

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 25 of 2024

Date of decision: 11.08.2026.

Raj Kumar ...Appellant

Versus

Sneh Lata & another ...Respondents.

Coram:

The Hon’ble Mr. Justice Romesh Verma, Judge.

*Whether approved for reporting?*¹

For the appellant : Mr. Karan Singh Kanwar, Sr. Advocate with Ms. Upasana Thakur, Advocate.

For the respondents : Mr. Yug Singhal and Ms. Ananya Sharma, Advocates, for respondent No.1.

Romesh Verma, Judge (Oral):

The present appeal has been filed by the appellant against the judgment dated 31.08.2023, passed by the Learned Additional District Judge, Nahan, District Sirmaur, H.P. in Civil Appeal No. 29-N/13 of 2020, whereby the appeal filed by the present appellant against the orders dated 23.09.2020/ 31.10.2020, passed by the Learned Senior Civil Judge, Nahan, District Sirmaur, H.P. in final partition petition No. 1/6 of 2013, titled as, Sneh Lata & another vs. Raj Kumar & another was dismissed, as not maintainable.

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

2. The facts, as emerge in the present case, are that the plaintiffs, Sneh Lata and Jogindro @ Rajni filed a Civil Suit No. 139/1 of 2009 in the Court of learned Senior Civil Judge, Nahan on 01.09.2009, for partition against the present appellant Raj Kumar and respondent No. 2, Narender Kumar. As per the averments as made in the plaint, it was stated by the plaintiffs that the suit land comprised in Khata/Khatauni No. 90/158, Khasra Nos. 53, 54, 55, 121, 124, 125, Kitta 6, total measuring 126.59 square meters, situated at Mohal Rajendra Nagar, Nahan, District Sirmaur, H.P., is joint inter-se the parties and inherited by them from their common ancestor, late Sh. Swaroop Chand. As per the case set up by the plaintiffs, the suit property is in exclusive possession of all of them and being enjoyed by them. The suit land being joint and not partitioned by regular process of law and the plaintiffs are having 1/4th share each after the death of their father and mother.

3. As per the plaintiffs, the defendants are in the habit of causing interference in the suit property and in established possession of the plaintiffs on the pretext of jointness and the plaintiffs are unable to enjoy their share. Hence, need has arisen to seek partition of the suit property, keeping in view its commercial value, location, and actual possession etc. Therefore, plaintiffs sought decree of partition against the

defendants, namely Raj Kumar and Narender Kumar.

4. The suit was contested by defendant No. 1, namely Raj Kumar (present appellant). However, defendant No. 2 Narender Kumar was proceeded ex-parte in the proceedings.

5. The Learned Trial Court framed the issues in the matter on 27.04.2010 in the following manner:-

- “1. Whether the plaintiffs are entitled for the relief of partition of suit land/property, as prayed for?
...OPP.
2. Whether the suit is not legally maintainable?
..OPD
3. Whether this Court has no jurisdiction to entertain and try the present suit?
...OPD
4. Whether the suit is not properly valued for the purposes of court fee and jurisdiction?
...OPD
5. Whether the suit has been filed in collusion with defendant No.2?
...OPD
6. Relief.”

6. The Learned Trial Court directed the parties to lead evidence in support of their contentions and finally vide its judgment and decree dated 30.06.2012, the suit of the plaintiffs for partition of the suit property was decreed and a preliminary decree for partition of the suit property comprising in Khata/Khatauni No. 90/158, Khasra Nos. 53, 54, 55, 121, 124,

125, Kitta 6, total measuring 126.59 meters situated at Mohal Rajendra Nagar, Nahan was passed in their favour and they were held entitled to 1/4th share each in the property. Similarly, the defendants were also held entitled to 1/4th share each in the suit property. Preliminary decree was drawn accordingly.

7. The decree-holder Sneh Lata, respondent No.1 filed an application on 19.12. 2012 under Order 20 Rule 18 read with Section 151 CPC for passing of the final decree of the land comprised of Khata/Khatauni No. 90/158, Khasra Nos. 53, 54, 55, 121, 124, 125, Kitta 6, measuring 126.59 square meters, situated at Mohal Rajendra Nagar, District Sirmaur, H.P., as per the judgment and decree of partition dated 30.06.2012, in Civil Suit No. 139/1 of 2009, titled as Sneh Lata & another vs. Raj Kumar & another.

