2025:PHHC:075511

RSA-1258-1994 (O&M)

RSA-1199-1994 (O&M)

Sr.No.105 (2 cases)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Decided on : 23.01.2025

1) RSA No.1258 of 1994 (O&M)

Smt. Jaswinder Kaur and others **…Appellants**

Versus

Sh. Kehar Singh and others **…Respondents**

2) RSA No.1199 of 1994 (O&M)

Kehar Singh and others

…Appellants

Versus

Jaswinder Kaur and others **…Respondents**

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present:- Mr. Surjit Singh Salar, Advocate
for the appellants (in RSA-1258-1994)
for respondents No.1 to 5 (in RSA-1199-1994).

Mr. Ritesh Aggarwal, Advocate
for the appellants (in RSA-1199-1994)
for respondents No.1 to 3 (in RSA-1258-1994).

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RSA-1258-1994 (O&M)

RSA-1199-1994 (O&M)

PANKAJ JAIN, J. (ORAL)

By way of instant judgement, I intend to dispose off above-captioned two regular second appeals. For the sake of convenience, the facts are being taken from the appeal bearing RSA No.1258 of 1994. The parties are being referred to by their original position in the suit i.e. the appellants as plaintiffs and respondents as defendants.

2. These two cross-appeals filed by both the parties are directed against judgment and decree dated 03.01.1994 passed by District Judge, Patiala, whereby the appeal preferred by defendants has been partly accepted and the cross-objections filed by plaintiffs have been ordered to be dismissed.

3. Plaintiffs filed suit seeking recovery of Rs.3,85,000/- on account of damages/compensation against defendants for having murdered Balwant Singh, husband of plaintiff No.1, father of plaintiffs No.2 & 3 and son of plaintiffs No.4 & 5.

3.1. As per the plaintiffs, the defendants conspired and brutally murdered Balwant Singh on 09.04.1987. All the defendants were booked for offences punishable under Sections 302, 148, 149, 201 IPC in FIR No.23 dated 09.04.1987, registered at Police Station Bhadson and stand convicted.

3.2. Trial Court held plaintiffs entitled to compensation of Rs.1,44,000/- observing as under:-

"xxxx xxxx xxxx

20. The plaintiffs have lead evidence to the effect that deceased Balwant Singh was doing agriculture. He was owning tractor and used to plaugh his land through skilled agriculture means and he used to cultivate the land of others on rent with his tractor and he was having diary farm and poultry farm. PW5 has given income of deceased as 3,00,000/- per year. PW3 has produced on file, the receipts vide which the payment of food grains sold at their shop by the deceased Balwant Singh during the year 1986 has been proved, and he has given income of deceased for a particular year as Rs.1,53,420.14. Ld. counsel for the plaintiffs has stated that if the income is divided with 4 persons i.e. 3 sons of Didar Singh and Didar Singh himself who is owner of the land as per jamabandi Ex. P.X for the year 1982-83, then the income of deceased Balwant Singh comes to Rs.38000/- per year. This also shows that he was earning more than Rs.3000/- per month. But this is an exaggerated income. However, it is evident that Balwant Singh deceased was a young man of 35 years and was having a good health. He was doing agriculture with modern scientific methods and he was having tractor and having Diary Farm and Poultry Farm. Under the circumstances the income of the deceased Balwant Singh cannot be estimated less than Rs.1000/- per month. If deceased would have spent 1/3rd of his income on him, then he would have been spent the remaining 2/3 income on the dependents i.e. plaintiffs. So, the monthly dependency of the plaintiffs on the deceased was Rs.750/- per month which will come to Rs.9000/- per year and applying multiplier of 16 it will come to Rs.1,44,000/- to which the plaintiffs are entitled for the

compensation from the defendants No. 1 to 3. The compensation can be given to the extent of 1/3rd to Jaswinder Kaur plaintiff No. 1 who is the widow of Balwant Singh deceased and 1/3 to plaintiff No. 2 and 3 who are daughter and son of deceased Balwant Singh and 1/3 to parents of deceased Balwant Singh i.e. plaintiffs No. 4 and 5. Thus I hold that plaintiffs are entitled for compensation to the tune of Rs.1,44,000/- from defendants No. 1 to 3. Thus both these issues are decided accordingly in favour of the plaintiffs and against the defendants.

