

**RSA No.96-2016**

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

**RSA No.96-2016 (O & M)**

**Date of Decision: 12.01.2016**

Suresh Kumar

... Appellant (s)

Versus

Maala Ram

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH  
DHALIWAL**

- |                                                                                |            |
|--------------------------------------------------------------------------------|------------|
| 1) Whether Reporters of the local papers may be allowed to see the judgment ?. | <b>YES</b> |
| 2) To be referred to the Reporters or not ?.                                   | <b>YES</b> |
| 3) Whether the judgment should be reported in the Digest ?                     | <b>YES</b> |

Present: Mr. J.S.Ghumman, Advocate,  
for the appellant.

Mr. A.K.Khunger, Advocate,  
for the caveator-respondent.

**Paramjeet Singh Dhaliwal, J.**

This regular second appeal of the defendant is against the judgment and decree dated 31.07.2015 passed by learned Civil Judge (Jr. Divn.), Bathinda whereby suit for permanent injunction filed by the respondent-plaintiff has been decreed and counter-claim filed by the appellant-defendant has been dismissed and against the judgment and decree dated 23.10.2015 passed by learned Additional District Judge, Bathinda whereby appeal preferred by the appellant-defendant has been dismissed.

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For convenience sake, hereinafter, reference to parties is being made as per their status in the plaint.

The detailed facts are already recapitulated in the judgments of the courts below and are not required to be reproduced. In brief, the facts relevant for disposal of this second appeal are to the effect that the plaintiff filed suit for permanent injunction restraining the defendant from entering forcibly and illegally in shop bearing MC No.2428 located at Court Road, Bathinda and from taking forcible possession of said premises, which consists of two shops on front side, the back portion has fallen down, where the plaintiff runs his business for the sale of shoes and further restraining the defendant from illegally interfering and carrying out demolition work of parapet (safety walls on the roof). The property is bounded as under:

|       |   |                            |
|-------|---|----------------------------|
| East  | : | 50' house of Jaswant Singh |
| West  | : | 48' 6" Vijay Singh         |
| North | : | 20' house of Prem Lata     |
| South | : | 20' Main Road              |

Whereas in the counter-claim filed by the defendant, he has sought injunction against the plaintiff from interfering in his peaceful possession of shop bearing MC No.2428 and passage between both the shops situated at Court Road, Bathinda. The defendant/counter-claimant further prayed for restraining the plaintiff from taking illegally and forcibly possession of the shop in question and further restraining the

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plaintiff from dispossessing the defendant-counter claimant from the shop in question in any manner under the garb of levelling false allegations and filing false suits and applications, against the defendant/counter-claimant and the plaintiff has no right or concern in the shop in question.

The plaintiff filed the suit for permanent injunction with the averments that he is owner in possession of the suit property which he purchased from his personal funds through registered sale deed No.1309 dated 11.05.2006. The plaintiff is running his business in the disputed shop of selling shoes even at present. The defendant who is son of the plaintiff, is a habitual drunkard. The defendant used to interfere in the business of the plaintiff and did not allow him to continue the same and thereby is causing hindrance in the business of the plaintiff, although, the defendant has no right to do so as he is neither owner nor in possession of the disputed property. The defendant also wanted to put locks unlawfully on the doors of the disputed property for which he has no right. The safety walls on the roof at the front side of road are in dilapidated condition as the same are more than eighty years old and entire mud and cement has deteriorated from the wall and the same can fall at any time and it has become a source of nuisance and it can take the life of the plaintiff or the passersby at any time and the plaintiff wants to demolish the said safety walls from the front side of the road and to reconstruct the same so that some precious life may not be lost but

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the defendant being irritated with the plaintiff creates hindrance in the demolition work of plaintiff illegally for which he has no right to do so. The plaintiff repeatedly requested the defendant not to interfere in his business and/or take forcible possession of the disputed property and further not to interfere in demolition work of safety wall and in its reconstruction work, but to no avail. Hence, suit was filed.

Upon notice, the defendant resisted the suit and filed written statement as well as counter-claim. In written statement, the defendant took various preliminary objections. On merits, it was averred that the plaintiff is owner of the disputed property but it is wrong that he is in possession of the same since long, rather the defendant is running the business of shoes under the name and style of Mala Ram Punjabi Juti House and New Fazilka Fancy Juti House and on the bottom of sign board, the name and mobile number of the defendant has been written. Both the shops were on rent with the plaintiff for the last 35 years but later on the defendant came on the shops and the plaintiff handed over the shop to him 20 years ago. Now the plaintiff sits on another shop situated at back side of Bus Stand, Bathinda and for the last 20 years, the defendant had been paying rent of Rs.300/- to the landlord and giving whole of the earnings to the plaintiff and after that on 11.05.2006, the defendant purchased the said shops in the name of his father, but all the payments were made by the defendant from his own pocket, which was already given by him to the plaintiff from the earnings of the shop in

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question. Now the plaintiff is not having any right in the disputed property and the same is in exclusive possession of the defendant. The defendant is also paying the electricity bills of the shops in dispute. Other averments made in the plaint were denied and dismissal of suit was prayed for. In counter-claim, the defendant prayed for the relief of permanent injunction reiterating the averments as made in written statement.

