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

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Date of decision : 24.07.2025

Paras Ram & anr.

..... Appellants

versus

Zile Singh (deceased) thr. His LRs.

..... Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Satbir Rathore, Advocate and
Mr. Vinod Pundir, Advocate
for the appellants.

Appellant Paras Ram-present in person.

Mr. Kulvir Narwal, Advocate
for the LRs of the respondent.

PANKAJ JAIN, J. (ORAL)

1 Defendants are in second appeal. For convenience, parties hereinafter are referred to by their original position before the Court of the First Instance i.e. appellants as defendants and respondents as plaintiffs.

2 LRs of plaintiff filed suit for mandatory injunction and for recovery of Rs.5,000/- as damages for use and occupation of the house in question from 15th August, 2008 to 15th September, 2008.

3 Plaintiff Zile Singh pleaded that he is owner in possession of the house in question having purchased the same vide sale deed dated 11.03.1982. Defendant No.1 Paras Ram is his brother-in-law and defendant No.2 is wife of defendant No.1. On their request possession of the house was given to defendants to perform marriage of their daughter. Despite repeated requests defendants having failed to hand over the vacant



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possession of the house, the plaintiff is thus entitled for decree of mandatory injunction. Suit was contested by the defendants. Defendants claimed that in fact the suit is result of impersonation as Zile Singh has not signed the vakalatnama or the plaint. On merits, defendants claimed to be owner in possession of house in question since 03.01.1993 and claimed to have become owner by way of adverse possession. Defendants claimed to be residing in the house since 03.01.1993. Defendants further claimed that a commercial plot was transferred by defendant No.1 in favour of plaintiff-Zile Singh vide sale deed dated 07.12.1992 bearing document No.5369 without any consideration.

4 On the strength of the pleadings following issues were framed :-

1. *Whether the plaintiff is entitled for vacant possession of house in question? OPP*
2. *Whether defendants have become owners in possession of house in question by way of adverse possession? OPD*
3. *Whether the plaintiff bank is entitled for recovery of damages as prayed for? OPP*
4. *Whether the suit of the plaintiff is not maintainable in the present form? OPD*
5. *Whether the plaintiff has no cause of action to file the present suit? OPD*
6. *Whether the plaintiff has no locus standi to filed 6. the present suit? OPD”*

5 While deciding issues No.1 to 3, Court of the First Instance found that defendant No.1 Paras Ram himself admitted in his cross-examination that Zile Singh is owner of the house in question and further



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that he is residing in the house in question with the consent of Zile Singh. Relying upon further admission made by defendant No.1 that the rate of rent of the similar property in the vicinity is Rs.3,000/- per month, plaintiffs were held entitled to mesne profits @Rs.3,000/- per month. Deciding issues No.4 to 6 the Court of the First Instance referred to testimony of PW-3 Samunder Singh to hold that even a suggestion was not put to him regarding the original plaint not bearing thumb impression of Zile Singh. The Trial Court accordingly decreed the suit filed by the plaintiff. The counter claim filed by the defendants whereby they claimed declaration to the effect that they are owners in possession of the house was ordered to be dismissed. The findings stand affirmed by the Lower Appellate Court.

6 Counsel for the appellants has assailed the findings recorded by the Courts below. It has been proved on record that a commercial plot was transferred by the defendants in favour of the plaintiff vide sale deed dated 07.12.1992. The said fact has been totally ignored by the Courts below. It has been submitted that once defendants proved sale deed in the month of December, 1992 in favour of the plaintiff and the possession of the defendants over the house in question stands established since 1993, the only inference that can be drawn is that the properties were exchanged. The time gap between sale deed and the handing over of the possession is merely of 25 days. He further submits that expert witness was examined by the defendants to prove that the plaint does not bear thumb impressions of Zile Singh yet the same has been ignored. Appellant-Paras Ram has also appeared in person. He submits that after filing of the suit he went to meet Zile Singh who told him that the plaint does not bear his signatures.



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Counsel for the appellants relies upon Order XLI Rule 31 CPC to content that the judgment passed by the Lower Appellate Court is in teeth of the bare provision. The provision mandates the Appellate Court being last Court of fact to cull out the points of determination and to record findings on each and every issue.

