

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**RSA No. 156 of 2006****Reserved on: 17.6.2026****Date of Decision: 30.6.2026**

Gopal Lal & anr.**...Appellants****Versus****Ravi Dutt (deceased) through LRs****...Respondents**

Coram***Hon'ble Mr Justice Rakesh Kainthla, Judge.******Whether approved for reporting?¹ No.*****For the Appellants****: Mr Bhupender Gupta, Senior Advocate, with Mr Pranjal Munjal, Advocate.****For the Respondents****: Mr Rajiv Jiwan, Senior Advocate, with Mr Hitender Verma, Advocate.**

Rakesh Kainthla, Judge

The present appeal is directed against the judgment and decree dated 31.12.2005, passed by the learned District Judge, Bilaspur, H.P., vide which the judgment and decree dated 30.9.2000, passed by the learned Senior Sub Judge. Bilaspur, District Bilaspur, H.P. (*Learned trial Court*) were set aside. (*The*

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience).

2. Briefly stated, the facts giving rise to the present appeal are that the plaintiffs filed a civil suit before the learned Trial Court seeking a declaration that they are the joint owners-in-possession of the suit land, mentioned in the headnote of the plaint. A consequential relief of Permanent Prohibitory Injunction to restrain the defendant from interfering with the plaintiffs' possession was also sought. It was asserted that the plaintiffs are joint owners in possession of the suit land. The defendant threatened to take forcible possession of the suit land without seeking partition. He was requested not to do so, but in vain. Hence, the suit was filed to seek the relief mentioned above.

3. The suit was opposed by filing a written statement taking preliminary objection regarding lack of maintainability and cause of action, the suit having not been properly valued for court fees and jurisdiction, the plaintiffs being estopped from filing the suit by their act, conduct, omission and deeds and acquiescence. The contents of the plaint were denied on the merits. It was specifically denied that the plaintiffs are the joint

owners of the suit land. It was asserted that the suit land was granted as Nautor to Jagdish, the defendant's father, who was not competent to execute any sale deed. Any sale deed executed by him was void and does not confer any title upon the plaintiff. Defendant is entitled to succeed to the estate of Jagdish. Hence, it was prayed that the suit be dismissed.

4. A replication denying the contents of the written statement and affirming those of the plaintiff was filed.

5. The defendant also filed a counterclaim for a declaration that the Sale Deed dated 25.6.1987 executed by Jagdish in favour of the plaintiffs is illegal, null and void. A consequential relief of Permanent Prohibitory Injunction for restraining the plaintiffs from interfering with the suit land was also sought. It was asserted that the suit land was allotted as a Nautor to Jagdish. There was a condition in the *Patta* that the suit land could not be transferred to any person within a period of 15 years. The *Patta* was issued on 12.9.1973, and Jagdish executed a Sale Deed on 25.6.1987 without receiving any consideration. The Sale Deed was void; hence, the declaration was sought.

6. The plaintiffs filed a written statement to the counterclaim taking preliminary objection regarding lack of maintainability and *locus standi*, the counterclaim having not been properly valued for Court fees and jurisdiction, and the counterclaim being barred by limitation, and act, conduct, admission, etc., of the counterclaimant. The contents of the counterclaim were denied on the merits. It was asserted that the Sale Deed was executed after paying the full price and inspecting the Jamabandi and Khasra Girdawaris. The sale deed is valid, and the counterclaim to challenge it was hopelessly barred by limitation. Hence, it was prayed that the counterclaim be dismissed.

7. A rejoinder denying the contents of the written statement to the counterclaim and affirming those of the counterclaim was filed.

8. Learned Trial Court framed the following issues on 19.1.1998: -

1. Whether the plaintiffs have a cause of action to file the present suit? OPP.
2. Whether the suit is not maintainable in the present form? OPD.

3. Whether the suit is valued properly for the purpose of court fees and jurisdiction? OPP.
 4. Whether the plaintiffs are estopped from filing the suit by their own act and conduct? OPD.
 5. Whether the suit is barred on account of acquiescence as alleged? OPD.
 6. Whether the counterclaim is not maintainable? OPP.
 7. Whether the counterclaim has been valued properly for the purpose of court fees and jurisdiction? OPD.
 8. Whether the counterclaim is time-barred? OPP.
 9. Whether the defendant has locus standi to file the counterclaim? OPD.
 10. Whether the plaintiffs have one-half share in the suit land as alleged? OPP.
 11. Whether the sale deed is in violation of the terms of the patta. If so its effect? OPD.
 12. Relief.
9. The parties were called upon to produce the evidence, and the plaintiffs examined Rakesh Kumar (PW1) and Ram Singh (PW2). The defendant examined himself (DW1) and Gopal Lal (DW2).
10. The learned Trial Court held that Jagdish, defendant's father, was the absolute owner in possession of the suit land and that he was competent to execute the Sale Deed. The Sale Deed could not be challenged on the ground that it was executed within 15 years of the allotment. Plaintiffs were in possession of the suit land, and the defendant had no right to

interfere with the plaintiffs' possession. Hence, the learned Trial Court answered Issue Nos. 1, 3, 6, 7, 8 and 10 in the affirmative, the rest of the issues in the negative, and decreed the suit and dismissed the counterclaim.