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3.3. Defendants preferred appeal. The Lower Appellate Court though held the plaintiffs entitled to compensation, but reassessed the compensation observing as under:-

"xxxx xxxx xxxx

11. With regard to issue No.2, I am of the considered view that trial court has not rightly calculated the dependency of the plaintiffs. With the death of Balwant Singh, there was only loss to his estate. Firstly, there is no satisfactory evidence led by the plaintiffs that deceased was owning any agricultural land. There is no Jamabandi in his name nor there is any khasra girdawari. In the jamabandi, the name of Teja Singh, Bachan Singh, Sham Singh, Ranjit Singh, Dara Singh and Kehar Singh figure. It was occurrence of 1987. Deceased was maintaining his wife and two children. In these circumstances, I calculate annual dependency of all the plaintiffs at Rs.5000/- and by applying multiplier of 16 years I am inclined to award Rs.80,000/- by way of compensation/damages to the plaintiffs for the murder of Balwant Singh. Learned trial court had assessed the annual

dependency at Rs.9000/-and by applying multiplier of 16 years, it has awarded Rs. 1,44,000/- to the plaintiffs. To my mind, the annual dependency of Rs.9000/-is on higher side. Hence, I modify the finding of the learned trial court on issue No.2.

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3.4. Plaintiffs also preferred cross-objections seeking future interest on the decretal amount. The cross-objections were partly allowed. Plaintiffs were held entitled to future interest @ 6% per annum.

4. Counsel for the appellants/plaintiffs submits that Lower Appellate Court erred in reassessing the compensation and applying the dependency. Whole of the calculation made by the Lower Appellate Court is in teeth of ratio of law laid down by Supreme Court in the case of ***Sarla Verma and others vs. Delhi Transport Corporation and another, (2009) 6 SCC 121***. He further submits that even though the present suit has been filed under The Fatal Accidents Act, 1855 (*hereinafter referred to as '1855 Act'*), however, as per settled proposition of law the formula and the parameters evolved under the Motor Vehicles Act, 1988 for assessing the compensation are applicable to the suit filed under 1855 Act. He thus submits that judgment passed by the Lower Appellate Court, to the effect the compensation awarded by the Trial Court was reduced, cannot be sustained.

5. *Per contra,* counsel for the respondents/defendants has raised objection regarding filing of single appeal by the plaintiffs. He submits that once the plaintiffs filed cross-objections in the appeal preferred by defendants

before the Lower Appellate Court, as per law they were required to file two separate appeals. Having failed to do so, the findings recorded by the Lower Appellate Court with respect to cross-objections shall operate as *res judicata* and single appeal deserves to be dismissed.

6. I have heard counsel for the parties and have carefully gone through records of the case.

7. The issue regarding filing of one appeal, where there is appeal and cross-appeal arising out of common judgment and composite decree, is no more *res integra.* This Court dealt with a similar issue. Both were decided by a common judgment and decree. The counter-claimant preferred single appeal which was allowed. In Regular Second Appeal, question was raised by the plaintiff regarding non-filing of two separate appeals by the defendant before Lower Appellate Court. In ***RSA No.3681 of 2016,*** titled as ***Punjab National Bank vs. M/s Kohinoor Stone Crusher Chandi Mandir and others, decided on 21.05.2025***, there was a suit and counter-claim. This Court after going through the entire thread of judgments on the issue observed as under:-

