—:: कार्यालय प्रधान जिला एवं सत्र न्यायाधीश, उज्जैन (म.प्र.) ::—

पृष्ठां.क्रं0 8383 /एक—6—2/11 उज्जैन, दिनांक सितम्बर 2026

प्रतिलिपि :— 29 OCT 2026

1. ..... (समस्त न्यायाधीशगण, जिला उज्जैन)

की ओर माननीय उच्च न्यायालय मध्यप्रदेश, जबलपुर का ज्ञापन क्रं. बी/6143 दिनांक 13.10.2026 मय **Civil Appeal No. 10569 of 2026 [Arising out of SLP (C) No. 4338 of 2025] in the case of "Basudev & Ors. Vs. Sanjay Kumar & Ors."** में माननीय उच्चतम न्यायालय द्वारा पारित निर्णय दिनांक **11.08.2026** की प्रति सहित सूचनार्थ, पालनार्थ एवं आवश्यक कार्यवाही हेतु संलग्न प्रेषित।

2. श्री सुशील कुमार जोशी, प्रथम जिला एवं अपर सत्र न्यायाधीश उज्जैन
3. जूनियर सिस्टम एनॉलिस्ट जिला न्यायालय उज्जैन की ओर उक्तानुसार ज्ञापन की प्रति मय सहपत्रों के सूचनार्थ एवं इस टीप के साथ प्रेषित कि वे समस्त न्यायाधीशगण के ई—मेल पर प्रेषित करें।

संलग्न : उपरोक्तानुसार

प्रधान जिला एवं सत्र न्यायाधीश,
उज्जैन (म.प्र.)

HIGH COURT OF MADHYA PRADESH: JABALPUR

No. B/6143 Jabalpur, dated 13./10/2026
II-3-10/29

To,

The Principal District and Sessions Judge(s),
All in the State (M.P.)

Subject:- Compliance of directions of Honb'le Supreme Court of India Reportable Judgment dated 11.08.2026 in Civil Appeal No. 10569 of 2026 [Arising out of SLP (C) No. 4338 of 2025] in the case of "Basudev & Ors. Vs. Sanjay Kumar & Ors."

Sir/Madam,

Please find enclosed herewith a copy of the Reportable Judgment passed by Honourable the Supreme Court of India dated 11.08.2026 in **Civil Appeal No. 10569 of 2026 [Arising out of SLP (C) No. 4338 of 2025]** in the case of "*Basudev & Ors. Vs. Sanjay Kumar & Ors.*"

As directed, I request you to bring the same into the knowledge of all the Judicial Officers under your kind control for information, compliance and necessary action.

Encl:- As above.

13/10/26

MUKESH RAWAT
REGISTRAR District Establishment

Endt. No. B/6144. Jabalpur, dated 13./10/2026
II-3-10/29

Copy forwarded to:-

The Principal Registrar (J), Registrar (J-II), Registrar (I & L), Director, Madhya Pradesh State Judicial Academy, Jabalpur and Assistant Registrar (M), Supreme Court, Section for information and appropriate action.

13/10/26

MUKESH RAWAT
REGISTRAR District Establishment

14 OCT 2026

11284

All Communications Should be Addressed to Registrar by Designation and not by Name.
Pin Code - 110001

D. No. 52426/2024
SEC-XIV-A
SUPREME COURT OF INDIA
NEW DELHI
13th August, 2026

SCANNED

From:

The Assistant Registrar,
Supreme Court of India, New Delhi.

To,

1 THE REGISTRAR GENERAL,
HIGH COURT OF ANDHRA PRADESH AT AMRAVATI,
ANDHRA PRADESH — PID: 208212/2026 IN C.A. NO.10569/2026 (SEC XIV-A)

2 THE REGISTRAR GENERAL,
HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD,
TELANGANA — PID: 208213/2026 IN C.A. NO.10569/2026 (SEC XIV-A)

3 THE REGISTRAR GENERAL,
HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH,
DISTRICT- HYDERABAD, ANDHRA PRADESH — PID: 208214/2026 IN C.A. NO.10569/2026 (SEC XIV-A)

4 THE REGISTRAR GENERAL,
GAUHATI HIGH COURT,
DISTRICT- GUWAHATI, ASSAM — PID: 208215/2026 IN C.A. NO.10569/2026 (SEC XIV-A)

5 THE REGISTRAR GENERAL,
HIGH COURT OF JUDICATURE AT PATNA,
DISTRICT- PATNA, BIHAR — PID: 208216/2026 IN C.A. NO.10569/2026 (SEC XIV-A)