11. Being aggrieved by the judgment and decree passed by the learned Trial Court, the defendant filed an appeal, which was allowed, and the matter was remitted to the learned Trial Court for fresh decision as per the law. However, this judgment and decree were set aside by this Court in FAO No. 411 of 2004, titled Gopal Lal Vs. Ravi Dutt decided on 27.4.2025 and learned Appellate Court was directed to decide the matter expeditiously.

12. The learned Appellate Court held that the learned Trial Court had failed to look into the terms and conditions of the allotment. It was clearly specified in the *Patta* that allottee Jagdish was not competent to execute the Sale Deed within 15 years of the allotment. Any sale made within 15 years was invalid. Therefore, the learned Appellate Court allowed the appeal, set aside the judgment and decree except for the finding on Issues Nos 3 and 7, dismissed the suit and decreed the counterclaim.

13. Being aggrieved by the judgment and decree passed by the learned Appellate Court, the plaintiffs filed the present appeal, which was admitted on the following Substantial Questions of Law on 7.4.2006: -

1. Whether the findings of the learned First Appellate Court are a result of misrepresentation and misconstruction of the Nautor Rules, 1968, and it was not open to the co-owner to have pleaded the validity of the sale of the property in dispute by the other co-owner in favour of the appellants in the cross-objections?
2. Whether the learned First Appellate Court erred in dismissing the suit on the ground that no consideration passed between the seller of the property and the appellant?

14. The Court noticed on 14.12.2008 that the learned Trial Court had decreed the suit and dismissed the counterclaim. Therefore, the maintainability of the composite appeal was doubtful. Subsequently, the Hon'ble Division Bench of this Court held in *Ramesh Chand Vs. Om Raj*, RSA No.57 of 2017 and connected matters decided on 17.5.2012 that a single appeal would not be maintainable when a counterclaim and suit are tried and disposed of by the learned Trial Court.

15. I have heard Mr Bhupinder Gupta, learned Senior Advocate, assisted by Mr Pranjal Munjal, learned counsel for the plaintiffs/appellants and Mr Rajiv Jiwan, learned Senior

Advocate, assisted by Mr. Hitender Verma, learned counsel for respondents No.1(a) to 1(e).

16. Mr Bhupinder Gupta submitted that a single appeal was not maintainable against the judgment decreeing the suit and dismissing the counterclaim. However, he fairly submitted that the matter is required to be remitted to the learned Appellate Court in accordance with the judgments of the Hon'ble Supreme Court in *Charan Singh Vs. Ram Swaroop, Civil Appeal No. 1585 of 2025, decided on 3.2.2025*, judgment of this Court in *Des Raj and another Vs. Vinod Kumar 2026: HHC:5450* and *Jagdish Singh Vs. Prem Singh 2026 HHC:14478* in support of his submissions.

17. Mr Rajeev Jiwan, learned Senior Advocate for the respondents, has also conceded the legal position that a single appeal was not maintainable against the judgment decreeing the suit and dismissing the counterclaim. He also prayed that the matter be remitted to the learned Appellate Court as per the judgments of this Court and the Hon'ble Supreme Court.

18. I have given a considerable thought to the submissions made at the bar and have gone through the records carefully.

Is the present appeal maintainable ?

19. The plaintiffs claimed to be the owner-in-possession by way of a sale executed by Jagdish, the defendant's father. The defendant, on the other hand, claimed that Jagdish was not competent to execute the sale deed because of the prohibition contained in the Patta. Learned Trial Court held that the condition in the Patta was not sufficient to invalidate the Sale Deed, and the plaintiff became the owner after the execution of the Sale Deed. Learned Trial Court decreed the suit and dismissed the counterclaim. Only a Single Appeal was filed. In *H.P. State Forest Corporation Through Its Divisional Manager Versus Kahan Singh and Others*, 2017 (1) H.L.R. 36, a suit was partly allowed, and a counterclaim was dismissed. It was held that two decrees were passed: one in the suit and one in the counterclaim. The aggrieved person is required to file two separate appeals, in the absence of which the findings in one appeal will constitute res judicata and the second appeal will not be maintainable. It was observed: -

“16. A three-Judge Bench of Hon'ble Supreme Court in *Ramagya Prasad Gupta and others v. MurliPrasad and others*, AIR 1974 Supreme Court 1320 has held:-

