



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(125)

RSA-441-2025 (O&M)

Reserved on:10.09.2025

Pronounced on:- 17.09.2025

RAJ SINGH AND ANOTHER

... Appellants

Versus

ASHOK KUMAR AND OTHERS

... Respondents

-.-

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present:- Mr. K.S. Sidhu, Senior Advocate, with
Mr. Praagbir Singh Dhindsa, Advocate,
For the appellants.
Mr. Aashish Chopra, Senior Advocate, with
Mr. Yashpal Sharma, and
Ms. Radhika Sharma, Advocates,
For the respondents.

VIRINDER AGGARWAL, J.

1. The appellants/defendants/counter-claimants filed this regular second appeal against the judgment and decree passed by learned Additional District Judge, SAS Nagar, Mohali, dated 21.11.2024.

2. Briefly, respondents/plaintiffs filed suit for permanent injunction restraining defendants from interfering in the possession of plaintiffs over the suit land measuring 1 bigha 6 biswas comprised in Khewat No.118, Khatoni No.196-197 bearing Khasra No.1111(0-5) and 1177 (1-1) situated within the revenue estate of Village Handesra, Tehsil Dera Bassi, District SAS Nagar, Mohali and from changing the nature by raising construction or in any other manner on the allegations that they are owners in possession of suit land. Previously, the same was jointly owned by plaintiffs and defendant No.1 in the suit land. The previous civil suit was filed by plaintiffs as well as defendant-Hardev Singh. The matter was



compromised and both the suits were decided in appeal by learned Additional District Judge, Patiala vide judgment dated 12.11.2001 and the suit land fell to the share of the plaintiffs. Mutation was also entered and sanctioned in favour of plaintiffs. The matter has been settled between the parties up to highest Court. Defendants are out to take forcible possession over the suit land.

3. Defendants contested the suit claiming that defendant No.1 is co-owner to the extent of half share in the suit land as per compromise dated 27.07.1992 and judgment and decree passed by the Appellate Court on 12.11.2001 is based upon that compromise. The impugned entries in the revenue record are contrary and are liable to be corrected. They also filed a counter claim claiming Hardev Singh to be the owner in possession of suit land to the extent of one half share and claiming separate possession by way of partition of the same and permanent injunction restraining plaintiffs from alienating the suit land beyond their one half share to any other person.

4. Plaintiffs filed replication as well as reply to the counter claim reiterating the contents of the plaint and denying the averments of the written statement as well as counter claim and has specifically pleaded that compromise was modified by the Court vide decree dated 12.11.2001, which has been confirmed by this Court vide order dated 12.04.2002.

5. From the pleadings the parties, the following issues were framed on 15.01.2010:-

1. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP



2. Whether the defendant is entitled to relief as claimed in the counter claim
3. Relief. ?
6. In order to prove these issues, the parties were granted opportunities to lead respective evidence.
7. After hearing the arguments, the learned Civil Judge, Junior Division, Dera Bassi vide judgment and decree dated 29.10.2014 has decreed the suit of the plaintiffs restraining the defendants from interfering into the possession of plaintiffs and from dispossessing the plaintiffs from changing the nature of suit land by raising construction or in any other manner and counter claim of the defendants was dismissed.
8. Aggrieved by the judgment and decree so passed, appellants/defendants preferred the appeal and learned Additional District Judge, SAS Nagar, Mohali vide judgment and decree dated 21.11.2024 dismissed the appeal and upheld the judgment and decree passed by the Court below.
9. Aggrieved by the judgment and decree, the present appeal has been filed.
10. Notice of motion of the appeal was issued.
11. Record was requisitioned .
12. I have considered the submissions made by learned counsel for the parties and have perused the record minutely.



13. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab and Haryana, second appeals preferred are to be treated as appeals under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 CPC. Reference in this regard can be made to the judgment of the Supreme Court in the case of ***Pankajakshi (Dead) through LRS and others V/s Chandrika and others, (2016)6 SCC 157***, followed by the judgments in the case of ***Kirodi (since deceased) through his LR V/s Ram Parkash and others, (2019) 11 SCC 317*** and ***Satender and others V/s Saroj and others, 2022(12) Scale 92***. Relying upon the law laid down in the aforesaid judgments, no question of law is required to be framed.

14. Learned counsel for the appellant argued that both the Courts below has not taken into consideration that as per the compromise effected between the parties, the suit land was kept joint and both parties were given one half share each in the suit property as such, defendant Hardev Singh was having one half share in the suit property. He pointed attention towards application (Exhibit D-2) and compromise deed (Ext. D4) effected between the parties, vide which, the suit land was kept joint between the parties.