> *"xxxx xxxx xxxx*
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> *7. Issue regarding requirement of filing separate appeals against judgment and decree has repeatedly been subject matter of judicial debate. It came up for consideration before the Full Bench of Lahore High Court in* ***Mussammat Lachhmi v. Mussammat Bhulli, 1927 SCC OnLine Lah 256****, wherein it was observed as under:-*

" xxxx xxxx xxxx

The questions of law, formulated by the learned Judges of the Division Bench, on which the Full Bench is invited to pronounce its opinion, are thus stated in the referring order:—

1. *"Two widows A and B are jointly in possession of certain land. Each sues the other for a declaration that she (the plaintiff) is the exclusive owner of that land and that the defendant has no right in it of any kind. Both suits are disposed of by a single judgment, which decided that A is the owner but that B is entitled to hold possession of half the land in lieu of maintenance. A separate decree is drawn up in each suit declaring the rights of the plaintiff according to that decision. B appeals against one of these decrees only, namely, the decree given, in the suit in which she was the plaintiff. Does the fact that no appeal has been preferred by B against the decree in the other suit of A prevent B's appeal from proceeding?"*
2. *"If the answer to question is in the affirmative, does the fact that A has filed cross-objections pressing her claim to exclusive ownership and possession affect the situation? If yes, then in what way?"*

The answer to the questions depends on the application of the rule of res judicata to the facts as set forth above, and, as stated in the referring order, the case-law on the subject is in a state of some confusion. There is not only a serious conflict of judicial opinion

between the different High Courts, but in some cases it is not possible to reconcile the rulings of the same High Court with one another. I think, therefore, that before discussing the various cases that have a bearing on the questions to be decided, it will be useful to make a few preliminary observations, which might clear the ground to some extent and be helpful in arriving at a correct conclusion on the exact points before us.

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The result of the examination of the rulings of the various High Courts may be summed up as follows:—

(a) The Madras High Court is whole-heartedly in favour of the right to proceed.

(b) The Allahabad High Court has held different views at different times, but the tendency of the latest decisions is in favour of the right to proceed.

(c) In the Calcutta Court the opinion of the majority in Mariam Nissa Bibi v. Joynab Bibi [(1906) I.L.R. 33 Cal. 1101 (F.B.).], is in favour of the right to proceed. Subsequent decisions of Division Benches (none of which, it is significant, has found its way into the authorized Reports) have however, taken the contrary view. But I venture to think that the reasoning of these decisions in so far as it conflicts with the earlier case cannot be supported.

(d) The High Courts of Patna and Rangoon have followed the earlier decisions of the Allahabad

High Court but these latter are no longer considered to be authoritative in that Court itself.

(e) In the Punjab the rulings are not uniform, but on the whole, it seems to me that though much of the reasoning of the Full Bench judgment in Jogal Kishore v. Chammo [85 P.R. 1905 (F.B.).] cannot be supported, the conclusion arrived at in that case is correct.

The contrary decisions proceed on one or other of the following three grounds:—

(a) Section 11, Civil Procedure Code, in terms applies to such a case;

(b) There are two separate and independent judgments and, therefore, two appeals are necessary; or

(c) Two decrees having been prepared, an appeal against only one of them ought not to be allowed to proceed, as it is necessary to avoid the scandal of having two conflicting decrees on the record of the Court.

I have already examined the question in detail from each one of these points of view and with the utmost respect to the learned Judges who have endorsed one or other of these views, I am of opinion that none of them can, on principle, be supported. They have, if I may venture to say so, taken too technical a view of the doctrine of res judicata which, it must not be forgotten, is, as pointed out by Hukam Chand and

other authors of standard text-books on the subject, a rule of procedure rather than of substantive law, strictly so called. And in enforcing rules of procedure it is as well to bear in mind the following remarks of Lord Penzance in Henry, J.B. Kendall v. Peter Hamilton [(1879) L.R. 4 A.C. 504.] : "Procedure is but the machinery of the law after all, the channel and means whereby law is administered and justice reached. It strangely departs from its proper office when, in place of facilitating, it is permitted to obstruct and even extinguish legal rights and is thus made to govern where it ought to subserve".