7 Reliance is being placed upon *Malluru Mallappa (D) Thr. LRs Vs. Kuruvathappa & ors.* 2020(2) RCR (Civil) 94, *Manjula & ors. Vs. Shyamsundar & ors.*, 2021(1) RCR (Civil) 866, *B.V.Nagesh & anr. Vs. H.V.Sreenivasa Murthy*, 2010(13) SCC 530, *H.Siddiqui (D) by LRs. Vs. A.Ramalingam*, 2011(4) SCC 240 and judgment passed by this Court in *Baldev Singh Vs. Malkiat Singh*, 2001(4) RCR (Civil) 332.

8 *Per contra* counsel for the respondent submits that pure findings of facts have been recorded by the Courts below. Defendant No.1 himself appeared in the witness box and admitted ownership of Zile Singh over the suit property and also admitted that defendants are in possession of the suit property with the permission of Zile Singh. He thus submits that the possession of the appellant-defendants over the suit property belonging to Zile Singh being permissive in nature, the Courts below have rightly held the respondents entitled to decree of mandatory injunction. Mr.Kulvir Narwal, Advocate refers to findings recoded by the Lower Appellate Court and submits that the issues No.4 to 6 were not pressed by the appellants before the Lower Court and thus no finding on it was recorded whereas on issues No.1 to 3 categorical findings have been recorded after discussing the evidence on record. Mr. Narwal has raised another plea claiming that once defendants filed counter claim and the same was also dismissed, defendants



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were required to prefer two separate appeals, one against decree of the suit and the other against dismissal of counter claim. He having filed only one appeal, the findings recorded in the counter claim shall operate as *res-judicata*. Reliance is being placed upon ratio of law laid down by Division Bench in Shri Ramesh Chand Vs. Om Raj & ors., in Regular Second Appeal No.57 of 2017 decided by Himachal Pradesh High Court on 17.05.2022.

9 I have heard learned counsel for the petitioner and have gone through records of the case.

10 Contention raised by Mr. Narwal questioning the maintainability of single appeal against judgment and decree deciding plaint and counter claim *sans* merit and is rejected. Whole of the law related to filing of separate appeals has been crystallized by Supreme Court in the case of *Sri Gangai Vinayagar Temple V. Meenakshi Ammal (2015) 3 SCC 624*. The Supreme Court after discussing the whole series of binding precedents starting from Full Bench of Lahore High Court in the case of *Mussammatt Lachhmi Vs. Mussammatt Bhulli, 1927 SCC OnLine Lah 256* observed as under :-

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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*



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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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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. In the present case the counter claim as well as the suit were decided by a common judgment and a common decree sheet was drawn thus defendants were not required to file separate appeals in the absence of any decree that remained unchallenged.

11. Coming to merits, from the written statement, it is discernible that the defendants-appellants claimed to be owners in possession of the suit property on the strength of adverse possession. Defendant-Paras Ram while appearing as DW-1 admitted that he entered into possession of the suit property with the permission of Zile Singh. Trite it is that mere long possession does not graduate into ownership being adverse possession until and unless the party claiming to be in adverse passion is able to show the date on which his possession became hostile in light of Article 65 of the Limitation Act, 1963. Once Paras Ram admitted to be in permissive possession and there is no date on which the possession became hostile no



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fault can be found with the findings recoded by Courts below rejecting the plea rejecting the plea of adverse possession raised by the defendants.

12 Though the plea of oral exchange has not been raised as such in the written statement, however, defendants in the written statement specifically pleaded that they transferred commercial property in favour of Zile Singh on 07.12.1992 and the sale was without consideration. The said plea is against the recitals and contents of document. Sale deed in question is a registered document. In order to rebut the presumption attached to recitals and statutory endorsement of the same, the appellants-defendants were required to lead positive evidence. None of the attesting witnesses was examined to prove that the sale deed was executed in favour of the plaintiff-Zile Singh by the defendants without any consideration in lieu of the house in question. Once the parties appeared before Sub-Registrar for registration of sale deed, what stopped them from executing exchange deed if the properties were being exchanged. This remained unanswered.

13 Pure findings of fact have been recorded by the Courts below which is based upon proper appreciation of the evidence. Finding no merits in the present appeal, the same is ordered to be dismissed.

14 Pending miscellaneous application, if any, also stands disposed off.

24.07.2025
Pooja Sharma-I

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No