6 THE REGISTRAR GENERAL,
HIGH COURT OF JUDICATURE AT BOMBAY,
DISTRICT- MUMBAI, MAHARASHTRA — PID: 208217/2026 IN C.A. NO.10569/2026 (SEC XIV-A)

7 THE REGISTRAR GENERAL,
HIGH COURT OF CHHATTISGARH AT BILASPUR,
DISTRICT- BILASPUR, CHHATTISGARH — PID: 208218/2026 IN C.A. NO.10569/2026 (SEC XIV-A)

8 THE REGISTRAR GENERAL,
HIGH COURT OF DELHI AT NEW DELHI,
DISTRICT- NEW DELHI, DELHI
(REF: WP-3408-2013) — PID: 208219/2026 IN C.A. NO.10569/2026 (SEC XIV-A)

9 THE REGISTRAR GENERAL,
HIGH COURT OF GUJARAT AT AHMEDABAD,
DISTRICT- AHMEDABAD, GUJARAT — PID: 208220/2026 IN C.A. NO.10569/2026 (SEC XIV-A)

10 THE REGISTRAR GENERAL,

High Court ... JAIL ...
29 AUG 2026
Reg. No. 102288
... Clerk

	HIGH COURT OF HIMACHAL PRADESH AT SHIMLA, DISTRICT- SHIMLA, HIMACHAL PRADESH	PID: 208221/2026 IN C.A. NO.10569/2026 (SEC XIV-A)
11	THE REGISTRAR GENERAL, HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU, DISTRICT- JAMMU, JAMMU & KASHMIR	PID: 208222/2026 IN C.A. NO.10569/2026 (SEC XIV-A)
12	THE REGISTRAR GENERAL, HIGH COURT OF JHARKHAND AT RANCHI, DISTRICT- RANCHI, JHARKHAND	PID: 208223/2026 IN C.A. NO.10569/2026 (SEC XIV-A)
13	THE REGISTRAR GENERAL, HIGH COURT OF KARNATAKA AT BENGALURU, DISTRICT- BANGALORE, KARNATAKA	PID: 208224/2026 IN C.A. NO.10569/2026 (SEC XIV-A)
14	THE REGISTRAR GENERAL, HIGH COURT OF KERALA AT ERNAKULAM, DISTRICT- ERNAKULAM, KERALA	PID: 208225/2026 IN C.A. NO.10569/2026 (SEC XIV-A)
15	THE REGISTRAR GENERAL, HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT AT JABALPUR, DISTRICT- JABALPUR, MADHYA PRADESH	PID: 208226/2026 IN C.A. NO.10569/2026 (SEC XIV-A)
16	THE REGISTRAR GENERAL, HIGH COURT OF ORISSA AT CUTTACK, DISTRICT- CUTTACK, ORISSA	PID: 208227/2026 IN C.A. NO.10569/2026 (SEC XIV-A)
17	THE REGISTRAR GENERAL, HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH, PUNJAB	PID: 208228/2026 IN C.A. NO.10569/2026 (SEC XIV-A)
18	THE REGISTRAR GENERAL, HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR, DISTRICT- JODHPUR, RAJASTHAN	PID: 208229/2026 IN C.A. NO.10569/2026 (SEC XIV-A)
19	THE REGISTRAR GENERAL, HIGH COURT OF SIKKIM AT GANGTOK, DISTRICT- EAST, SIKKIM	PID: 208230/2026 IN C.A. NO.10569/2026 (SEC XIV-A)
20	THE REGISTRAR GENERAL, HIGH COURT OF JUDICATURE AT MADRAS AT CHENNAI, DISTRICT- CHENNAI, TAMIL NADU	PID: 208231/2026 IN C.A. NO.10569/2026 (SEC XIV-A)
21	THE REGISTRAR GENERAL, HIGH COURT OF JUDICATURE AT ALLAHABAD,	PID: 208232/2026 IN C.A. NO.10569/2026 (SEC XIV-A)

DISTRICT- ALLAHABAD, UTTAR PRADESH

22 THE REGISTRAR GENERAL,
HIGH COURT OF UTTARAKHAND AT NAINITAL,
DISTRICT- NAINITAL, UTTARAKHAND — PID: 208233/2026 IN C.A. NO.10569/2026 (SEC XIV-A)

23 THE REGISTRAR GENERAL,
HIGH COURT AT CALCUTTA,
DISTRICT- KOLKATA, WEST BENGAL — PID: 208234/2026 IN C.A. NO.10569/2026 (SEC XIV-A)

