to all the suit properties, including the properties sold by defendant Nos.1, 2 and 3 in favour of defendant No.6.

The learned 5th Joint Civil Judge, Senior Division, Nagpur dismissed the suit and decreed counter claim in part vide judgment and decree dated 28.02.2019. The learned Trial Court held that the daughters of defendant No.3, who were brought on record as her legal representatives, were entitled to a share in the suit properties, other than the two properties which were sold by defendant Nos.1, 2 and 3 to defendant No.6.

7. As stated above, the plaintiff, daughters of defendant No.3 and defendant Nos.1 and 2 preferred separate appeals challenging the aforesaid judgment and decree passed by the learned Trial Court.

8. The learned District Judge-4, Nagpur dismissed the appeals preferred by the original plaintiff and legal representatives of defendant No.3 (present non-applicants) and allowed the appeal preferred by defendant Nos.1 and 2. As a result, the suit and counter-claim both stood dismissed. The learned First Appellate Court held that counter-claim filed by the present non-applicants/legal representatives of original defendant No.3 for partition and separate possession against co-defendants was not maintainable, inasmuch as, no relief was sought in the counter-claim against the original plaintiff.

9. The legal representatives of defendant No.3, who are the present non-applicants, filed the aforesaid second appeals challenging the said judgment and decrees

passed by the learned First Appellate Court dismissing their counter-claim and allowing the appeal filed by their brothers, defendant Nos.1 and 2. Vide order dated 10.08.2022, Second Appeal No.275 of 2022 came to be admitted on the following substantial questions of law:-

I) Whether the co-defendant can file an application under order VIII, Rule 6-C of the Civil Procedure Code, 1908 for exclusion of counter claim, when as per order VIII, Rule 6-C of C.P.C., only plaintiff can file the application for exclusion of counter claim?

II) Whether the counter claim is maintainable?

III) Whether the separate suit for partition, separate possession and cancellation of sale deed on behalf of the appellants is maintainable, when the suit for partition, separate possession and cancellation of sale deed between the same parties, for the same properties and for the same relief is pending before the competent Court of law?

IV) Whether the learned appellate Court committed serious error of law by ignoring record and submitted that the counter claim is barred by limitation. Specifically, the property was self acquired

property and till date, no partition is effected?

V) Whether mere verification of Revenue Record to ascertain title of a person by itself is sufficient for declaring respondent no.7 as a bonafide purchaser?"

10. The appeals came to be allowed by this Court vide common judgment dated 11.02.2026. This Court has granted a decree for partition and separate possession to the appellants, who are legal representatives of original defendant No.3. It is held that the sale deed executed by defendant Nos.1 to 3 in favour of defendant No.6 is valid only to the extent of their share and that the said sale deed is not binding on the appellants. Accordingly, appellants are granted decree for partition with respect to their shares in the suit properties sold by defendant Nos.1 to 3 to defendant No.6. With respect to the other suit properties, this Court has maintained the decree for partition and separate possession in favour of the sons and daughters of the original owner which was granted by the learned Trial Court. Since the father died after commencement of Hindu Succession Act, 1956 without leaving any Will and the sons and daughters are class-1 legal representatives, equal share is granted. Review of the said common judgment is sought in the present application.

11. At the outset, Mr. M.G. Bhangde, learned Senior Advocate for the applicants, does not dispute the shares

of respective parties as are computed in the judgment under review. The contention of Mr. Bhangde, however, is that counter-claim filed by the daughters of original defendant No.3 seeking relief for partition and separate possession against the co-defendants was not maintainable, since no relief was sought in the counter-claim against the original plaintiff. He contends that maintainability of a counter-claim is not a matter of technicality but a vital aspect pertaining to the jurisdiction of a Court of law and since the counter-claim was not maintainable, the same was rightly dismissed by the learned First Appellate Court.

12. He further elaborates that while this Court has also concurred on this legal aspect with the learned First Appellate Court and in terms accepted the contention that counter-claim was not maintainable, it ought not to have placed reliance on Section 99 of the CPC to hold that the objection with respect to maintainability of the counter-claim was a technical objection. His contention is that the objection was pertaining to jurisdiction of the learned Trial Court and as such, the same could not be brushed aside as a technical objection. Mr. Bhangde, further contends that the appeal was admitted vide order dated 10.08.2022 on five substantial questions of law, out of which substantial question of law Nos.1 and 2 pertain to the maintainability of counter-claim and exclusion of counter-claim, which have not been answered by this Court and a question relating to scope

of interference with a decree in the light of Section 99 of the CPC is answered, which question was in fact was not framed by this Court at all. He contends that this is another error that has crept in the judgment under review.