Replication was filed. On the basis of pleadings of parties, the Court of first instance framed following issues:

- “1. *Whether the plaintiff is entitled to permanent injunction as prayed for?OPP*
2. *Whether the defendant is entitled to permanent injunction as prayed for in the written statement-cum-counter claimant?OPD*
3. *Whether the suit is not maintainable?OPD*
4. *Whether the plaintiff has got no locus standi or cause of action to file the present suit?OPD*
5. *Whether the plaintiff has not come to the court with clean hands?OPD*
6. *Whether the plaintiff is estopped from filing the suit by his own act and conduct?OPD*
7. *Relief.”*

After appreciating the evidence, the Court of first instance decreed the suit and the defendant was restrained from entering forcibly and illegally in shop bearing MC No.2428, located at Court Road, Bathinda and from taking forcible possession of the same from the

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plaintiff till the subsistence of present decree and defendant was further restrained from illegally interfering in demolition work of parapet (safety walls on the roof). However, counter-claim filed by the defendant has been dismissed. Feeling aggrieved, the defendant preferred an appeal before learned Appellate Court which has also been dismissed. Hence, this regular second appeal.

Learned counsel for the appellant has referred to following substantial questions of law formulated in the grounds of appeal in para 8 for consideration by this Court:

- (i) *Whether the appellant/defendant stands prejudiced by the order passed by the learned Civil Judge (Jr. Divn.), Bathinda and the order passed by the learned Addl. District Judge, Bathinda wherein the question regarding the possession of the shops in question have been wrongly decided?*
- (ii) *Whether the judgment and decree of learned lower Appellate Court deserve to be set aside solely on the ground that issuewise findings have not been given?*
- (iii) *Whether the evidence and documents have been completely misread and misconstrued, which resulted into perverse findings?*

I have heard learned counsel for the parties and perused the record.

Learned counsel for the appellant-defendant has vehemently contended that both the courts below have not properly appreciated the

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evidence and there is misreading of material evidence by the courts below. Both the courts below have recorded the findings on the basis of surmises and conjectures. He contended that the plaintiff is the only owner of the property in dispute, not in possession, rather the defendant has been in possession of the same since long. Both the courts below have erroneously given weightage to the version of the plaintiff.

Per contra, learned counsel for the caveator-respondent has vehemently opposed the contentions of learned counsel for the appellant and supported the impugned judgments and decrees. Learned counsel further submitted that the defendant has preferred one appeal before the first appellate court as well as before this Court and was required to file two separate appeals, therefore, the principle of res judicata will apply in the present case.

I have considered the rival contentions of learned counsel for the parties.

In view of the submissions made by the learned counsel for the parties, following substantial questions of law arise for consideration:-

- “i) *What status is to be assigned to judgment in counter-claim?*
- ii) *Whether appellant-defendant was required to file two appeals before the first appellate Court as well as this Court. In case one appeal is filed will the principle of res-judicata apply?”*

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**Re: Question No.1:**

To appreciate the controversy, it is imperative to appreciate the scheme relating to the counter-claim that has been introduced by CPC (amendment) Act 104 of 1976 with effect from 1.2.1977. Order 8, Rule 6A deals with counter-claim by the defendant. Rule 6A(2) stipulates thus:-

*“(2) Such counter-claim 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 counter-claim.”*

Rule 6A(3) enables the plaintiff to file a written statement. The said provision reads as follows:-

*“(3) The plaintiff shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the Court.”*

Rule 6A(4) of the said Rule provides that the counterclaim shall be treated as a plaint and governed by rules applicable to a plaint. Rule 6B provides how the counter-claim is to be stated and Rule 6C deals with exclusion of counter-claim. Rule 6D deals with the situation when the suit is discontinued. It is as follows:-

***“R. 6D. Effect of discontinuance of suit. – If in any case in which the defendant sets up a counterclaim, the suit of the plaintiff is stayed, discontinued or dismissed, the counter-claim may nevertheless be proceeded with.”***