24 THE REGISTRAR GENERAL,
HIGH COURT OF MANIPUR AT IMPHAL,
DISTRICT- IMPHAL WEST, MANIPUR — PID: 208235/2026 IN C.A. NO.10569/2026 (SEC XIV-A)

25 THE REGISTRAR GENERAL,
HIGH COURT OF MEGHALAYA,
DISTRICT- EAST KHASI HILLS,
MEGHALAYA — PID: 208236/2026 IN C.A. NO.10569/2026 (SEC XIV-A)

26 THE REGISTRAR GENERAL,
HIGH COURT OF TRIPURA AT AGARTHALA,
DISTRICT- WEST TRIPURA, TRIPURA — PID: 208237/2026 IN C.A. NO.10569/2026 (SEC XIV-A)

CIVIL APPEAL No. 10569 OF 2026

BASUDEV AND OTHERS ... Appellants(s)

Versus

SANJAY KUMAR AND OTHERS ... Respondent(s)

Sir,

I am directed to forward herewith, a certified copy of the order of this Court, as contained in the ~~record of proceeding~~ dated **11th August, 2026** passed by this Hon'ble Court in the matter above-mentioned for your information, necessary action and compliance.

Please acknowledge receipt.

Yours faithfully,

ASSISTANT REGISTRAR

Copy to :-

1 Mr. Vinod Sharma (adv.)
b-41 Lgf Jangpura Extn New Delhi-14
New Delhi , Delhi

2 Mr. Dhawesh Pahuja (adv.)
d-77, 2nd Floor, Defence Colony, New Delhi-110024
New Delhi , Delhi

ASSISTANT REGISTRAR

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. 10569 of 2026
(Arising out of SLP (C) No.4338 of 2025)

Basudev & Ors.

...Appellant(s)

Versus

26116014

Sanjay Kumar & Ors.

...Respondent(s)

JUDGMENT

Certified to be true Copy
Asstt. Registrar (Judl.)
Supreme Court of India

K.Vinod Chandran, J.

Leave granted.

2. The question to be answered in this appeal is as to whether there should be two appeals filed from the two decrees drawn up when a suit with a counterclaim is disposed of by a single judgment. The ancillary question would also be whether in every such situation two decrees should be drawn up.

3. In the present case, a suit was filed and a counterclaim was raised. The Trial Court allowed the suit claim and dismissed the counterclaim. A single appeal was filed by the defendants; in which the suit was dismissed and the counterclaim was allowed. The High Court in second appeal

found that the single appeal was incompetent and relied on the decision of a Division Bench in ***Ramesh Chand v. Om Raj and Others***[1]. It was held that in the nature of the disposal, decreeing the suit and rejecting the counter claim. there ought to be two separate appeals filed. In the teeth of the principle of waiver and estoppel the single appeal will have to be rejected was the finding. We are not concerned with the merits of the claims; suffice it to notice that when the plaintiffs claimed half share and sought for an injunction against interference, the defendants raised a counterclaim of ownership over the entire property.

4. Sri Jayant Bhushan, learned Senior Counsel for the appellants, would first point out that there is only one decree drawn up which is produced at Annexure P-13. When the Court itself had drawn up only one decree, the defendant's appeal filed, could not have been rejected is the argument. Reliance was also placed on ***Narhari v. Shanker***[2] and ***Charan Singh v. Ram Saroop***[3].

5. Sri Sanjay R. Hegde, learned Senior Counsel for the respondents, relied upon ***Ramesh Chand***[1], as relied on in the

[1] 2022 (2) SLC 1145
[2] 1950 SCC 668
[3] C.A. No.1585-1586 of 2025 dated 03.02.2025

impugned judgment and specifically referred to ***Premier Tyres Ltd. v. Kerala State Road Transport Corporation***[4]. The defendant does not dispute the position that there will be only one decree, but there has to be two appeals filed, is the contention.

6. We would first look at the decisions on this point, urged by both the learned Senior Counsel; in the arguments addressed and the written submissions.

7. ***Narhari***[2] dealt with a suit filed to establish 2/3rd rights over a property against eight defendants, wherein two sets of defendants, set up separate claims of 1/3rd rights each over the suit property. The Trial Court decreed the suit and the two separate appeals filed were allowed, dismissing the suit and allowing the counterclaims. The plaintiff preferred two second appeals, one, within time and the other, delayed. The delayed appeal was dismissed on the ground of limitation and as a consequence, the other appeal also stood dismissed, finding it to be hit by *res-judicata*. This Court found the ground of *res-judicata* to be specious, when there is only one suit, the decrees founded on the same judgment, deciding the entire suit. It was

[4] 1993 Supp. (2) SCC 146

found that the two decrees, in substance are one and besides, the High Court had failed to give the benefit of Section 5 of the Limitation Act, especially when there were conflicting decisions on this question.