15. Counsel for the respondents/plaintiffs argued that first of all, a composite appeal of the appellant is not maintainable as vide judgment, the learned Civil Judge has disposed of suit of the respondents/plaintiffs and counter-claim of the appellants/defendants and counter claim is in the nature of a civil suit, so, when two civil suits has been decided and two decrees were framed then two appeals should have been filed but appellants filed only single appeal before the First Appellate Court, as such, the findings



recorded in the civil suit would operate *res judicata* as those findings has not been assailed in the appeal. He further contended that the learned Additional District Judge, Patiala has passed the decree after modification of compromise between the parties and after modification, the suit land was not kept joint and it fell to the share of respondents/plaintiffs as per the judgment and decree passed by learned Additional District Judge, which has been proved as Exhibit P-3. Respondents/plaintiffs are owners of the suit land and both the Courts below has rightly appreciated the evidence on record.

16. Learned counsel for the respondents/plaintiffs relied upon the law laid down by Co-ordinate Bench of this Court in ***Nirmal Kaur versus Sawinder Singh and others, 2017:PHHC:119449***, where in that case, a composite appeal against the judgment and decree in a civil suit and counter claim was held to be not maintainable. He also relied upon the law laid down by Hon'ble Madhya Pradesh High Court in ***Baboo Lal versus Kishanlal and Others, 2025:MPHC-GWL:12441*** and Hon'ble Allahabad High Court in ***Ramnath Singh versus Parshuram Singh (Deceased) and 13 others, 2024 (8) ILR (Allahabad) 931*** and he argued that the composite appeal is not maintainable, whereas learned counsel for the appellant contended that the composite appeal is maintainable in view of law laid down by Full Bench of Lahore High Court in ***Mt. Lachmi versus Mt. Bhulli, AIR 1927, Lahore, 289***, where Full Bench of Hon'ble Lahore High Court has held as under:-

“It is necessary to emphasize here what has been stated already, that res judicata is either estoppels by verdict or estoppels by judgment (or record), and there is no such thing as estoppel by ‘decree’. As remarked by Caspersz in



para. 575 of his book on Estoppel, “the decree itself is not the test of what is or is not res judicata, but the question in each case is what did the Court decided.” The determining factor is not the decree but the decision of the matter in controversy. The cases in which the property in dispute in two suits is different the matter is simple enough, for there the plea of res judicata can, if at all, be sustained on the ground of a common issue having been decided before. The estoppel is created by verdict and as the two decrees relate to distinct properties no question of any embarrassment by contrariety of decrees arises.”

17. Hon’ble Apex Court in ***Narhari and others versus Shanker and others, 1953 AIR (SC) 419*** has held as under:-

“4. In the judgment of the High Court, though reference is given to some of these decisions, it is merely mentioned that the appellant relies of these decisions. The learned Judges perhaps thought that in the presence of the Hyderabad Judicial Committee decision in '17 Deccan L R 322 ', they need not comment on these decisions at all. There is also a later decision of the Judicial Committee of the State in -'Bansilal v. Mohanlal', 33 Deccan La 603 (F-G). where the well known and exhaustive authority of the Lahore High Court in -'Mst. Lachmi v. Mst. Bhuli', AIR 1927 Lahore 289 , was followed. In the Lahore case, here were two cross suits about the same subject matter, filed simultaneously between the same parties, whereas in the present case, there was only one suit and one judgment was given by the trial court and even in the first appeal to the Sadar Adalat, there was only one judgment in spite of there being two appeals by the two sets of defendants. The plaintiffs in their appeal to the High Court have impleaded all the defendants as respondents and their prayer covers both the appeals and they have paid consolidated court-fee for the whole suit. 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. As has been observed by Tek Chand J. in his learned judgment in 'AIR 1927 Lahore 289 ', mentioned above, the determining factor is not the decree but the matter in controversy. As he puts it later in his judgment, the estoppel is not created by the decree but it can only be created by the Judgement. The question of



res judicata arises only when there are two suits. Even when there are two suits, it has been held that a decision given simultaneously cannot be a decision in the former suit. When there is only one suit, the question of res judicata does not arise at all and in the present case, both the decrees are in the same case and based on the same judgment, and the matter decided concerns the entire suit. As such, there is no question, of the application of the principle of res judicata. The same judgment cannot remain effective just because it was appealed against with a different number or a copy of it was attached to a different appeal. The two decrees in substance are one. Besides, the High Court was wrong in not giving to the appellants the benefit of Section 5 of the Limitation Act because there was conflict of decisions regarding this question not only in the High Court of the State but also among the different High Courts in India.