On a plain reading of the aforesaid provisions it is quite

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limpid that a counter-claim preferred by the defendant in a suit is in the nature of a cross-suit and by a statutory command even if the suit is dismissed, counter-claim shall remain alive for adjudication. The purpose of counter-claim is to avoid multiplicity of the proceedings. When counter-claim of the defendant is dismissed on adjudication, it forecloses the rights of the defendant subject to appeal and separate judgment is required to be pronounced under Rule 6A(2) by the Court with respect to counter claim. Hon'ble Supreme Court in **Jag Mohan Chawla and another vs. Dera Radha Swami Satsang and others, (1996) 4 SCC 699**, dealing with the concept of counter-claim has held as under:-

*“... The counter-claim expressly is treated as a cross-suit with all the indicia of pleadings as a plaint including the duty to aver his cause of action and also payment of the requisite court fee thereon. Instead of relegating the defendant to an independent suit, to avert multiplicity of the proceeding and needless protection (sic protraction), the legislature intended to try both the suit and the counter-claim in the same suit as suit and cross-suit and have them disposed of in the same trial. In other words, a defendant can claim any right by way of a counter-claim in respect of any cause of action that has accrued to him even though it is independent of the cause of action averred by the plaintiff and have the same cause of action adjudicated without relegating the defendant to file a separate suit.”*

The Hon' ble Supreme Court in **Rajni Rani and another vs. Khairati Lal and others, (2015) 2 SCC 682**, has held as under:-

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*“17. 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 evincible, in the case at hand, the counter-claim 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 appeal could lay by paying the requisite fee. It could not have been unsettled by the High Court in exercise of the power under Article 227 of the Constitution of India. Ergo, the order passed by the High Court is indefensible.”*

From the above, it is clear that counter claim is an independent suit and in this regard, separate court fee is required to be paid. The Court may draw up a formal decree or may not, but if by virtue of the judgment of the Court, the rights have finally been adjudicated, it would assume the status of a decree. In the present case, the suit has been decreed and counter-claim has been dismissed, but the defendant (appellant before this Court), filed one appeal before the first appellate Court. Thus, the suit and counter-claim are to be treated as two suits and if two suits, filed by the parties against each other pertaining to the same property/ subject matter involving same questions were heard and

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decided by the Court by a common judgment, then the status of judgment in the counter -claim would be treated as independent decree. In view of the discussion above, one appeal filed against one of the decrees would not be sustainable and other decree which remains unchallenged will operate as res- judicata . So the question is answered accordingly.

**Re: Question No.2:**

As discussed above, the counter-claim is like a separate suit and separate appeal was required to be filed. In the absence of same, the principle of res-judicata will apply, Hon'ble Supreme Court in **Harbans Singh and others vs. Sant Hari Singh and others, 2009(3) RCR (Civil) 862,** has held as under:-

*“13. Both the suits, as noticed hereinbefore, were consolidated. They were heard together. The disputes between the parties to both the suits were common. The issues raised therein also were common. The Managing Committee filed a suit for declaration that it was in management and control of the said Gurudwara Sahib and was entitled thereto as also a declaration that the respondent was not a Mohtmim of the said Gurudwara and, thus, not entitled to manage its affairs. As the said decree had attained finality, it is binding on the appellants also. Appellants, therefore, in law, were required to prefer another Second Appeal against the judgment and decree passed in the said suit. The principle of res judicata in the aforementioned fact situation, in our opinion, has rightly been applied by the High Court.*

*14. Section 11 of the Code of Civil Procedure reads thus:*

*"Section 11 - Res judicata.-- No Court shall try any*

*suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court."*

15. In Premier Tyres Limited vs. Kerala State Road Transport Corporation [1993 Suppl. (2) SCC 146], this Court held:

*"....The question is what happens where no appeal is filed, as in this case from the decree in connected suit. Effect of non-filing of appeal against a judgment or decree is that it becomes final. This finality can be taken away only in accordance with law. Same consequences follow when a judgment or decree in a connected suit is not appealed from.*

5. Mention may be made of a Constitution Bench decision in Badri Narayan Singh v. Kamdeo Prasad Singh. In an election petition filed by the respondent a declaration was sought to declare the election of appellant as invalid and to declare the respondent as the elected candidate. The tribunal granted first relief only. Both appellant and respondent filed appeals in the High Court. The appellant's appeal was dismissed but that of respondent was allowed. The appellant challenged the order passed in favour of respondent in his appeal. It was dismissed and preliminary objection

*of the respondent was upheld. The Court observed, "We are therefore of opinion that so long as the order in the appellant's Appeal No. 7 confirming the order setting aside his election on the ground that he was a holder of an office of profit under the Bihar Government and therefore could not have been a properly nominated candidate stands, he cannot question the finding about his holding an office of profit, in the present appeal, which is founded on the contention that that finding is incorrect."*