13. It will be pertinent to state that although several grounds are raised in the application for review, these are the only two grounds, which were pressed into service.

14. The learned senior advocate has placed reliance on judgments in the case of *Sansar Chand Vs. Swami Vivekanand Adarsh Vidha Mandir*¹ and in the case of *Surat Singh Vs. Hukam Singh Negi*², respectively to contend that duty is cast on a Court hearing appeal under Section 100 of the CPC to frame a substantial question of law and hear the appeal only on that question after giving opportunity of hearing to the parties.

15. With respect to maintainability of counter-claim, the learned senior advocate has placed strong reliance on judgments of the Hon'ble Supreme Court in the case of *Rohit Singh and Ors. Vs. State of Bihar and Ors.*³ and in the case of *Rajul Manoj Shah Alias Rajeshwari Rasiklal Sheth Vs. Kiranbhai Shakrabhai Patel and Anr*⁴. Apart from the aforesaid decisions, the learned senior advocate places reliance on judgment in the case of *State of*

¹(2010) 15 SCC 155

²(2010) 15 SCC 525

³ (2006) 12 SCC 734

⁴ 2025 INSC 1109

Rajasthan Vs. Rao Raja Kalyan Singh (Dead) by his L.Rs.⁵ and in the case of ***R. Kandasamy (since dead) and ors. Vs. T.R.K. Sarawathy and anr***⁶ to contend that the plea regarding maintainability of a suit is a legal plea and that, if a suit is not maintainable, the fact that specific objection in that regard is not raised is not of any consequence. He contends every aspect pertaining to jurisdiction of a Court must essentially be dealt with by the learned Trial Court before granting decree to the plaintiff.

16. Mr. Bhangde, also draws attention to paragraph No.20 of the written statement to counter-claim and contends that an objection with respect to maintainability of counter-claim was in fact raised in the counter-claim and further that issue with respect to maintainability of counter-claim was also framed by the learned Trial Court. He therefore criticizes the observations in the judgment wherein it is recorded that objection to maintainability of counter-claim was not raised and that the counter-claim was contested on merits without reservations.

17. It must be accepted that the applicants had raised an objection to the maintainability of counter-claim in the written statement. It must also be stated that the observation that objection was not raised to

⁵ (1972) 4 SCC 165

⁶ (2025) 3 SCC 513

maintainability of counter-claim that has appeared in the judgment under review is incorrect.

18. The bone of contention of the learned senior advocate is that a counter-claim for seeking relief against co-defendants is not maintainable, particularly when no relief is sought against the plaintiff. This proposition of law is accepted while deciding the Second Appeal. It must be stated that the counter-claim is filed seeking partition and separate possession. The counter claimants have sought relief of partition only against the co-defendants. It is also true that no relief was sought in the counter-claim against the original plaintiff. The judgments in the cases of *Rohit Singh (supra)* and *Rajul Manoj Shah (supra)* certainly lay down that a counter-claim filed for seeking relief only against co-defendants will not be maintainable unless a relief is also sought against the plaintiff.

19. In a suit for partition and separate possession, every party is a plaintiff and also a defendant. The counter claimants in a suit for partition can get themselves transposed as plaintiffs and once that is done the objection that prayer in counter-claim is reiterated to defendants alone can be fully taken care of. Placing reliance on this settled legal principle, this Court in the case of *Multicon Builders Vs. Sumandevi (First Appeal No.295 of 2012 decided vide judgment dated 10.09.2014 at Nagpur Bench)* has held that counter-

claim for partition and separate possession will be maintainable even if it is filed seeking relief only against the co-defendants. The judgment in the case of ***Rohit Singh (supra)*** is considered by this Court in the case of ***Multicon Builders (supra)*** and has held that a counter-claim for relief of partition and separate possession will be maintainable although relief is sought only against the co-defendants and not against the plaintiff. It may be stated that Civil Appeal Nos.8400-8401 arising out of the said judgment came to be dismissed by the Hon'ble Supreme Court on a different ground.

20. In view of the above, argument pertaining to maintainability of counter-claim is liable to be rejected.

21. It must be stated that counter-claim is a separate suit by itself. It is not in dispute that the learned Civil Court had the subject matter jurisdiction to adjudicate the claim for partition and separate possession. The learned Civil Court, thus did not lack inherent jurisdiction. As regards, procedural aspects of jurisdiction, i.e., territorial jurisdiction and pecuniary jurisdiction, it cannot be disputed that the learned Trial Court did not lack territorial jurisdiction or pecuniary jurisdiction. In that sense, the decree does not suffer from any error of jurisdiction. The difference in a plaint and counter-claim is only one of form. Therefore, if a claim is correctly adjudicated by a Civil Court, may be by way of counter-claim instead of a separate suit, the same

can be protected by taking shelter under Section 99 of the Code of Civil Procedure rather than setting aside on the ground that counter-claim was not maintainable although same relief must necessarily follow if the counter-claim is dismissed on the ground of maintainability and the counter-claimants are relegated to instituting a separate civil suit for the cause agitated in the counter-claim.