"8. It is clear that where a suit has been tried and finally

decided on the merits, if the defeated party wishes in another suit between the same parties relating to the same property to have the same questions re-agitated, he cannot be allowed to do so, because his cause of action has passed into a judgment, and the matter has become *res judicata*. Even where two appeals have been taken from the same judgment by two different parties to which all others are parties either as appellants or respondents and one of the appeals is dismissed either on merits or for any other reasons, it has been held by some of the High Courts, but we express no opinion thereon, that the other appeal has also to be dismissed, because it is barred by the principles of *res judicata* as otherwise there will be conflict in the decrees. In the Lahore decision, there were two cross-suits about the same subject matter filed simultaneously between the same parties, and two decrees were prepared. An appeal being filed in respect of one decree and not in respect of the other, the question was whether the non-filing of the appeal against that decree creates an estoppel against the hearing of the other appeal. In *Narhari's case (supra)*, what this Court held was that, where there has been on trial one finding and one decision, there need not be two appeals even though two decrees may have been drawn up, and consequently, the fact that one of the appeals was time-barred does not bar the other appeal on the ground of *res judicata*. In this case, these questions need not be considered. Nor is it relevant to consider whether there is any conflict between the decision in this case and *Sheodan Singh's case (supra)*. In *Sheodan Singh's case*, two suits were filed in the Court of the Civil Judge, one for a declaration of the title to the suit property and the second for other reliefs and consequently, two other suits were filed by the respondents in the Munsif's court against the appellant, claiming joint ownership of the suit property and other reliefs. The four suits were tried together by the Civil Judge. Some of the issues were common to all the suits, and one of the common issues relating to the title of the parties was found in favour of the respondent. The

Civil Judge dismissed the appellant's title suit, decreed his other suit partly, and decreed the two suits of the respondent. The appellant filed appeals against the decree in each suit. The High Court dismissed the two appeals arising out of the respondent's suits, one as time-barred, and the other for failure to apply for translation and printing of the record. As the title of the respondent to the suit property had become final on account of such dismissal, the respondent prayed for the dismissal of the other two appeals also, as the main question involved therein was the same. The High Court agreed that the appeals were barred by res judicata and dismissed them. Against these orders of dismissal, the appellant filed appeals to this Court and contended that - (1) title to the property was not directly and substantially in issue in the respondent's suits (2) the Munsif's Court could not try the title suit filed by the appellant; (3) it could not be said that appeals arising out of the respondent's suits were former suits as such the bar of res judicata will be inapplicable; and (4) the two appeals which were dismissed-one on the ground of limitations and the other on the ground of not printing the records, could not be said to be heard and finally decided. This Court held that the High Court was right in dismissing the appeals as being barred by res indicate inasmuch as the issue as to the title was raised in respondent's suits and it was directly and substantially in issue in those suits also and did arise out of the pleadings of the parties, and further the High Court's decision in the two appeals arising from the respondent's appeals were 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 that case. The decision in *Narhari's case (supra)* was distinguished by this Court in that case, so it could not be said that the decision was in any way in conflict with the decision in *Narhari's case (supra)*. In appeals arising out of a subsequent suit and an earlier suit where there were common issues, common subject matter and common trial and the appeals arising

out of the subsequent suit were dismissed, a question would arise as to whether the appeals from the earlier suit which were pending are barred by res judicata. A question may also arise where the subject-matter is the same and the issues are common in the two suits but some of the parties are different in one suit, whether the bar of res judicata would operate against the parties who are common. All these aspects need not be considered in these appeals because, in our view, the subject matter of Title Suit No. 68 of 1954 and that of Title Suit No. 94 of 1956 are entirely direct. Even if the issues are common in the two suits, it has been admitted by the learned Advocate for the appellants that some of the issues might be common to both the suits, issues Nos. 4, 9, 12, 13 and 14 at any rate survive, and consequently, the bar of res judicata would not apply."

17. A three Judges Bench of the Hon'ble Supreme Court in *Premier Tyres Limited v. Kerala State Road Transport Corporation*, AIR 1993 Supreme Court 1202 while dealing with a situation where suits are decreed by common judgment and appeal is filed against one judgment and decree whereas appeal is not filed in the connected case held that finality of finding recorded in the connected suit due to non-filing of appeal precludes the Court from proceeding with appeal in another suit. It was held by the Hon'ble Supreme Court that the effect of non-filing of an appeal against a judgment or decree is that it becomes final, and as this finality can be taken away only in accordance with the law, the same consequences follow when a judgment or decree in a connected suit is not appealed from.

18. In *Ram Prakash v. Smt. Charan Kaur and another*, AIR 1997 Supreme Court 3760, the Hon'ble Supreme Court has held:-

"2. It would be obvious that since the claims of the petitioner and the respondents have arisen from the same cause of action and the finding of the appellate Court that damages had occurred to the

respondents due to misfeasance or malfeasance having been allowed to become final, the decree which is the subject matter of the special leave petition cannot be assailed. The self-same question was directly in issue and was the subject matter of both the suits. The same having been allowed to become final, it cannot be gone into since the same had attained finality, the petitioner having not filed any appeal against the appeal dismissing the suit. In view of this situation, the High Court was right in concluding that the decree of dismissal of the suit against the petitioner would operate as res judicata under Section 11 CPC in the appeal against which the petitioner has filed the second appeal."

19. In *Sri Gangai Vinayagar Temple and another v. Meenakshi Ammal and others* (2015) 3 Supreme Court Cases 624, three Judges Bench of the Hon'ble Supreme Court has held:-

"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 30 Page 31 becoming sub judice once again. Consolidation orders are passed by virtue of the bestowal of inherent powers on the Courts by Section 151 of the 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 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 nought a decree passed in Suit A by only challenging the decree in Suit B. Law considers it 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 procedural 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."