For the foregoing reasons, I am of opinion that the first question referred to us must be answered in the negative and it must be held that B's omission to prefer an appeal in A's suit does not prevent the appeal in her own suit from proceeding.

The second question is a simple one and no lengthy discussion is necessary. It is conceded by the learned counsel on both sides that the answer to this question will depend on our answer to the first. Mutuality is a condition of estoppel by res judicata and if the hearing of the appellant's appeal is barred by res judicata the same bar will apply equally to the respondent's cross-objections. If, on the other hand, it is held that the appeal can proceed, the cross-objections must also be heard and decided.

As I have answered the first question in favour of the appeal proceeding, I must answer the second

question also in similar terms, namely, that there is no bar to the hearing of the cross-objections."

8. The same was reiterated by Supreme Court in the case of ***Narhari and others vs. Shanker and others, 1950 SCC 668*** *holding that where there are two suits and decrees in the same case, based upon the same judgment, and the matter decided concerns the entire suit, there is no question of the application of principle of res judicata. The ratio of law laid down in* ***Narhari's case (supra)*** *came up for consideration before the Constitution Bench judgment in* ***Badri Narayan Singh v. Kamdeo Prasad Singh, AIR 1962 SC 338****. Constitution Bench found that in* ***Narhari's case (supra)*** *there existed one point of contention common to both appeals. Thus, the same was not applicable. The Constitution Bench further found that in the case before Supreme Court in* ***Narhari's case (supra)****, the decision of High Court in two appeals, though stated in one judgment, amounted to two decisions, and not one decision common to both appeals. The appellant having preferred an appeal against order passed in one appeal by the High Court, he cannot be allowed to question the findings returned in other appeal.*

9. Four Judges Bench in the case of ***Sheodan Singh vs. Daryao Kumar (Smt.), AIR 1966 SC 1332****, referring to the ratio of law laid down by Supreme Court in* ***Narhari's case (supra)****, observed that the same was not applicable as there was only one suit which led to filing of two appeals. The appeals were heard together and disposed off by the same judgment though separate decrees were prepared. An appeal was taken up against one of the decrees. In these circumstances, it was held that it was not*

necessary to file two separate appeals and the fact that one of the appeals was time barred did not affect the maintainability of the other appeal and the question of res judicata did not at all arise where there is only one suit.

*10. Supreme Court in **Sheodan Singh's case (supra)** held that where the trial court has decided two suits having common issues on the merits and there are two appeals therefrom, and one of them is dismissed on some preliminary ground, like limitation or default in printing, with the result that the trial court's decision stands confirmed, the decision of the appeal court will be res judicata and the appeal court must be deemed to have heard and finally decided the matter. Reference can be made to following observations:-*

> *"xxxx xxxx xxxx*
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> *22.....Our conclusion on the question of res judicata raised in the present appeals is this. (Where the trial court has decided two suits having common issues on the merits and there are two appeals therefrom and one of them is dismissed on some preliminary ground, like limitation or default in printing, with the result that the trial court's decision stands confirmed, the decision of the appeal court will be res judicata and the appeal court must be deemed to have heard and finally decided the matter. In such a case the result of the decision of the appeal court is to confirm the decision of the trial court given on merits, and if that is so, the decision of the appeal court will be res judicata whatever may be the reason for the*

dismissal. It would be a different matter, however, where the decision of the appeal court does not result in the confirmation of the decision of the trial court given on the merits, as for example, where the appeal court holds that the trial court had no jurisdiction and dismisses the appeal even though the trial court might have dismissed the suit on the merits.) In this view of the matter, the appeals must fail, for the trial court had in the present case decided all the four suits on the merits including the decision on the common issues as to title. The result of the dismissal on a preliminary ground of the two appeals arising out of Suits Nos. 77 and 91 was that the decision of the trial court was confirmed with respect to the common issues as to title by the High Court. In consequence the decision on those issues became res judicata so far as appeals Nos. 365 and 366 are concerned and Section 11 of the Code of Civil Procedure would bar the hearing of those common issues over again. It is not in dispute that if the decision on the common issues in Suits Nos. 77 and 91 has become res judicata, Appeals Nos. 365 and 366 must fail.