8. The said application came to be resisted by the JDs by stating that the application in the present form is not maintainable and all the averments as made in the application were specifically refuted and denied.

9. Thereafter, the Local Commissioner was appointed to carry out the mode of partition and after receiving the same, the parties filed their objections to the same. On 26.10.2020, the matter was taken up before the learned trial Court, whereby

it was ordered by the learned Senior Civil Judge, Nahan, District Sirmaur in the following manner:-

“Matter taken up today before the Court by maintaining all norms of physical distancing with a view to avoid the spread of incurable pandemic novel Coronavirus (COVID-19).

2. *Report of Tehsildar, Nahan received.*

3. *However, an application for passing final decree of partition on the basis of mode of partition whereby the shop was allotted to the petitioner and residential house in backside to the respondents, filed. When the aforesaid application was filed by J. D. No.1, the joint statement of parties recorded separately, so that the parties do not continue to raise the dispute time and again.*

4. *As per the joint statement of parties, they have stated that they have entered into a compromise and now they wish that the application filed by the petitioner under Order 20 Rule 18 of the C. P. C. be disposed of on the basis of report of Tehsildar dated 10-09-2020. They have also stated that they have entered into such compromise before the Court out of their free will and without any pressure from anybody else and they also wish that the parties be left to bear their own costs.*

5. *In view of the aforesaid joint statement of the parties, the final decreer in the present case be drawn on the basis of compromise entered into between the parties to the following terms:-*

(1) *The parties have now accepted the report dated 10-09-2020 submitted by the Tehsildar, Nahan and now they wish that the petition filed under Order 20*

Rule 18 of C. P. C. be disposed of by this Court on the basis of such report.

- (2) The parties have also agreed that the final decree for partition be drawn on the basis of Naksha prepared by the Tehsildar, Nahan on 10.09.2020*
- (3) The report of Tehsildar, Nahan (Ext. CA), Naksha J (Ext. CB) and tatima (Ext. CC) shall form part of the final decree.*
- (4) The parties also desire that in view of considerable delay having been caused in the present case the parties also wish that the possession be got delivered to them on the basis of order to be passed by this Court today. The parties have also desired that the date and time for delivery of possession be fixed by this Court and on that day the parties shall remain present before the Court and no separate notice would be required.*

6. In the light of aforesaid facts and circumstances, the application under Order 20 Rule 18 of the C. P. C. filed by the applicant is disposed of to the effect that the parties shall be entitled to respective shares as mentioned in Naksha J (Ext. CB) and tatima (Ext. CC).

7. With the consent of parties, the date and time for fixing the delivery of possession is fixed as 29-10-2020 at 11.00 A. M.

8. Let Tehsildar, Nahan be directed to deliver the possession to the parties on the spot as per Naksha J (Ext. CB) and tatima (Ext. CC) and to submit his report to this Court on 31-10-2020 as the matter is very old and

required to be disposed of on priority basis. The parties shall bear their respective costs.

9. *The application moved by the J.Ds. before the Court today is accordingly disposed of. Be tagged with the main file after registration as uncontested C.M.A. Civil Alhmad is directed to comply with the order today itself positively.”*

10. Perusal of the aforesaid order reveals that on the basis of joint statement of the parties, whereby it was stated that they have entered into a compromise and now they wish that the application filed by the decree-holder under Order 20 Rule 18 CPC be disposed of on the basis of the report of Tehsildar dated 10.09.2020. The aforesaid order came to be passed by learned Senior Civil Judge, Nahan, District Sirmaur. On the said date, statements were recorded by the parties by endorsing the compromise by decree-holder Sneh Lata, present appellant Raj Kumar and Smt. Nirmal Attri, Special Power of Attorney of JD No. 1 Sh. Raj Kumar and JD No. 2 Sh. Narender Kumar.

11. On the basis of the compromise which was effected inter-se the parties, the learned Senior Civil Judge, Nahan, District Sirmaur vide its order dated 31.10.2020, disposed of the petition which was filed by the decree-holder under the provision of Order 20 Rule 18 CPC.

12. Feeling dissatisfied, the present appellant, Raj

Kumar, instituted an appeal under Section 96 of the CPC in the Court of learned Additional District Judge, Nahan against the order dated 23.09.2020 and 31.10.2020.