20. In *Rajni Rani and another v. Khairati Lal and others*, (2015) 2 Supreme Court Cases 682 the Hon'ble Supreme Court has held that keeping in mind the conceptual meaning given to the counterclaim and the definitive character assigned to it, there can be no shadow of doubt that when the counterclaim filed by the defendants is adjudicated and dismissed, finality is attached to it as far as the controversy in respect of the claim put forth by the defendants is concerned. Hon'ble Apex Court further held that in that regard nothing survives as far as the said defendants are concerned, and if the definition of a decree is appropriately understood, it conveys that there has to be a formal expression of an adjudication as far as that court is concerned, and the determination should

conclusively put to rest the rights of the parties in that sphere. It was further held by the Hon'ble Supreme Court that a Court may draw up a formal decree or may not, but if by virtue of the order of the court, the rights have finally been adjudicated, it would, irrefutably, assume the status of a decree. It further held that where a counterclaim, which is in the nature of a cross-suit, has been dismissed, nothing else survives for the defendants who had filed the counterclaim, and the order passed by the learned trial Judge has the status of a decree, and the challenge to the same has to be made before the appropriate forum where an appeal could lie by paying the requisite fee.

21. A similar view has also been taken by a Coordinate Bench of this Court in *Piar Chand and others v. Ranjeet Singh and others*, in RSA No. 293 of 2006, decided on 16.9.2016.

22. Reverting to the facts of this case, the admittedly learned trial court, while partly allowing the suit for recovery filed by the plaintiff-Corporation, dismissed the counterclaim filed by the defendant, vide which the defendant had prayed for a decree for recovery of Rs. 60,031/-. In other words, the learned trial court held that in lieu of the transaction, the subject matter of the civil suit, whereas the plaintiff-Corporation was entitled to recovery from the defendant; however, the defendant was not entitled to any recovery from the plaintiff-Corporation. The defendant, rather than filing two separate appeals, one against the decree which was passed in favour of the plaintiff corporation by the learned trial court in its civil suit and the second against the dismissal of his counterclaim, filed only one appeal before the learned appellate court. In my considered view, the defendant erred in doing so because the partial decreeing of the suit of the plaintiff-Corporation and dismissal of the counterclaim of the defendant were two distinct adjudications though made by way of the same judgment and decree by the learned trial court, both these

adjudications assumed the status of a decree and they required to be challenged separately and filing only one appeal against both the said adjudications was not permissible in law. As I have already discussed above, it has been categorically held by the Hon'ble Supreme Court in such matters that a Court may draw a formal decree or not, but if by virtue of the judgment of the Court, the rights have finally been adjudicated, then the same would assume the status of a decree. As the adjudication on the suit filed by the plaintiff corporation and the adjudication on the counterclaim filed by the defendant assumed the status of two distinct decrees, they were required to be challenged by way of separate appeals by paying the requisite Court fee on each of them. Defendant having failed to do so, he could not have been granted the relief which was granted by the learned appellate court in one single appeal, which was filed by the defendant against the decree passed in favour of the plaintiff-Corporation by the learned trial court, as well as against the dismissal of his counterclaim. Learned appellate court failed to appreciate that in the absence of two appeals, one appeal so filed was not maintainable, as the findings returned on the plaint and counterclaim acted as *res judicata vis-a-vis* each other, which necessitated the filing of two appeals. The learned appellate court also failed to appreciate that non-filing of two distinct and separate appeals amounted to having the same effect, where no appeal was filed from a decree in a connected case, and the effect of non-filing of an appeal against a judgment or decree that has become final. In other words, because only one appeal was filed, therefore, the finality of the finding recorded in the connected claim on account of non-filing of the appeal precluded the Court from proceeding with the appeal in the other connected claim.

23. To give an illustration, 'A' files a suit for recovery of Rs. 100/- against 'B' and 'B' also files a counterclaim for recovery of Rs. 50/- from plaintiff 'A'. Learned trial court partly decrees the suit of 'A' against defendant 'B' for

recovery of Rs. 70/- but dismisses the counterclaim filed by the defendant. In such like circumstance defendant cannot assail the dismissal of his counterclaim as well as the partial decree of the suit of the plaintiff by one appeal. The defendant will have to file two separate appeals, one challenging the decree passed in favour of the plaintiff and the other challenging the dismissal of his counterclaim. However, if the plaintiff wants to assail the factum of his suit not being decreed in totality, he is not to file two appeals, but he can file only one appeal against the partial allowance of his suit.

24. It is settled law that a counterclaim has the effect of a cross-suit, and the Court can announce a final judgment both on the original claim and on the counterclaim. A counterclaim filed by the defendant has to be treated as a plaint, and the effect of the counterclaim is that even if the suit of the plaintiff is stayed, discontinued, dismissed or withdrawn, a counterclaim can be decided independently on merits. In fact, a counterclaim has to be treated as a plaint and is governed by the Rules applicable to the plaint, and similarly, the reply filed in answer to the counterclaim is to be treated as a written statement and is governed by the Rules applicable to a written statement.