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11. The issue was further debated in ***Premier Tyres Ltd. vs. Kerala State Road Transport Corporation, 1993 Supp (2) SCC 146****, wherein the Supreme Court observed as under:-*

"xxxx xxxx xxxx

3. The validity of this finding has been assailed by Shri Raja Ram Aggarwal, the learned senior advocate appearing on behalf of the appellant. It is urged that Section 11 of the Civil Procedure Code does not apply as such. According to him since both the suits were connected and decided by a common order the issue in neither suit can be said to have been decided in a former suit. Therefore, the basic ingredient of Section 11 of the CPC was not satisfied. The submission derives some support from observations in Narhari v. Shanker [1950 SCC 668 : AIR 1953 SC 419 : 1950 SCR 754] that, 'even when there are two suits it has been held that decision given simultaneously cannot be a decision in the former suit'. But this decision was distinguished in Sheodan Singh v. Daryao Kunwar (Smt) [(1966) 3 SCR 300 : AIR 1966 SC 1332] as it related to only one suit, therefore, the observations extracted above were not relevant in a case where more than one suit were decided by a common order. The Court further held that where more than one suits were filed together and main issues were common and appeals were filed against the judgment and decree in all the suits and one appeal was dismissed either as barred by time or abated then the order operated as res judicata in other appeals,

> *"In the present case there were different suits from which different appeals had to be filed. The High Court's decision in the two appeals arising from suit Nos. 77 and 91 was undoubtedly earlier and therefore the condition that there should have been a decision in a former suit to give rise to res judicata in a subsequent suit was satisfied in the present case. The contention that there was no former suit in the present case must therefore fail."*

In Ramagya Prasad Gupta v. Murli Prasad [(1974) 2 SCC 266] an effort was made to get the decision in Sheodan Singh [(1966) 3 SCR 300 : AIR 1966 SC 1332] reconsidered. But the Court did not consider it necessary to examine the matter as the subject-matter of two suits being different one of the necessary ingredients for applicability of Section 11 of the CPC were found missing.

4. Although none of these decisions were concerned with a situation where no appeal was filed against the decision in connected suit but it appears that where an appeal arising out of connected suit is dismissed on merits the other cannot be heard, and has to be dismissed. The question is what happens where no appeal is filed, as in this case from the decree in connected suit. Effect of non-filing of appeal against a judgment or decree is that it becomes final. This finality can be taken away only

in accordance with law. Same consequences follow when a judgment or decree in a connected suit is not appealed from.

5. Mention may be made of a Constitution Bench decision in Badri Narayan Singh v. Kamdeo Prasad Singh [AIR 1962 SC 338 : (1962) 3 SCR 759 : 23 ELR 203] . In an election petition filed by the respondent a declaration was sought to declare the election of appellant as invalid and to declare the respondent as the elected candidate. The tribunal granted first relief only. Both appellant and respondent filed appeals in the High Court. The appellant's appeal was dismissed but that of respondent was allowed. The appellant challenged the order passed in favour of respondent in his appeal. It was dismissed and preliminary objection of the respondent was upheld. The Court observed,

> *"We are therefore of opinion that so long as the order in the appellant's Appeal No. 7 confirming the order setting aside his election on the ground that he was a holder of an office of profit under the Bihar Government and therefore could not have been a properly nominated candidate stands, he cannot question the finding about his holding an office of profit, in the present appeal, which is founded on the contention that that finding is incorrect."*

6. Thus the finality of finding recorded in the connected suit, due to non-filing of appeal, precluded the court from proceeding with appeal in other suit. In any view of the matter the order of the High Court is not liable to interference.