8. In ***Charan Singh***[3] the Trial Court dismissed the suit and allowed the counterclaim against which only one appeal was preferred, which was dimissed as not maintainable. This Court found the requirement in law, to file two appeals, but went on to permit the appellant to file a separate memorandum of appeal, without a certified copy of the judgment since, Order XLI Rule 1 of the CPC permitted the Appellate Court to dispense with the requirement of filing a copy of the impugned judgment twice over even when two separate appeals are filed. This was observed to be in furtherance of ends of justice, so that the subject matter is considered on its merits.

9. In ***Girija and Ors. v. Rajan***[5] the High Court of Kerala considered an identical substantial question of law as to whether the single appeal filed from the dismissal of a counter claim, without an appeal against the decree in the suit, would fail on the ground of *res-judicata*. Reliance was placed on a

[3] 2015 (1) KLT 695

decision of this Court in ***Premier Tyres Limited***[4] to extract the following: -

> *"Where an appeal arising out of connected suits is dismissed on merits the other cannot be heard and has to be dismissed. Where no appeal is filed, as in this case from the decree in connected suit, it has the same effect of non-filing of appeal against the judgment or decree. Thus, the finality of finding recorded in the connected suit, due to non-filing appeal, precludes the court from proceeding with appeal in other suit."*

10. The argument that the power of the Appellate Court under Order XLI Rule 33 of the CPC was all encompassing, being a continuation of the original proceeding, empowering it to pass any decree or make any order and such further orders or decree as the case may require, was negated. It was held that the power under Order XLI Rule 33 cannot be invoked against specific statutory provisions: namely, Section 11 of the CPC. *Res-judicata* is non-negotiable and indefeasible, creating an absolute bar against the Court from deciding a matter which was substantially in issue and decided in a former case. ***State of Punjab v. Bakshish Singh***[6] was relied on for the principle that Order XLI Rule 33 is discretionary and in the garb of exercising such power, the scope of appeal cannot be enlarged. Order VIII

[6] (1998) 8 SCC 222

Rule 6A of the CPC clothes a counterclaim with all the characteristics of a cross suit, including the vulnerability of suffering the bar of *res-judicata* enshrined in Section 11 of the CPC, if not properly appealed, was the finding. The first appeal filed in the said case against the decree passed in the suit was held to be barred by *res-judicata* since the dismissal of the counterclaim was not challenged.

11. ***Shankar Masu Dokare v. Shobha Subhash Dokare and Anr.***[7] from the High Court of Bombay considered an identical issue. ***Narhari***[2] was relied on to hold that, when there is one suit and a counterclaim, there is only; one trial, one finding and one decision and hence there need not be two appeals. Order XLI Rule 1 of the CPC postulated only filing of one copy of the judgment if the suits are tried together, even if two decrees are passed. Order XX Rule 19 of the CPC posits that the decree passed in a suit in which a counterclaim is filed, shall be subject to the same provisions in respect of an appeal, if there was no counter claim. This cannot be extended to contend that there is requirement for filing of two appeals. Thus, the prayer in the suit and the counterclaim are so interlinked that the

[7] 2014 SCC Online Bom 1859

requirement was only to file one appeal, which is not in contravention of any of the provisions of the CPC, was the finding.

12. *Abdul Nazer v. Lakshmana Das*[8] dealt with a defect noted by the Registry, that one appeal would not suffice against two decrees; one dismissing the suit and the other allowing the counterclaim, based on ***Girija***[5]. It was held, Rule 6A of Order VIII of the CPC confers on the counter claim the same effect as a cross-suit and it is to be treated as a plaint, by a legal fiction employed by sub-rules (2) and (4) of Rule 6A CPC. Rule 19(1) of Order XX CPC was also referred, to hold that homogeneity is evident in the composite decree which has to state what amount is due to the plaintiff and the defendant, with the sum for recovery specified, which appears to be due to either the plaintiff or the defendant. Rule 6C of Order VIII providing for raising an objection against the counterclaim as being independent of the original claim in the suit, clearly indicates that it is a unified proceeding as held in *T.K.V.S. Vidyapoornachary Sons v. M.R. Krishnamahary*[9]. The decision in ***Girija***[5] was reversed in ***Abdul Nazer***[8] by a Division

[8] 2016 SCC OnLine Ker 41103
[9] AIR 1983 Mad 291

Bench and it was held that the single appeal filed would be maintainable against the decrees respectively passed in the suit and in the counterclaim.