In view of the findings returned above, this appeal is allowed and the judgment and decree passed by the learned appellate court in Civil Appeal No. 59 of 2005 dated 30.11.2007 are set aside by holding that as the defendant had not filed two separate appeals against the judgment and decree passed by the learned trial court in favour of the plaintiff-Corporation and against the dismissal of his counterclaim which findings acted as res judicata vis-a-vis each other, single appeal so filed by defendants was not maintainable before the learned appellate court.

20. A similar view was taken by this Court in *Mohan Singh Versus Inder Singh and Others 2017 (1) H.L.R. 368*, and it was

held: -

“24. A careful perusal of the trial court record further suggests that the appellant-plaintiff refuted the aforesaid counterclaim of the respondent-defendants by way of replication as well as by filing separate written statements. However, the fact remains that the learned trial Court, after framing issues, as have been reproduced above, dismissed the suit of the plaintiff and decreed the cross-objection having been filed by the respondent-defendants. The operative part of the judgment and decree passed by the learned trial Court clearly suggests that the learned trial Court dismissed the suit of the appellant-plaintiff for possession, whereas it decreed the counterclaim of ownership and possession preferred on behalf of the respondent-defendants. A careful perusal of the decree sheet available on record suggests that the decree for possession was passed in favour of the respondent defendants and against the appellant-plaintiff.

25. Careful perusal of the decree, as referred to herein above, suggests that it also stands mentioned, "in view of my findings on the aforesaid issues, the suit of the plaintiff fails, and the same is, accordingly, dismissed, whereas, the counterclaim of the defendants is decreed and the defendants are declared to be the owners in possession of the suit property." A perusal of the aforesaid decree prepared by the learned trial Court while dismissing the suit and accepting the counterclaim of the defendants, clearly suggests that a proper decree was drawn as far as acceptance of the counterclaim filed by the defendants is concerned.

26. Appellant-plaintiff, being aggrieved with the aforesaid judgment and decree, approached the learned District Judge by way of an appeal under Section 96 CPC, laying therein a challenge to the aforesaid judgment and decree passed by the learned trial Court. At this stage, it would be appropriate to reproduce the cause title/head

note of appeal preferred by the appellant-plaintiff before the learned District Judge, which reads thus:-

"Civil appeal under section 96 CPC read with section 21 of the H.P. Courts Act against the judgment and decree dated 30.11.2004 passed by the learned Civil Judge (Jr.Division), Chamba in Civil Suit no.2 of 1995, titled as Mohan Singh v. Inder Singh and others, with a prayer to set aside the same."

27. Careful perusal of aforesaid cause title as well as relief claimed in the appeal suggests that the appellant-plaintiff before the learned first appellate Court prayed that the appeal filed by him be accepted with costs and the judgment and decree dated 30.11.2014 passed by the learned trial Court be set aside, but there is no prayer, if any, for setting aside the judgment and decree passed by the learned trial Court, whereby counterclaim filed by the defendants-respondents have been decreed and they were declared owners in possession of the suit property.

28. Before advertng to the submissions having been made on behalf of the learned counsel representing both parties, it would be appropriate to refer to relevant provisions of law applicable in the present case, i.e. Order 8, Rule 6A :

"6A. Counterclaim by the defendant.-

(1) A defendant in a suit may, in addition to his right of pleading a set off under rule 6, set up, by way of counterclaim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counterclaim is in the nature of a claim for damages or not:

Provided that such counterclaim shall not exceed the pecuniary limits of the jurisdiction of the court.

(2) Such counterclaim shall have the same effect as a cross-suit so as to enable the court to pronounce a final judgment in the same suit, both on the original claim and on the counterclaim.

(3) The plaintiff shall be at liberty to file a written statement in answer to the counterclaim of the defendant within such period as may be fixed by the court.

(4) The counterclaim shall be treated as a plaint and governed by the rules applicable to plaints."

29. Aforesaid provisions of law entitle a defendant in a suit to set up a counterclaim against the claim of the plaintiff in respect of a cause of action accruing to him against the plaintiff either before or after filing the suit, but definitely before the defendant files his defence or before the time stipulated for delivering the defence expires. Needless to say, the aforesaid right of filing a counterclaim is in addition to his right of pleading as set up in Rule 6. Further perusal of the aforesaid provisions of law suggests that a counterclaim, if any, filed on behalf of the defendant would be treated as a plaint and the same would be governed by the rules applicable to the plaint. Similarly, counterclaims filed on behalf of the defendant would have the same effect as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and the counterclaim.

30. Similarly, Rule 6A(3) enables the plaintiff to file a written statement, if any, to the counterclaim filed by the defendant. Rule 6D specifically provides that in case the suit of the plaintiff is stayed, discontinued or dismissed, the counterclaim filed on behalf of the defendant would nevertheless be proceeded with.

31. Similarly, Rule 6E provides that if the plaintiff fails to file a reply to the counterclaim made by the defendant, the Court may pronounce judgment against the plaintiff in relation to the counterclaim made against him/her, or make such order in relation to the counterclaim as it

deems fit. It would be relevant here to refer to Order 8, Rule 6F :

"6F. Relief to the defendant where the counterclaim succeeds.- Where in any suit a set-off or counter-claim is established as a defence against the plaintiff's claim and any balance is found due to the plaintiff or the defendant, as the case may be, the Court may give judgment to the party entitled to such balance."