13. The learned First Appellate Court vide its impugned judgment dated 31.08.2023, dismissed the appeal as preferred by the present appellant and the learned First Appellate Court came to the conclusion that in view of the specific bar under Section 96 Sub-section (3) of the CPC, the appeal as preferred was not maintainable.

14. Feeling dissatisfied, the present appellant has approached this Court by instituting the present Regular Second Appeal.

15. It is contended by Mr. Karan Singh Kanwar, learned Senior Counsel assisted by Ms. Upasana Thakur, Advocate, for the appellant that the impugned judgment as passed by the learned First Appellate Court holding the appeal to be not maintainable is erroneous and liable to be quashed and set aside. He submits that the learned First Appellate Court has not appreciated the point in controversy and has wrongly come to the conclusion that there was a consent decree inter-se the parties. Therefore, the appeal is not maintainable. He submits that after accepting the present appeal, the judgment dated 31.08.2023 and orders dated 31.10.2020 and 23.09.2020

deserve to be quashed and set aside.

16. On the other hand, Mr. Yug Singhal, learned counsel for respondent No.1 has defended the impugned judgment/orders as passed by the learned Courts below. He submits that this is a classic case inter-se the brothers and the sisters, whereby the present appellant, by instituting various proceedings, has dragged the respondents in unwarranted litigation and they are fighting for their cause for the last more than 13 to 14 years. He further submits that the civil suit for partition was instituted by the decree-holder/respondent No. 1 Sneh Lata along with Smt. Jogindro on 01.09.2009 and despite passing of decree of partition way back in 2012, till date they are fighting for their cause. He submitted that the judgment and the orders as passed by the learned Courts below are well reasoned and do not call for any interference.

18. I heard the learned counsel for the parties and have also gone through the record carefully.

19. With the consent of the parties, the present appeal is finally heard at the admission stage on the following substantial question of law:-

“Whether the judgment passed by the learned First Appellate Court holding the appeal filed by the appellant to be not maintainable in view of provisions of Section 96

(3) of CPC is erroneous and liable to be quashed and set aside?”

20. In the present case, admittedly, suit came to be instituted by Sneh Lata and Jogindro against Raj Kumar and Narender Kumar for the grant of decree of partition and the same came to be decreed on 30.06.2012, whereby preliminary decree for partition of suit property comprised in Khata/Khatauni No. 90/158, Khasra Nos. 53, 54, 55, 121, 124, and 125, Kitta 6, total measuring 126.59 meters was passed in favour of the parties by holding the plaintiffs and the defendants to be entitled to 1/4th share each in the entire suit property.

21. It has been fairly conceded by the learned counsel for the parties that, none of the parties assailed the said judgment before the superior Court. Subsequently, the decree-holder filed an application for passing of the final decree and during the pendency of the said application, the parties entered into a compromise and the same was placed on record, whereby the learned trial Court, based upon the compromise and on the basis of the joint statements which were made by the parties, disposed of the application which was filed by the decree-holder/respondent No. 1.

22. The record reveals that joint statement was made by

Smt. Snehlata (respondent No. 1), Sh. Raj Kumar (present appellant) and Smt. Nirmal Attri, Special Power of Attorney of JD No. 1 Raj Kumar and JD No. 2 Sh. Narender Kumar. In the said statements, it was categorically stated by the respective parties that the matter has been compromised between the parties in the application which has been filed by the decree-holder for the passing of the final decree under the provisions of Order 20 Rule 18 of the CPC.

23. It was stipulated in the statement that after the compromise, it has been agreed upon by the parties that the application which has been filed by the decree-holder should be disposed of in the manner as has been incorporated in the said statements.

24. Finally, in the concluding para of the statement, it has been stated that the compromise has been effected between the parties without any pressure, fear or coercion and the said compromise was agreed upon by all the respective parties. Page No. 50 of the record of trial Court file shows that the said statement has been duly signed by present appellant Raj Kumar, Nirmal Attri (Special Power of Attorney of JD No. 1 and JD No. 2). Based upon the statements which have been placed on record, which are duly signed by the respective parties, the learned trial Court passed the order dated 26.10.2020 by

disposing of the petition filed under Order 20 Rule 18 of the CPC.