13. The High Court of Madras in *T.K.V.S. Vidyapoornachary Sons*[9] held that though Order VIII Rule 6A speaks of a counterclaim as a plaint at one place and a cross-claim at another, the operative portion lays down that the court shall pronounce a single judgment in the suit, both on the original claim and on the counterclaim. Thus, a suit-claim and a counterclaim are not distinctly apart and Rule 6C by implication emphasizes that a suit-claim and a counterclaim constitute a unified proceeding.

14. ***Ghanshyam Singh v. Narendra Singh***[10] from the High Court of Uttarakhand relied on ***Rajni Rani & Another v. Khairati Lal***[11] to hold that one composite appeal against the two independent and distinct decrees; in the suit and a counterclaim, would not be tenable since they are independent proceedings. Immediately, we have to notice that we are unable to agree that ***Rajni Rani***[11] propounded such a view. Considerable reliance was placed on ***Rajni Rani***[11], in the

[9] Second Appeal No.76 of 2022 decided on 22.07.2022 by High Court of Uttarakhand at Nainital
[11] (2015) 2 SCC 682

written submission of the respondents also, to uphold the impugned judgment, despite accepting that there need be only a single decree drawn up in the suit and the counter claim.

15. In *Rajni Rani*[11] the suit for declaration of ownership was resisted with a counterclaim, by some defendants, claiming to be the real owners of the suit scheduled property, based on a will. The other defendants sought dismissal of the counterclaim on the ground that it was barred by Order II Rule 2 of the CPC; since in an earlier suit between the same parties, with respect to the very same property, the said claim was not raised. The learned Trial Judge dismissed the counterclaim against which a revision was filed under Article 227 of the Constitution of India. This Court at the very outset made it clear that they would not advert to the merits of the order and were only concerned whether a revision petition could have been entertained or whether it was obligatory to assail the order by way of an appeal. Extracting Rule 6A, 6B and 6D of Order VIII of the CPC, it was found that the counterclaim in the suit is in the nature of a suit and even if the suit is to be dismissed, the counterclaim would remain alive for adjudication. We cannot but observe that this was not to declare that the suit could be dismissed at

the first instance and then the counterclaim was to be considered as an independent suit. In fact, the court emphasized in Paragraph 9.6 that the very scheme of a counterclaim is to avoid multiplicity, and the court is required to pronounce a final judgment in the suit, both on the original claim and on the counterclaim; the seminal purpose being to avoid piecemeal adjudication.

16. In ***Gumai Singh v. Baburam***[12], the High Court of Madhya Pradesh relied on ***Rajni Rani***[11] to find that a suit and a counterclaim when disposed of by a single judgment, there are two decrees drawn up, and both have to be appealed separately in two different appeals. The High Court of Madras in ***K. Kandasamy v. P. Natarajan & Others***[13], held otherwise, that, a single appeal would be maintainable against a common judgment rendered in a suit and a counterclaim, since Order VIII Rule 6A of the CPC treats the counterclaim as a cross-suit which culminates in a single judgment and a composite decree, which does not necessitate multiplicity of appeals.

17. ***Ramesh Chand***[1], as relied on in the impugned judgment, also found that where both the suit and the counterclaim are

[12] Second Appeal No.144 of 2012 decided on 28.07.2025 by Madhya Pradesh High Court at Gwalior
[13] 2026 SCC OnLine Mad 14

disposed of by a common judgment, regardless of whether separate decrees have been prepared, there shall be two appeals filed (Para 42 (iv)). The appellants argued that that this would in fact be contrary to the principle enunciated in the very same decision in Para 42 (i), that when two suits are consolidated and tried together, the same can be subjected to challenge by way of a single appeal, while, two suits, which were not consolidated but are decided by a common judgment, require a challenge by way of two appeals (Para 42(iii)). As held in ***Rajni Devi***[11], It was found that there could be situations when the suit is dismissed; in default or as withdrawn, then the counter claim is continued.