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12. Again, the issue came up for consideration in the case of ***Sri Gangai Vinayagar Temple v. Meenakshi Ammal, (2015) 3 SCC 624****. Analysing the importance of application under Section 11 CPC, the Supreme Court observed as under:-*

"xxxx xxxx xxxx

24. We must additionally advert to a four-Judge Bench decision in Sheodan Singh v. Daryao Kunwar [Sheodan Singh v. Daryao Kunwar, AIR 1966 SC 1332 : (1966) 3 SCR 300] , in which this Court has lucidly enumerated five constituent elements of Section 11, namely :

"(I) The matter directly and substantially in issue in the subsequent suit or issue must be the same matter which was directly and substantially in issue in the former suit;

(II) The former suit must have been a suit between the same parties or between parties under whom they or any of them claim;

(III) The parties must have litigated under the same title in the former suit;

(IV) The court which decided the former suit must be a court competent to try the subsequent suit or the suit in which such issue is subsequently raised; and

(V) The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the court in the first suit.

Further Explanation I shows that it is not the date on which the suit is filed that matters but the date on which the suit is decided so that even if a suit was filed later, it will be a former suit if it has been decided earlier."

The conundrum in Sheodan Singh [Sheodan Singh v. Daryao Kunwar, AIR 1966 SC 1332 : (1966) 3 SCR 300] was only marginally different to what has arisen before us. The appellate court was confronted with five appeals from five different suits between the same parties in which the issues were common. Two of the appeals were dismissed, albeit, not on merits. It was in those premises argued and accepted by this Court that the principles of res judicata became operational with regard to the decrees passed in the two suits in respect of which the appeals filed there against had been dismissed. It was pithily observed that otherwise :

> *"13. … all that the losing party has to do to destroy the effect of a decision given by the trial court on the merits is to file an appeal and let that appeal be dismissed on some preliminary ground, with the result that the decision given on the merits also becomes useless as between the parties."*

Sheodan Singh [Sheodan Singh v. Daryao Kunwar, AIR 1966 SC 1332 : (1966) 3 SCR 300] took note of several judgments of the High Courts, which preferred to overlook procedural technicalities ostensibly in the interests of the merits of the matter, but did not state its final opinion, which has propelled us to do so in order so that the divergent opinions be interred and dissonance be removed.

25. On the issue of applicability of res judicata in cases where two or more suits have been disposed of by one common judgment but separate decrees, and where the decree in one suit has been appealed against but not against the others, various High Courts have given divergent and conflicting opinions and decisions. The High Court of Madras and the erstwhile High Courts of Lahore, Nagpur and Oudh have held that there could be no res judicata in such cases whereas the High Courts of Allahabad, Calcutta, Patna, Orissa and the erstwhile High Court of Rangoon have taken contrary views. It should also be noted that there are instances of conflicting judgments within the

same High Court as well. The decision of Tec Chand, J. in Full Bench judgment of the Lahore High Court in Lachhmi v. Bhulli [AIR 1927 Lah 289] and Full Bench judgment of the Madras High Court in Panchanada Velan v. Vaithinatha Sastrial [ILR (1906) 29 Mad 333] and of the Oudh High Court in B. Shankar Sahai v. B. Bhagwat Sahai [AIR 1946 Oudh 33] appear to be the leading decisions against the applicability of res judicata. Without adverting to the details of those cases, it is sufficient to note that the hesitancy or reluctance to the applicability of the rigours of res judicata flowed from the notion that Section 11 of the Code refers only to "suits" and as such does not include "appeals" within its ambit; that since the decisions arrived in the connected suits were articulated simultaneously, there could be no "former suit" as stipulated by the said section; that substance, issues and finding being common or substantially similar in the connected suits tried together, non-filing of an appeal against one or more of those suits ought not to preclude the consideration of other appeals on merits; and that the principle of res judicata would be applicable to the judgment, which is common, and not to the decrees drawn on the basis of that common judgment.