25. It has been categorically stated in the order that based upon the compromise which has been effected between the parties, the petition is disposed of on the strength of the settlement as arrived between the parties. There is no manner of doubt that after passing of the preliminary decree, when the application for the passing of final decree was filed by the decree-holder, the parties have entered into a compromise and the same is reflected in the record, which has been duly signed and acknowledged by the respective parties, including the present appellant. Thereafter, on 31.10.2020, on the basis of compromise, the learned trial Court came to the conclusion that since the application stands fully satisfied with delivery of possession, therefore, the said application was disposed of as fully satisfied.

26. Against the said order, the present appellant Sh. Raj Kumar instituted an appeal under Section 96 of the CPC in the Court of Learned Additional District Judge, Sirmaur, District at Nahan, H.P. The perusal of Section 96 Sub-section (3) of the CPC, reads as follows:-

“96. Appeal from original decree.—

(1) xxx xxx

(2) xxxx xxx

(3) No appeal shall lie from a decree passed by the Court with the consent of parties.”

27. The provisions of the Section 96 demonstrate that no appeal shall lie from a decree passed by the court with the consent of the parties. Admittedly, in the present case, compromise was effected between the parties, which has been duly acknowledged and has been duly signed by all the parties. After the disposal of the application which came to be filed by the decree-holder /respondent for the passing of the final decree, the appellant became wiser and he filed the appeal under Section 96 of the CPC, which in the considered opinion of this Court, is not maintainable in its present form. There is a specific bar under the provisions of Section 96 sub-section (3) CPC and as rightly held by the learned First Appellate Court, the appeal itself is not maintainable.

28. The Hon'ble Apex Court in ***Lajja Devi vs. Khushiram Prajapat, 2014 SCC Online Raj 252: AIR 2014 (NOC 510) 182*** has held as follows:-

“(iv) A consent operates as an estoppel and is valid and binding unless it is set aside by the court which passed the consent decree, by an order on an application under the proviso to Rule 3 of Order 23.

Therefore, the only remedy available to a party to a consent decree to avoid such consent decree is to approach the court which recorded the compromise and

made a decree in terms of it, and establish that there was no compromise. In that event, the court which recorded the compromise will itself consider and decide the question as to whether there was a valid compromise or not. This is so because a consent decree, is nothing but contract between parties superimposed with the seal of approval of the court. The validity of a consent decree depends wholly on the validity of the agreement or compromise on which it is made. The second defendant, who challenged the consent compromise decree was fully aware of this position as she filed an application for setting aside the consent decree on 21.08.2001 by alleging that there was no valid compromise in accordance with law. Significantly, none of the other defendants challenged the consent decree. For reasons best known to herself, the second defendant within a few days thereafter (that is on 27.08.2001), filed an appeal and chose not to pursue the application filed before the court which passed the consent decree. Such an appeal by second defendant was not maintainable, having regard to the express bar contained in section 96(3) of the Code.”

29. The exposition of law, as laid down by the Hon’ble Apex Court in conjunction with the provisions of Section 96 sub-section (3), clearly stipulates that against the consent decree, appeal under Section 96 of the CPC is not maintainable. The essence of the order as passed by the learned trial Court comes within the definition of decree.

30. This Court is of the considered opinion that once application filed by the decree-holder for the passing of final decree came to be decided on the basis of compromise effected whereby joint statement was made by the respective parties and the said document was duly signed by the respective parties thereafter final decree on the strength of consent came to be passed by the learned trial Court. The application came to be decided fully satisfied with delivery of possession. In essence the final decree for partition came to be passed on the basis of compromise coupled with the statement, which was endorsed by the parties. Therefore, definitely, appeal filed against the provision of Section 96 (3) of CPC is not maintainable.

31. The learned First Appellate Court has legally appreciated the point in controversy and after relying upon the exposition of law laid down by Hon'ble Apex Court, rightly came to the conclusion that the appeal as filed by the present appellant is not maintainable.

32. This Court is in agreement with the judgment as passed by the learned First Appellate Court and does not see any merit in the present appeal. The court below has adjudicated the controversy after relying upon the legal proposition of law and statutory provision. There is no infirmity in the same.

33. No other point was raised by the learned counsel for the parties.

34. Substantial question of law is answered accordingly.

35. In view of the aforesaid observations, there is no merit in the present appeal and the same is accordingly dismissed. Pending applications, if any, also stand disposed of.

(Romesh Verma)
Judge

11th August, 2026.
(kck)