18. The aforesaid decisions clearly indicate that there is a cleavage of opinion, insofar as whether two appeals are required to be filed when there is a suit and a counterclaim, both being disposed of by a common judgment. There also seems to be dissimilarity in the procedure adopted in the different States, in drawing up the decree from a single judgment, allowing one claim and rejecting the other, which normally gives rise to two decrees. We are in full agreement with the interpretation of Rule 6A to 6D of Order VIII of the CPC;

inserted in 1976, as declared in ***Rajni Rani***[11]. Rule 6A (1) enabled a counterclaim against the claim in the plaint, in addition to the right to plead set off. Sub-rule (2) enables the counterclaim to be treated as a cross-suit, facilitating a common judgment, both on the suit claim and the counterclaim. The plaintiff is provided a right to file a written statement in answer to the counterclaim, especially since the counterclaim is deemed to be a plaint under sub-rule (4); governed by the rules applicable to plaints. The rules relating to written statements are also made applicable to the written statement in reply to the counterclaim, by virtue of Rule 6G of Order VIII.

19. We also agree with the finding that when Rule 6C of Order VIII excludes a counterclaim, when it is an independent cause required to be agitated in an independent suit, it implies that a counterclaim should be so interlinked with the suit claim to facilitate adjudication of both; on the evidence led at one trial. It is noticing Rule 6D, that, even if the suit is stayed, discontinued or dismissed, the counterclaim may nevertheless be proceeded with; that ***Rajni Rani***[11] expressed the opinion, that a suit even if dismissed the counterclaim survives, which was misinterpreted by two High Courts to find a requirement

for two appeals from a common judgment adjudicating a suit and counter claim.

20. We reiterate that in ***Ranji Rani***[11] the question was whether the rejection of a counterclaim for reason of it being barred by Order II Rule 2, has to be challenged in appeal or whether a revision would lie under Article 227 of the Constitution of India. The question of two appeals being filed from a decree in the counterclaim and the suit, did not arise at all since in ***Rajni Rani***[11] the suit was pending before the Trial Court, and the counterclaim alone was rejected under order VII Rule 11; which rejection order was amenable only to an appeal. But there may arise occasions where there should be two decrees drawn up, like in ***Rajni Rani***[11] itself. If the appeal against the dismissal of the counter claim, on a decree drawn up, is pending without a stay of the suit and eventually the suit is either dismissed or allowed, then necessarily there should be another decree drawn up, which would also have to be subjected to an appeal.

21. In this context, we also notice Order XX Rule19 from which sub-rule (1) was noticed in ***Abdul Nazer***[9], which applies to a suit for recovery of money, when a counterclaim is also with

respect to the money due. Rule 19(1) may not have application in the very many cases we noticed, wherein the subject matter of the suit was a claim and counterclaim with respect to ownership and possession of immovable property. Apposite would be sub-rule (2) of Order XX Rule 19, which indicates that any decree passed in a suit, in which a set off or counterclaim is raised, shall be subject to the same provisions applicable to a suit in which no counterclaim is raised. It only indicates that when a counterclaim is raised and decided, the appeal provisions with respect to a decree in a suit would squarely apply. It does not, according to us, either require that two appeals have to be filed or by implication prohibit a single appeal.

22. Here, we have to notice the judgment of this Court in ***Laxmidas Dayabhai Kabrawala v. Nanabhai Chunilal Kabrawala***[14], rendered in a slightly different context. Therein one of the partners, filed a suit for enforcement of an agreement, entered into with a deceased partner; resisted by the legal representatives of the deceased, with a counterclaim of settlement of accounts on dissolution of the firm. The Trial

[14] AIR 1964 SC 11

Court while dismissing the suit held the counterclaim to be not permissible under the CPC, but left liberty to bring a separate suit for accounts and share of the profits, if so advised. Even in the absence of a provision enabling a counterclaim, it was held by a majority that despite the counter claim raised not confirming to the requirements of a plaint, as prescribed in the CPC, it could as well be treated as a cross suit. It is not proper to deny the court the power and jurisdiction to read and construe the pleadings in a reasonable manner and consider the claim raised, as would have been dealt with, if it was made in the form of a plaint. Eventually the matter was restored to the Trial Court permitting the defendant to file a fresh written statement raising the counter claim satisfying the requirements of a plaint, as provided in the CPC and the plaintiff given further opportunity to controvert such pleadings by a written statement. ***Laxmidas Dayabhai Kabrawala***[14] even in the teeth of the unamended CPC, permitting only a cross suit, sans the enabling provision to raise a counterclaim, directed the counterclaim to be considered as a cross-suit. This very scheme has been brought into operation after the amendment of 1976 in the CPC enabling a counterclaim by the defendant in a suit.