32. Perusal of the aforesaid Order 8, Rule 6F clearly suggests that where in any suit a set-off or counterclaim is established as a defence against the plaintiff's claim and any balance is found due to the plaintiff or the defendant, the Court may give judgment to the party entitled to such balance. Further perusal of Order 8, Rule 6G suggests that no pleadings, if any, subsequent to the written statement filed by a defendant other than by way of defence to set up a claim can be presented except with the leave of the Court.

33. Under Order 8, Rule 10, when any party fails to file a written statement as required under Rule 1 or Rule 9 within the stipulated time, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit, and on the pronouncement of such judgment, a decree shall be drawn up.

34. Careful perusal of the aforesaid provisions of law clearly suggests that the counterclaim, if any, preferred by the defendant in the suit is in the nature of a cross-suit, and even if the suit is dismissed, the counterclaim would remain alive for adjudication. Since the counterclaim is in the nature of a cross suit, the defendant is required to pay the requisite court fee on the valuation of the counterclaim. It has been specifically provided in the aforesaid provisions that the plaintiff is obliged to file a written statement qua counterclaim, and in case of default, the court can pronounce the judgment against the plaintiff in relation to the counterclaim put

forth by the defendant, as it has an independent status. As per Rule 6A (2), the Court is required to pronounce a final judgment in the same suit both on the original claim and also on the counter-claim.

35. In the present case, as clearly emerged from the judgment passed by the learned trial Court, the learned trial Court effectively determined the rights of the parties on the basis of the counterclaim as well as the written statement thereto filed by the respective parties, and as such, it attained the status of a decree. It would be profitable here to reproduce the definition of the term 'decree' as contained in Section 2(2) of CPC:-

"2. (2) "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within [1][* * *] Section 144, but shall not include -

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default. Explanation- A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final."

36. Close scrutiny of the aforesaid definition of "decree" clearly suggests that there should be a formal expression of adjudication by the Court while determining the rights of the parties with regard to controversy in the suit, which would also include the rejection of the plaint. Similarly, the determination should be a conclusive determination resulting in a formal expression of the adjudication. It is a settled principle that once the matter

in controversy has received judicial determination, the suit results in a decree, either in favour of the plaintiff or in favour of the defendant.

37. In this regard, it would be appropriate to place reliance on the judgment of the Hon'ble Apex Court in *Rajni Rani and Another v. Khairati Lal and Others*, (2015)2 SCC 682, wherein the Court has held as under:-

"16. We have referred to the aforesaid decisions to highlight that there may be situations where an order can get the status of a decree. A Court may draw up a formal decree or may not, but if by virtue of the order of the Court, the rights have finally been adjudicated, irrefutably it would assume the status of a decree. As is evident, in the case at hand, the counterclaim, which is in the nature of a cross-suit, has been dismissed. Nothing else survives for the defendants who had filed the counter-claim. Therefore, we have no hesitation in holding that the order passed by the learned trial Judge has the status of a decree and the challenge to the same has to be made before the appropriate forum where the appeal could lie by paying the requisite fee. It could not have been unsettled by the High Court in the exercise of the power under Article 227 of the Constitution of India. Ergo, the order passed by the High Court is indefensible."

38. After perusing the aforesaid judgment passed by the Hon'ble Apex Court, this Court need not elaborate further on the issue at hand because the Hon'ble Apex Court has categorically held that if by virtue of an order of the Court, rights have finally been adjudicated, it would assume the status of a decree. Hon'ble Apex Court has also stated that the Court may or may not draw a formal decree, but if rights are finally adjudicated, it would assume the status of a decree. The Apex Court has further held that in such like situation, an order passed by the trial Judge has the status of a decree and a challenge to the same has to be made before the appropriate forum

where an appeal could lie by paying the requisite fee.

39. Apart from the above, this Court viewed this matter from another angle also. Admittedly, the appellant-plaintiff, claiming himself to be the owner of the suit land, as recorded in Jamabandi for the year 1970-71, filed a suit for declaration and a permanent prohibitory injunction restraining defendants No.1 and 2 from changing the nature of the suit land. The aforesaid claim, having been set up by the plaintiff in the instant Civil Suit, was dismissed, meaning thereby that he was not declared as the owner of the suit land entitling him to seek possession of the same. Whereas, in the aforesaid suit having been filed by the plaintiff, the defendants filed a written statement-cum-counter claim seeking a declaration to the effect that they may be declared owners in possession of the suit property, which relief was extended by the trial Court by decreeing the counterclaim of the defendants declaring them to be the owners in possession of the suit property.