18. It is now well-settled law 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. As has been observed by Tek Chand, J in his learned judgment in ***AIR 1927 Lahore 289*** mentioned above, the determining factor is not the decree but the matter in controversy. As he puts it later in his statement, the estoppel is not created by the decree but it can only be created by the judgment. The question of *res judicata* arises only when there are two suits. Even when there are two suits, it has been held that a decision given simultaneously cannot be a decision in the former suit. When there is only one suit, the question of *res judicata* does not arise at all and in the present case, both the decrees are in the same case and based upon the same judgment and the matter decided concerns the entire suit. As such, there is no question, of application of principle of *res judicata*.

19. He further relied upon the law laid down by Co-ordinate Bench of this High Court in ***Hansi Town Improvement Trust versus Ram Sarup, 2024:NCPHHC:75106***, wherein, it was held in para 3.27 as under:



“3.27. The First Appellate Court has also erred in observing that the judgment passed in a civil suit has become res judicata as no appeal has been filed. 'Doctrine of res judicata' is regulated by section 11 of the CPC. The provision applies to cases where the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, in those cases the Courts are barred to try the subsequent suit as the issue has been already adjudicated in the former suit. Explanation 1 of Section 11 defines the expression 'former suit. It provides that a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto shall be treated as a former suit. In the case involving the counterclaim, the aforesaid doctrine shall not be applicable because neither there is a former suit nor it has been decided by a separate judgment in a former suit. The essential requirement of the application of Section 11 are not fulfilled in the counter claim cases. The judgments discussed above shall not be applicable to the facts of the present case because the entire basis of the aforementioned judgments is Section 11, Res-judicata and the aforesaid provision is not applicable to the counter-claim cases, as involved in the matter at hand.”

20. It was held that a single Memorandum of Appeal filed for challenging the correctness of the composite judgment and decree was maintainable and that First Appellate Court has erred in dismissing the same on technical grounds.

21. The judgment relied upon by the counsel for the respondents/plaintiffs of Co-ordinate Bench of this Court in **Nirmal Kaur** (Supra) is distinguished as in the present case, a composite appeal assailing a composite judgment and decree has been preferred and in that Memorandum of Appeal, both the findings of the civil suit as well as counter claim has



been assailed, so in the findings, it cannot be held that a composite appeal is not maintainable when the judgment of the learned Civil Judge is a composite judgment and the issues, which were involved are also interconnected and furthermore, the cause of the parties is not required to be defeated on the technicalities and parties are required to be heard on merits.

22. Learned counsel for the appellants argued that both the Courts below have misread and misinterpreted the compromise deed dated 27.07.1992 (Ext. D4), in which, defendant-Hardev Singh was given half share in Barra measuring 1 bigha 6 biswas, which is suit land in the present suit and that compromise has been acted upon in the judgment and decree dated 12.11.2001. Wording of the compromise deed (Ext.D4) has been totally misread and misinterpreted in the impugned judgment and decree dated 29.11.2014 passed by the learned Civil Judge and affirmed by learned Additional District Judge, SAS Nagar, Mohali, vide judgment and decree dated 21.11.2024, whereas, counsel for the respondents/plaintiffs argued that both the Courts below has rightly interpreted the judgment and decree dated 12.11.2001, vide which, the compromise (Ext. D4) was given effect to after modification of the compromise. He argued that as per the compromise (Ext. D4) only 1/5th share was given in land measuring 99 bigha 16 biswas, whereas, respondents/plaintiffs were given 4/5th share and suit land was kept common having one half share each but later on the shares were changed and modified and respondents/plaintiffs were given 3/4th share in the total land measuring 101 Bigha 4 Biswa, which included the suit land and Hardev Singh-appellant/defendant was given 1/4th share out of the land of Ajmer Kaur along with his 1/3rd share in the total land and he was given ownership



of 40 bigha 13 biswa and that judgment and decree passed by learned Sub Judge (Second Class), Rajpura on 14.12.1995, vide which, the compromise (Ext. D4) has been modified while framing the decree has been acted upon. Copy of the decree sheet is Ext. P2 and the same was affirmed in appeal vide judgment and decree (Ext. P4) and that judgment and decree between the parties has attained finality and as RSA was dismissed vide order, copy of which is Ext. P5. The main contention of counsel for the appellants/defendants is that both the Courts below has overlooked application for compromise moved by the parties, copy of which is Ext. D3 and in para No.4 of that application, it has been stated as under:-

“4. That the defendant No.1 has been admitted to be owner in possession of total 40 bighas of land out of entire joint khewat comprising in Khasra No.231 to 240. The deficiency, if any, shall be made out of Khasra No.241. In addition to it, the defendant No.1 Hardev Singh shall be owner of 0-13 biswas out of Khasra Nos. 1111(0-5) and 1177 (1-1) and the possession has already been taken by the parties as per the said compromise. The parties shall be bound by the said compromise. The compromise be recorded and the suit be decreed as per the terms of the compromise.”