26. On the other hand, the verdict of Full Bench of the Allahabad High Court in Zaharia v. Debia [ILR (1911) 33 All 51] and decisions of the Calcutta

High Court in Isup Ali v. Gour Chandra Deb [37 Cal LJ 184 : AIR 1923 Cal 496] and of the Patna High Court in Gertrude Oates v. Millicent D'Silva [ILR (1933) 12 Pat 139 : AIR 1933 Pat 78] are of the contrary persuasion. These decisions largely proceeded on the predication that the phraseology "suit" is not limited to the court of first instance or trial court but encompasses within its domain proceedings before the appellate courts; that non-applicability of res judicata may lead to inconsistent decrees and conflicting decrees, not only due to multiplicity of decrees but also due to multiplicity of the parties, and thereby creating confusion as to which decree has to be given effect to in execution; that a decree is valid unless it is a nullity and the same cannot be overruled or interfered with in appellate proceedings initiated against another decree; that the issue of res judicata has to be decided with reference to the decrees, which are appealable under Section 96 CPC and not with reference to the judgment (which has been defined differently), but with respect to decrees in CPC; that non-confirmation of a decree in appellate proceedings has no consequence as far as it reaching finality upon elapsing of the limitation period is concerned in view of Explanation II of Section 11, which provides that the competence of a court shall be determined irrespective of any provisions as to right of appeal

from the decision of such court; and that Section 11 CPC is not exhaustive of the doctrine of res judicata, which springs up from the general principles of law and public policy.

27. Procedural norms, technicalities and processual law evolve after years of empirical experience, and to ignore them or give them short shrift inevitably defeats justice. Where a common judgment has been delivered in cases in which consolidation orders have specifically been passed, we think it irresistible that the filing of a single appeal leads to the entire dispute becoming sub judice once again. Consolidation orders are passed by virtue of the bestowal of inherent powers on the courts by Section 151 CPC, as clarified by this Court in Chitivalasa Jute Mills v. Jaypee Rewa Cement [(2004) 3 SCC 85]. In the instance of suits in which common issues have been framed and a common trial has been conducted, the losing party must file appeals in respect of all adverse decrees founded even on partially adverse or contrary speaking judgments. While so opining we do not intend to whittle down the principle that the appeals are not expected to be filed against every inconvenient or disagreeable or unpropitious or unfavourable finding or observation contained in a judgment, but that this can be done by way of cross-objections if the occasion arises. The decree not assailed thereupon metamorphoses into the

character of a "former suit". If this is not to be so viewed, it would be possible to set at naught a decree passed in Suit A by only challenging the decree in Suit B. Law considers it an anathema to allow a party to achieve a result indirectly when it has deliberately or negligently failed to directly initiate proceedings towards this purpose. Laws of procedure have picturesquely been referred to as handmaidens to justice, but this does not mean that they can be wantonly ignored because, if so done, a miscarriage of justice inevitably and inexorably ensues. The statutory law and the processual law are two sides of the judicial drachma, each being the obverse of the other. In the case in hand, had the tenant diligently filed an appeal against the decree at least in respect of OS No. 5 of 1978, the legal conundrum that has manifested itself and exhausted so much judicial time, would not have arisen at all.