22. It will also be pertinent to state that in the case of ***Rohit Singh***, apart from maintainability of counter-claim, the Hon'ble Supreme Court has also considered the merits of the counter-claim and has held that the counter-claimants were in fact not entitled to the relief that was granted to them. In the case of ***Manoj Shah*** the counter-claim was not decided on merits. The matter went before the Hon'ble Supreme Court only with respect to maintainability of counter-claim. The present situation where a decree passed in counter-claim, which is otherwise in accordance with law is sought to be dislodged only on the ground of maintainability of counter-claim.

23. With respect, the ratio of ***Rohit Singh and Rajul Manoj Shah*** is not that a decree passed in counter-claim which is otherwise in accordance with law should be set aside on the ground that counter-claim was not maintainable particularly when filing of civil suit for the relief granted in the counter-claim would result in the

same decree as is passed in the counter-claim.

24. This Court has held that the learned First Appellate Court should not have interfered with the decree passed by the learned Trial Court only on the ground that relief in counter-claim was sought only against the co-defendants since taking the defence of the contesting defendant Nos.1, 2 and 6 on its face value, the decree passed in the counter-claim is inevitable. The learned Trial Court had correctly computed the shares of the parties with respect to properties, which were not sold by defendant Nos.1 to 3. This Court has confirmed the decree to that extent. As regards the property which is sold by defendant Nos.1 to 3 to defendant No.6, this Court has held that since the appellants were not parties to the sale deed and they had also inherited the said property from their father, the sale deed was not binding on them to the extent of their share. Accordingly, a decree for partition is granted to them in the property which is sold by defendant Nos.1 to 3 to defendant No.6.

25. It will be appropriate to refer to following decisions of the Hon'ble Supreme Court where the Hon'ble Supreme Court has held that laws of procedure are handmaid of justice and therefore technicalities should be kept at bay and endeavour of Courts should always be to impart substantive justice:-

Manohar Lal Vs. N.B.N. Supply, Gurgaon⁷,

⁷ AIR 1969 SC 1267

“5... Rules of procedure are intended to be handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of rules of procedure...”

Union of India Vs. Jyoti Chit Fund and Finance and ors⁸,

“7.....A shift on the emphasis, away from technical legalistics, is overdue if the Judicature is not to aid its grave diggers. We express the view strongly so that hopefuls may be dissuaded from taking up court time by playing up technicalities....”

***Kulwant Kaur and ors. Vs. Gurdial Singh Mann (Dead)
by LR's and ors⁹.***

“34....Technicality alone by itself ought not to permit the High Court to decide the issue since justice-oriented approach is the call of the day presently..”

***Sugandhi (Dead) by LR's Vs. P Rajkumar represented
by his Power Agent Imam Oli¹⁰***

“9. It is often said that procedure is the handmaid of justice. Procedural and technical hurdles shall not be allowed to come in the way of the court while doing

⁸ AIR 1976 SC 1163

⁹ (2001) 4 SCC 262

¹⁰ (2020) 10 SCC 706

substantial justice. If the procedural violation does not seriously cause prejudice to the adversary party, courts must lean towards doing substantial justice rather than relying upon procedural and technical violation. We should not forget the fact that litigation is nothing but a journey towards truth which is the foundation of justice and the court is required to take appropriate steps to thrash out the underlying truth in every dispute.”

26. The aforesaid legal principle is statutorily recognized and embodied under Section 99 of the CPC. It will be appropriate to refer to judgment of this Court in the case of ***Subhash Vithalrao Gatlewar and ors. Vs. Dattatraya Keshavrao Shinde***¹¹, wherein, reiterating the same legal principle with specific reference to Section 99 of the CPC, this Court has held as under:-

“Section 99 of Civil Procedure Code puts a guard on the power of the appellate Court to interfere in the judgment appealed against to the effect that if the error banked upon by the appellants committed by the appellate Court while delivering the judgment in question does not affect the merits of the case, such judgment need not be interfered...”

11 2005 2 AllMR 757

27. In view of law laid down in the case of ***Multicon (supra)*** the counter-claim was maintainable and even otherwise the objection is technical in nature.

28. Applications for review are, therefore, **rejected** with no order as to costs.

(ROHIT W. JOSHI, J.)

Ταπηγά...