23. He further pointed out that copy of compromise between the parties, which is Ext. D-3 clearly shows that out of the land measuring 101 bigha, 04 biswas, the land in Khasra Nos. 231 to 240 has been allotted to Hardev Singh and deficiency, if any, was to be made good out of Khasra No.241 abutting Khasra No.240 and it has also been a recital in the compromise deed dated 27.07.1992 that Khasra No.1111 (0-5) and Khasra No.1177 (1-1) would be shared by the plaintiffs and Hardev Singh-defendant



equally in one half share. There is no doubt that in application (Ext. D3) and Compromise (Ext. D4), the suit land was given half share each i.e. defendant-Hardev Singh was given 13 biswas land out of the suit land as per compromise but when the compromise was acted upon, the compromise was modified vide judgment, copy of which is Ext. P-1 and as per that, in the entire land measuring 101 bigha 04 biswas, respondents/plaintiffs were held to be owners of $3/4^{\text{th}}$ share and Hardev Singh-appellant/defendant was held to be entitled to remaining $1/4^{\text{th}}$ share out of the land of Ajmer Kaur along with his own $1/3^{\text{rd}}$ share in the total land aforesaid and copy of decree sheet is (Ext. P2) and in appeal, the judgment and decree (Ext. P1 and P2) was affirmed vide judgment (Ext. P4). The paras 20 and 21 of the judgment of learned Additional District Judge, Patiala are relevant and are reproduced as under:-

“20. The learned counsel for the appellant argued that the relief clause has not been happily worded by the trial court. Plaintiffs were given $3/4^{\text{th}}$ share in the total land measuring 101 bighas 04 biswas whereas it should have been $3/4^{\text{th}}$ share out of the land left by Smt. Ajmer Kaur. This contention appears to be correct because there was no dispute between the parties regarding the share of the defendant and that of Ram Kishan which was already owned by them after the death of their father i.e. $1/3^{\text{rd}}$ each out of the land left by their father. $1/3^{\text{rd}}$ share which was owned by Smt. Ajmer Kaur, mother of Hardev Singh defendant and grand mother of the plaintiffs is in dispute. Therefore, the relief clause is modified and now it would be read as “a decree is passed in favour of the plaintiffs and the defendant on the basis of compromise Ext. P2 (Ext. CX) and in view of the application which was filed by the plaintiffs, the plaintiffs are owner of $3/4^{\text{th}}$



share and Hardev Singh defendant is owner of 1/4th share in the land left by Smt. Ajmer Kaur, deceased.”

21. In the second suit, the land in dispute is 34 bighas 12 biswas comprised in Khasra No.341, 248, 231 to 238. As per Jamabandi Ext. P1 for the year 1988-89, land compromise in Khasra No.341 is shows in possession of Smt. Ajmer Kaur whereas land comprised in Khasra No.246 has been shown in possession of Ram Kishan and land comprised in Khasra No.231 to 239 is shown in possession of Hardev Singh. As per the compromise Ex. CX (Ext. P2), Hardev Singh defendant has been given land comprised in Khasra Nos.231 to 240 measuring 40 bighas and in case of any deficiency that would be made good out of Khasra No.241 adjoining Khasra No.240. Accordingly, the plaintiffs (Ashok Kumar etc. in the first suit and Ram Kishan defendant in the first suit)are restrained from dispossessing Hardev Singh (defendant in the first suit and plaintiff in the second suit) from the land in his possession, otherwise that in due course of law. Similarly, Hardev Singh defendant is restrained from dispossessing the plaintiffs from the land in their possession and in possession of Ram Kishan, otherwise than in due course of law. Resultantly, with the modification in the relief clause, rest of the relief claimed in the appeal is declined and the appeals are dismissed to that extent. Parties are left to bear their own costs. Decree sheets be prepared accordingly. Trial Court records be returned. Appeal files be consigned to the Record Room.”

24. This judgment (Ext. P4) has attained finality between the parties as appeal against that judgment and decree was dismissed vide order (Ext. P5) by this Court and both the Courts below in second round of litigation has relied upon the judgment and decree (Ext. P1, P2 and P4) and has rightly concluded that the appellants/defendants has no right in the suit



land, as such, finding no merit in the present appeal, and the same is dismissed.

25. Pending miscellaneous applications, if any, are also disposed of accordingly.

17.09.2025
S. Pathania

(VIRINDER AGGARWAL)
JUDGE

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No