23. In this context, we notice the concurring judgment in *Abdul Nazer*[8] noticing ***Owners and Parties Interest in M.V. 'Vali Pero' v. Fernandeo Lopez and Others***[15], as to the rule of procedure, extracted herein: -

> *"Rules of procedure are not by themselves an end but the means to achieve the ends of justice. Rules of procedure are tools forged to achieve justice and are not hurdles to obstruct the pathway to justice. Construction of a rule of procedure which promotes justice and prevents its miscarriage by enabling the court to do justice in myriad situations, all of which cannot be envisaged, acting within the limits of the permissible construction, must be preferred to that which is rigid and negatives the cause of justice. The reason is obvious. Procedure is meant to subserve and not rule the cause of justice. Where the outcome and fairness of the procedure adopted is not doubted and the essentials of the prescribed procedure have been followed, there is no reason to discard the result simply because certain details which have not prejudicially affected the result have been inadvertently omitted in a particular case. In our view, this appears to be the pragmatic approach which needs to be adopted while construing a purely procedural provision. Otherwise, rules of procedure will become the mistress instead of remaining the handmaid of justice, contrary to the role attributed to it in our legal system."*

24. Section 96 of the CPC provides an appeal from every decree leading to the unequivocal declaration of law by the

[15] (1989) 4 SCC 671

High Courts and this Court, that an appeal is from a decree and not from a judgment. Order XLI Rule 1 as it was before the amendment in 01.07.2002 also required the Memorandum of Appeal to be accompanied by a copy of the decree. As of now, the word *'decree appealed from and (unless the Appellate court dispenses therewith) of the judgment on which it is founded'* has been substituted with the word *'judgment'* in Order XLI Rule 1 with effect from 01.07.2002. The intention of the legislature is very clear that the delay in drawing up decrees shall not frustrate the appellate remedy and there should be an end to multiplicity of proceedings.

25. Immediately, we have to notice Rule 6A of Order XX, CPC having the nominal heading of *'Preparation of decree'*. Sub-rule (1) speaks of expeditious drawing up of a decree, at any rate, within fifteen days from the date of pronouncement of judgment. Sub-rule (2) permits an appeal to be preferred, with a judgment, if a decree has not been drawn up, which shall for the purposes of Rule 1 of Order XLI be treated as a decree. It is also provided that as soon as a decree is drawn up, the judgment shall cease to have the effect of a decree for the purpose of execution or for any other purposes. The provision

insofar as an appeal is concerned is redundant since Rule 1 of Order XLI permits an appeal to be filed accompanied by a judgment. Hence, sub-rule (2) of Order XX Rule 6A only applies insofar as execution, as of now.

26. In this context, we have to notice that before the amendment brought to Rule 6A of Order XX by Act 46 of 1999, it provided that *"the last paragraph of the judgment shall state in precise terms the relief which has been granted by such judgment'(sic).* This stood omitted by Act 46 of 1999, the consequence of which came up for consideration before the Andhra Pradesh High Court in ***Faqruddin v. Didde Mahadevappa and Others***[16]. Therein the suit was filed for declaration of title, recovery of possession and consequential injunction. The suit was fully decreed but however in the operative portion of the judgment, recovery of possession was omitted, which hence did not figure in the decree also. On execution being filed, recovery was objected to, on the trite principle that the Execution Court cannot go beyond a decree. A learned Single Judge of the High Court agreed with the objection, but gave liberty to the plaintiff to approach the Trial

[16] 2004 (5) ALT 469

Court under Section 152 of the CPC for correction of the decree. The learned Single Judge noticed that the omission of that portion in Rule 6A created more problems than it resolved. It was also noticed that simultaneous to the said omission Order XLI Rule 1 was also amended, facilitating an appeal to be filed accompanied by a copy of the judgment and not the decree. Thus, confining the application of a decree to the execution proceedings.

27. ***Lakshmi Ram Bhuyan v. Hari Prasad Bhuyan***[17] though rendered after the amendment, did not notice the omission made in Rule 6A. Therein, the High Court had in Second Appeal overturned a concurrent decision of the Trial Court and the Appellate Court but allowed the appeal with costs and a direction to the Trial Court, to draw up a decree. Since the relief was not specified, the Trial Court drew up a decree, with provision for cost alone which was challenged before this Court. It was held that the obligation cast by Order XX of the Code that the decree should agree with the judgment, spells out an obligation on the part of the author of the judgment to clearly indicate the relief or reliefs to which a party, in his

[17] (2003) 1 SCC 197

opinion, has been found entitled, to enable decree being framed in such a manner that it agrees with the judgment and specifies clearly the relief granted or other determination of the suit. The operative part of the judgment should be so clear and precise that in the event of an objection being laid, it should not be difficult to find out by a bare reading of the judgment and decree whether the latter agrees with the former and is in conformity therewith. '*A self-contained decree drawn up in conformity with the judgment would exclude objections and complexities arising at the stage of execution*' (sic). The Andhra Pradesh High Court held that though Rule 6A was amended with the aforesaid omission, the judgment of this Court having been pronounced after such amendment, it takes care of the vacuum created by the omission, being the law of the land under Article 141 of the Constitution of India. For completeness, we have to notice that even this Court in ***Lakshmi Ram Bhuyan***[17] left it to the decree holder to approach the High Court to get modified the decree.

