Sr.No.119

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

RSA No.2736 of 2018 (O&M)
Date of Decision: 15.07.2025

Shiv Kumar

....Appellant

Versus

Narender Kumar and others

....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present:- Mr. Aditya Jain, Advocate
for the Appellant.

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PANKAJ JAIN, J. (ORAL)

CM No.7126-C-2018

This is an application for condonation of delay of 21 days in refiling the appeal.

For the reasons stated in application, this Court is satisfied that the applicant/appellant has shown sufficient cause to condone delay in filing the appeal. Application stands allowed. Delay of 21 days in refiling the appeal is condoned.

Main Case

Defendant No.1 is in appeal. For convenience, the parties are being referred to by their original position in the suit i.e. the appellant as defendant No.1, respondents No.1 to 5 as plaintiffs and respondents No.6 to 8 as defendants No.2 to 4, respectively.

2. Plaintiffs filed suit for permanent injunction seeking decree to restrain defendants from interfering in the peaceful possession of plaintiffs over the suit property as mentioned in the plaint. As per the plaintiffs, they are wife and children of Satish Kumar, deceased brother of defendants. The father of Satish Kumar and defendants namely Sube Singh died on 21.02.1999. Through a Will dated 21.02.1999, Sube Singh bequeathed the entire property in favour of his three sons. Plaintiffs claimed three storey building on the suit property constructed by deceased Satish Kumar in the year 2000 and since then plaintiffs are residing in the said property. After the death of Satish Kumar, defendants started interfering in their peaceful possession. Accordingly, the plaintiffs claimed for decree of permanent injunction.

2.1. Suit was contested by defendants. Defendant No.1 claimed that he purchased property from deceased Satish Kumar for a sale consideration of Rs.1,08,000/- vide Agreement to Sell dated 04.01.2005 and constructed two storey house over the same. Defendant No.1 preferred counter-claim seeking specific performance of Agreement to Sell dated 04.01.2005. Both the civil suit as well as the counter-claim were dismissed by a common judgment dated 09.09.2014 passed by Civil Judge (Jr. Division), Gurgaon.

Both the parties preferred cross-appeals. The present appellant/defendant No.1 filed Civil Appeal No.167 of 2014/2015. Plaintiffs preferred Civil Appeal No.34 of 2014/2016. The cross appeals were adjudicated by way of common judgment. Separate decrees were drawn. Both the appeals stand dismissed. Present appeal has been preferred against judgment and decree passed in Civil Appeal No.167 of 2014/2015.

3. No appeal has been preferred against decree passed in Civil Appeal No.34/2014/2016. On being asked as to how single appeal is maintainable when decree passed in Civil Appeal No.34/2014/2016 has not been challenged by way of separate appeal, counsel for the appellant submits that since the present appellant is only concerned with counter-claim, one appeal will be maintainable.

4. In the considered opinion of this Court, once the appeals were decided by way of a common judgment but by drawing separate decrees and the decree passed in Civil Appeal No.34/2014/2016 has been allowed to remain unchallenged, the same has attained the character of a "*former suit*" and shall operate as *res judicata*. The present appeal will be barred. Reference can be made to the following observations made by Supreme Court in ***Sri Gangai Vinayagar Temple vs. Meenakshi Anmal, (2015) 3 SCC 624*** :-

> *"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.*
>
> *xxxx xxxx xxxx"*

5. It being a case of two separate decrees drawn by the Appellate Court in the cross-appeals and the one decree having been allowed to attain finality, the present appeal is ***dismissed*** being barred by *res judicata.*

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

(PANKAJ JAIN)
JUDGE

July 15, 2025
ashish

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No