40. Since, as has been observed above, no challenge has been laid to the judgment and decree passed by the trial Court decreeing the counterclaim of the defendants, whereby they have been declared to be owners in possession of the suit property, the composite appeal laying therein challenge to the judgment and decree passed by the learned Civil Judge in Civil Suit No.2 of 1995 was not maintainable. Moreover, relief as claimed in the appeal, having been filed by the appellant-plaintiff, could not be extended to him without setting aside the judgment and decree passed in the counterclaim in favour of the defendants. Once defendants have been declared to be owners in possession of the suit property by the trial Court while decreeing their counterclaim, it is not understood how relief, as prayed for in a Civil suit having been filed by the plaintiff, can be extended without setting aside the judgment and decree passed in the counterclaim.

21. This question was also considered by a Division

Bench of this Court in *Ramesh Chand v. Om Raj*, 2022 SCC OnLine HP 2094, and it was held that a person is required to file two separate appeals in case of judgment and decree in a suit and counterclaim. It was observed: -

“40. The contention that the counter-claim cannot be tried as an independent suit for all purposes but is deemed to be an independent suit for the purposes as mentioned in the Code under Order 8 Rule 6a (2), (3) & (4) and for the purpose of limitation as per Section 3(2)(b) of the Limitation act, 1963, cannot be countenanced for reasons to be stated presently. We also cannot agree with the argument that if the counterclaim is to be treated as a separate suit, independent from the main suit, then it would amount to rewriting Order 8 Rule 6a (2), which mandates "a final judgment" and in "the same suit". A further argument that treating the counterclaim as a separate suit would mean that there will be a "common judgment" as against the "final judgment" and that it will be common for "both the suits" as against the mandate of having it in the "same suit" per Order 8 Rule 6a (2) also does not convince us. The further submission that since the counterclaim can also be set up through amendment (Order 8 Rule 8 the Code) and by way of subsequent pleadings (Order 8 Rule 9 the Code), treating the counterclaim as an independent suit would mean that a suit may be filed by way of amendment or by way of subsequent proceedings, is also not founded on a sound interpretation. One of the consequences of the amendment in 1976 amendment in Order 8 by virtue of the insertion of Rule 6-D is that if, in any case, in which the defendant sets up a counterclaim, the suit of the plaintiff is stayed, discontinued or dismissed, the counterclaim may nevertheless survive. Moreover, this signifies the independent character of the counter-claim. A reading of Order 20 Rule 19 (1) clearly shows that

separate decrees are required to be prepared for set off, as well as the counterclaim, which shall state what amount is due to the plaintiff and what amount is due to the defendant, and shall be for the recovery of any sum which appears to be due to either party. Order 20 Rule 19 (2), *inter alia*, provides that any decree passed in a suit in which a set off or counterclaim is claimed shall be subject to the same provisions in respect of an appeal to which it would have been subject if no set-off or counterclaim had been claimed.

41. The Supreme Court in the *LaxmidasDayabhai case supra* examined the question whether there is anything in law which precludes treating the counterclaim as a plaint in a cross-suit and answered the same in the negative. The Supreme Court held that even though CPC prescribes the contents of a plaint, and it might very well be that a counterclaim, which is to be treated as a cross-suit, might not conform to all these requirements, but this by itself is not sufficient to deny the Court the power and the jurisdiction to read and construe the pleadings in a reasonable manner. If, for instance, what is really a plaint in a cross-suit is made part of a Written Statement either by being made an annexure to it or as part and parcel thereof, though described as a counter-claim, there could be no legal objection to the Court treating the same as a plaint and granting such relief to the defendant as would have been open if the pleading had taken the form of a plaint. The unamended provisions of CPC prior to 1976 was that any respondent, though he may not have filed an appeal from any part of the decree, may still support the decree to the extent to which it is already in his favour, at the same time by laying a challenge to a finding recorded in the impugned judgment against him. That, however, is not the position of law now after the 1976 amendment in CPC. After the 1976 amendment of Order 41 Rule 22, the insertion made in sub-rule (1) thereof makes it permissible to file a cross-objection against a finding. The difference is basically that a respondent may defend

himself without taking recourse to file a cross-objection to the extent the decree stands in his favour. But if he intends to assail any part of the decree, it is obligatory on his part to file the cross-objection. Post-amendment, read in the light of the Explanation to Order 41 Rule 22(1), though it is still not necessary for the respondent to take any cross-objection laying challenge to any finding adverse to him, as the decree is entirely in his favour, yet he may support the decree without cross-objection. It gives him the right to take a cross-objection to a finding recorded against him either while answering an issue or while dealing with an issue. After the aforesaid amendment in CPC, if the appeal stands withdrawn or dismissed in default, the cross-objection taken to a finding by the respondent would still be adjudicated upon on merits, which remedy was not available to the respondent under the unamended CPC, the Supreme Court held.

42. The principles deducible from the afore-discussed law can be summarised as follows:-

- (i) When two suits are consolidated and tried together with common issues framed and common evidence led by the parties, resulting in a common judgment and decree, the same can be subjected to challenge by way of a single appeal at the instance of the aggrieved party;
- (ii) Where a single appeal is filed questioning the judgment and decree passed in two suits, which were consolidated and decided by a common judgment, the decision of such single appeal, by a common judgment, reversing or modifying the claim in one suit out of the two, can also be challenged by the aggrieved party also, in a single appeal.
- (iii) When two suits, though not consolidated, are decided by a common judgment, resulting in the preparation of two separate decrees, the aggrieved

party would be required to challenge both of them by filing separate appeals.