28. We have been informed that in certain States, two decrees are drawn up from a common judgment in a suit and a counterclaim, but in others there is only one decree drawn up,

as in this case. The necessity of two decrees or one single decree, pales into insignificance, especially when the provision for appeal requires only a judgment to accompany the Memorandum of Appeal. The proviso to Order XLI Rule 1 enables the certified copy of the judgment to be dispensed with, when two appeals from a common judgment in two suits tried together, are preferred, whether or not the appeals are filed by the same person or not. However, the fact remains that the claim in the suit and the counterclaim, when treated as cross-suits, court fees are to be paid for the claim raised in the suit and also counterclaim raised in the written statement. Hence, whether it be a single decree or two, when a composite appeal is filed from a common judgment in the suit and the counterclaim, necessarily court fees have to be paid on the valuation in the suit and the counterclaim as applicable to appeals.

29. Finding no contrary or restrictive provisions in the CPC, we hold and declare that a suit and a counterclaim, if adjudicated by a single common judgment; both on the original claim and on the counterclaim, it can be challenged in a composite appeal. The composite appeal, however, should

show the grounds raised against the decree in the suit and the decree in the counterclaim separately; whether there are two decrees or one drawn up. The composite appeal should also be valued as two separate appeals and the court fees paid accordingly. This would enable the appeal to be considered on merits, without the grounds of *estoppel* and *res judicata* raised only for reason of two appeals not being filed. Though an implied mandate could be drawn from the various provisions, we are of the opinion that this would ensure avoidance of procedural rigmarole as also multiplicity of litigations.

30. On the above reasoning and also finding that there was considerable flux insofar as whether there should be two appeals or a composite appeal, in disposal of this appeal, it would suffice, if we direct the first appeal to be restored, which we do, and to facilitate that, the impugned orders of the High Court and the First Appellate Court are set aside. The appellant herein would be entitled to file a fresh memorandum with separate grounds taken and pay court fees for the one additional appeal. The appeal so filed shall be considered by the First Appellate Court along with the other appeal, on merits as expeditiously as possible considering the delay that has now

been occasioned. We make it clear that we direct another appeal to be filed in this case since there is already one appeal filed, but henceforth a challenge against a common judgment in a suit and counterclaim, can be by way of a composite appeal, as directed herein above.

31. The appeal is allowed with the above directions.

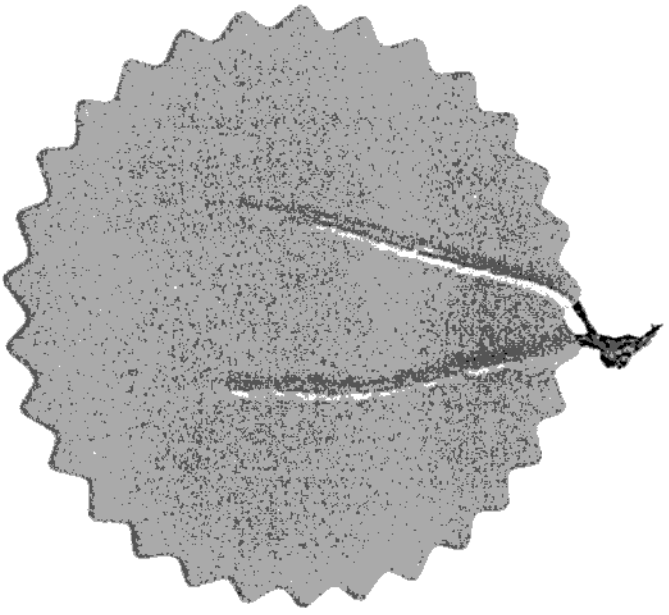
32. Pending application(s), if any, shall stand disposed of.

33. The Registry shall forward one copy each of this judgment to all the High Courts.

Sd/- ..... J.
(J. B. PARDIWALA)

Sd/-
(K. VINOD CHANDRAN)

NEW DELHI;
AUGUST 11, 2026.



SEALED IN MY PRESENCE