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13. Supreme Court in ***Patiala Urban Planning & Development Authority vs. Tarlochan Singh, (2020) 17 SCC 224*** *observed as under:-*

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14. It was also submitted on behalf of the landowners that since the appeals have been preferred by development authority as against decision in appeals, filed in the High Court for the purpose of reduction in compensation and not

against the decision in appeals of landowners, in which the compensation has been enhanced, this Court should not interfere on this technical ground. The submission is factually incorrect as in order to meet the objection separate appeals have also been filed by the development authority as against the decision of the High Court allowing appeals filed by the landowners. Moreover, even if no fresh appeals would have been filed, in that case also, in substance, the claim of the development authority is that the compensation could not have been enhanced by the High Court and the compensation as awarded by the Reference Court may also be reduced. Thus, in essence, their appeal is against the entire determination made by the High Court. It cannot be said to be a case like that of two decrees passed by the High Court in which two separate appeals are required to be filed. The substance of the appeal has to be seen and we have no hesitation in rejecting the submission raised by the learned counsel appearing on behalf of landowners.

xxxx xxxx xxxx"

14. Mr. Sagar, learned Senior counsel for the respondents/defendants heavily relied upon ***Sri Gangai Vinayagar Temple's case (supra)****. Therein, the Supreme Court observed that the appeals are not expected to be filed against every inconvenient or disagreeable or unpropitious or unfavourable finding or observation contained in a judgment.*

> *The decree not assailed thereupon metamorphoses into the character of a "former suit". Thus, wherein there are two decrees drawn at any stage of proceeding, the aggrieved parties are required to challenge the same until it attains the character of former suit. Applying the aforesaid ratio to the present case, this Court finds that even though the counter-claim forms a separate suit but the main suit as well as counter-claim having been decided and adjudicated by common judgment and by drawing a common decree, counter-claimant was not required to file a separate appeal i.e. two separate appeals against the same judgment and decree. Even if it is said to be desirable, the same was not necessary. Filing of a single appeal by the counter-claimant brought the entire dispute under the lens of the Appellate Court and made the same sub judice. Appeal being against the entire determination made by the Lower Court, the non-filing of the other appeal against the same judgment and decree passed by the Court of First Instance, cannot be held to be a ground to invoke the principle of res judicata in the facts and circumstances of the present case. Until there is a separate decree drawn that metamorphoses into the character of a former suit, res judicata will not be applicable.*
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> *xxxx xxxx xxxx"*

8. In view of above, this Court finds that once cross-objections preferred by plaintiffs and the appeal preferred by defendants were decided by a common judgment drawing common decree, there is no requirement of filing two separate appeals. Thus, the objection raised by counsel for respondents/defendants *sans* merit and is hereby rejected.

9. Coming on to the issue of compensation, this Court finds that the Lower Appellate Court without any rhyme or reason concluded that annual dependency of plaintiffs is Rs.5000/-. As rightly held by Trial Court, the income of the deceased was not less than Rs.1000/- per month. The Trial Court rightly applied 1/3rd deduction and calculated the compensation accordingly. The same is in consonance with settled principle of law as laid down by Supreme Court in ***Sarla Verma's case (supra)***.

10. In view of above, this Court finds that part of the judgment and decree passed by the Lower Appellate Court reversing the judgment and decree passed by the Trial Court cannot be sustained and is thus set aside. However, the decree passed by Lower Appellate Court granting future interest @ 6% per annum to the plaintiffs on amount of compensation in the cross-objections filed by plaintiffs, is ordered to be maintained.

11. Consequently, the appeal bearing **RSA No.1199 of 1994**, filed by defendants, is ***dismissed*** and the appeal bearing **RSA No.1258 of 1994**, filed by plaintiffs, is ***disposed off***. Plaintiffs are held entitled to compensation of Rs.1,44,000/-, as calculated by the Trial Court, alongwith future interest @ 6% per annum from the date of decree passed by the Trial Court till the date of actual realization. Defendants No.1 to 3 are held liable to pay compensation to plaintiffs jointly and severally.

RSA-1258-1994 (O&M)

RSA-1199-1994 (O&M)

12. Pending application(s), if any, shall also stand disposed off.

13. Photocopy of this order be placed on file of the connected case.

(PANKAJ JAIN)
JUDGE

January 23, 2025
ashish

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No