(iv) When both the suit and the counterclaim are decreed by a common judgment, regardless of whether a separate decree has been prepared in the counterclaim, both would be required to be challenged by separate appeals;

(v) In a case where two separate appeals are required to be filed against the judgment of the suit and the counterclaim and if the appeal is filed only against one and not against the other, non-filing of appeal against such judgment and decree would attach finality thereto and would attract not only the principle of res-judicata but also waiver and estoppel and the judgment and decree not appealed against would be taken to have been acquiesced to by the party not filing an appeal;

(vi) When however, two appeals are filed against a common judgment passed by the trial Court, both by the plaintiff and the defendant, and are disposed of by the first appellate Court by modifying/reversing/affirming the judgment of the trial Court, the aggrieved party, would be required to challenge both by two separate appeals, in absence of which, non-filing of appeal against one shall attract bar of the principles of res-judicata against another.

(vii) Where more than one appeal are required to be filed or are filed, and one or more of them are dismissed for default, delay or any other similar reason, any such situation would attract res judicata and such dismissal would satisfy the requirement of the appeal being heard and finally decided on merits 'in a former suit' for the purpose of attracting principles of res judicata.

22. Therefore, a single appeal was not maintainable in view of the judgment of this Court in *Ramesh Chand* (supra), and the judgment and decree passed by the learned Appellate Court were *non est*, which could not have been assailed by filing the present appeal. Thus, the submission made by Mr. Bhupinder Gupta, learned Senior Counsel for the plaintiffs/appellants, has to be accepted as correct that the first appeal was not maintainable.

23. The matter does not rest here. A similar situation arose before the Hon'ble Supreme Court in *Charan Singh* (supra), wherein a composite appeal was filed before the learned Appellate Court, which was dismissed after holding that such an appeal was not maintainable. The Hon'ble Supreme Court held that the learned First Appellate Court was right in holding that a composite appeal was not maintainable, but it should have alerted the appellant by making him aware of the requirement of law and by giving him the liberty to file a separate memorandum of appeal. It was observed:

“7. In our considered view, reliance was rightly placed by the first appellate court on precedents to hold that a composite appeal was not maintainable in law, but, at the same time, the first appellate court ought to have borne

in mind that courts exist for rendering justice, albeit in accordance with law. Once the first appellate court found, correctly, that challenge to the common judgment of the trial court dated 16th March, 2021 had been laid in a composite appeal but law requires to file two appeals with separate memoranda of appeal, which had not been filed by the appellant, the court ought to have at least alerted the appellant by making him aware of the requirement of law and giving him the liberty to file a separate memorandum of appeal. In fact, in terms of Order XLI Rule 1 of the CPC, the appellate court has the power to even dispense with the requirement of law of filing a copy of the impugned judgment twice over if it is part of the memorandum of appeal already filed. In any event, the defect was not such that it was incurable. The composite appeal was filed well within the period of limitation and, except for the fact that a separate memorandum of appeal was not filed, no other defect, far less serious defect, was shown to exist. If even after being alerted, the appellant had failed to file a separate memorandum, the first appellate court would have been perfectly justified in dismissing the appeal. It is not shown to us that any such endeavour was made.”

24. It was further held that the High Court should have set right the wrong by its interdiction and technicality of this nature should not have been allowed to prevail over the substantive justice. It was observed:

“8. The first appellate court having failed to alert the appellant, we would have expected the High Court to intervene to set right the wrong by its interdiction. Technicality of a nature such as this should not have been allowed to prevail over substantive justice. The appellant had filed two second appeals before the High Court, meaning thereby that he had been properly advised, while such advice might have been missing in the district of

which the parties are residents. Unfortunately, the High Court did not address the point from the proper perspective either. While spurning the objection of learned counsel for the respondents, who has vehemently argued that there is no occasion to interfere since the appellant did not adhere to the law, we find good reason and ground to interfere.”

25. This judgment was followed by a Co-ordinate Bench of this Court in *Deshraj* (supra) and *Jagdish* (supra), and the matter was remitted to the First Appellate Court with liberty to the defendant to file an independent appeal within three weeks, and once so filed, it was ordered to be treated as within a limitation. These judgments are binding on this Court.

26. Hence, the present appeal is not maintainable; however, the appeal cannot be dismissed as per the binding precedent of the Hon’ble Supreme Court and the Coordinate Bench of this Court, and the matter is required to be remitted to the learned Appellate Court with a direction to permit the defendant to file an independent appeal and thereafter decide the matter as per the law.

Final order:

27. In view of the above, the present appeal is allowed, judgment and decree passed by the learned District Judge, Bilaspur, H.P., dated 31.12.2005, are ordered to be set aside

28. The matter is remitted to the learned Appellate Court with liberty to the defendant to file a memorandum of appeal within three weeks

29. Pending application(s), if any, also stand(s) disposed of.

30. Records of the learned Courts below be sent down forthwith.

(Rakesh Kainthla)
Judge

30th June, 2026
(Chander)