*In Union of India vs.V. Pundarikakshudu & sons & anr. [(2003) 8 SCC 168], this Court held:*

*"31. In this case the District Judge as also the High Court of Madras clearly held that the award cannot be sustained having regard to the inherent inconsistency contained therein. The arbitrator, as has been correctly held by the District Judge and the High Court, committed a legal misconduct in arriving at an inconsistent finding as regards breach of the contract on the part of one party or the other. Once the arbitrator had granted damages to the first respondent which could be granted only on a finding that the appellant had committed breach of the terms of contract and, thus, was responsible therefor, any finding contrary thereto and inconsistent therewith while awarding any sum in favour of the appellant would be wholly unsustainable being self-contradictory."*

*As no appeal was preferred by the Union of India while accepting the award made in favour of the first respondent,*

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*it had attained finality and, thus, the principle of res judicata was found to be applicable. It was opined:*

*"35. As the appellant failed to get that part of the award which was made by the arbitrator in favour of the first respondent set aside, the basic conclusion of the High Court cannot be faulted. The Court upon setting aside the whole award could have remitted back the matter to the arbitrator in terms of Section 16 of the Act or could have appointed another arbitrator, but at this juncture no such order can be passed as the award in part has become final."*

*The said decision applies to the facts of the present case also."*

This Court in **Sukhdev Singh vs. Baldev Singh and others, 2014(4) PLR 651**, has held as under:-

*"13. Moreover, the plaintiff has not preferred separate appeal challenging the acceptance of counter-claim of defendant no.1 meaning thereby that he has accepted the impugned judgment. Since counter-claim is just like an independent suit, two appeals ought to have been filed. In absence of same, principle of res judicata will apply. Reference can be made to the decision rendered in **Harbans Singh and others vs. Sant Hari Singh and others, AIR 2009 SC 1819** by the Hon'ble Supreme Court."*

In the present case, although one decree has been framed by the Court of first instance, but the suit as well as counter-claim have been adjudicated by common judgment. Issue no 2 is regarding counter-claimant which has been decided against the defendant-appellant. Meaning thereby the counter-claim has been dismissed. In view of law

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laid down in the judgments referred to above, in the present case two appeals were required to be filed before the first appellate Court as well as before this Court. Therefore, principle of *res-judicata* will apply. Hence, question No.2 is answered accordingly.

Moreover, admittedly the plaintiff is owner of the property in dispute. Both the courts below have concurrently held that the defendant has failed to prove that he was in possession of the suit property and merely writing of name and mobile number of the defendant on the sign board installed at the shop in dispute would not mean that the defendant is in exclusive possession over the shop in dispute and especially when he is son of the plaintiff. The defendant has failed to prove any document to show that he had paid the consideration amount in respect of said shop to the vendor. The defendant has failed to explain as to why he had purchased the property in the name of the plaintiff. The defendant has also failed to produce any bill to show that he had purchased the entire material lying in the shop. Both the courts below have rightly held that the defendant, who is not owner of the property in dispute, has no right to stop the plaintiff from getting the property in dispute repaired. Moreover, the perusal of sale deed dated 11.05.2006 reveals that the plaintiff was also tenant since long and possession of the said shop on which plaintiff was earlier tenant has been given to the plaintiff and possession of second shop which was with Bimla Devi and Prem Parkash tenant, will be taken by the plaintiff

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himself and remaining property which was in possession of Balwinder Kaur, she has delivered the possession of the same to the plaintiff on the same day of the execution of sale deed No.1309 dated 11.05.2006, proved as Ex.P-1, in favour of the plaintiff. The defendant has also failed to prove any rent receipt to show that he used to pay the rent to the landlord. The plaintiff has further proved on record the receipt and property tax return i.e. Ex.P-4 and P-5, respectively, in his favour. Both the courts below have concurrently held that the plaintiff has established his ownership and possession over the suit property by leading cogent evidence on record and on the contrary, the defendant has miserably failed to prove his claim, as per the versions of his written statement as well as the counter-claim filed by him. Therefore, the defendant has no right to interfere into the peaceful possession of the plaintiff over the suit property.

In view of concurrent findings of fact recorded by both the Courts below as well as on account of the fact that two appeals were required to be filed before first appellate court and this court, I do not find any illegality or perversity in the impugned judgments and decrees passed by both the Courts below.

No other point has been urged.

Dismissed in limine. Costs made easy.

**12.01.2016**

parveen kumar

**(Paramjeet Singh Dhaliwal)**  
**Judge**