

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

RSA-2782 of 2017 (O&M)
Date of decision: 30.11.2017

Nirmal Kaur

.... Appellant

Versus

Sawinder Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr.S.K.Mahajan, Advocate
for the appellant.

Avneesh Jhingan, J

The regular second appeal has been filed by Nirmal Kaur-plaintiff against concurrent dismissal of her suit by the Courts below.

For the sake of convenience, the parties are being referred to as per their original position in the plaint.

The suit was filed by the plaintiff for mandatory injunction seeking a direction to the defendants to vacate one room and kitchen of the property detailed in the suit and to hand over the vacant physical possession thereof to her.

On notice, the counter claim was filed by defendant No.1 for declaration and joint possession to the effect that the counter claimant is a co-sharer in possession to the extent of half share in the house bearing No.235 situated at Ghanupur Chheharta, Tehsil and District Amritsar. The trial Court dismissed the suit and decreed the counter claim.

The plaintiff filed the single first appeal which was dismissed by the learned Additional District Judge, Amritsar vide judgment and decree dated 27.01.2017. The said appeal was dismissed being not maintainable as decree of counter claim and judgment has not been specifically challenged.

The present appeal has been filed having a grievance that learned Appellate Court erred in dismissing the appeal.

Learned counsel for the appellant has argued that the First Appellate Authority erred in dismissing the appeal as not maintainable.

The issue that when two suits or a suit and a counter claim are consolidated and decided by a common judgment, one appeal is not maintainable is no longer res-integra.

The Hon'ble Apex Court in case of **Premier Tyres Limited vs. Kerala State Road Transport Corporation, 1993(Sup2) SCC 146** held as under :-

“4. Although none of these decisions were concerned with a situation where no appeal was filed against the decision in connected suit but it appears that where an appeal arising out of connected suits is dismissed on merits the other cannot be heard, and has to be dismissed. 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 become final. This finality can be taken away only in accordance with law. Same consequences follows 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 vs. Kamdeo Prasad Singh, AIR 1962 Supreme Court, 338.** 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.

6. Thus the finality of finding recorded in the connected suit, due to non filing appeal, precluded the Court from proceeding with appeal in other suit. In any view of the matter the order of the High Court is not liable to interference.”

This Court in case of **Sukhdev Singh vs. Baldev Singh and others, 2014(4) PLR 651** relying upon the decision of the Hon'ble Apex Court in **Harbans Singh and others vs. Sant Hari Singh and others, AIR 2009 SC 1819** 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's case (supra)** by the Hon'ble Supreme Court.”*

This Court in case of **Harjeet Singh and others vs. Mehar Singh, 2010(4) R.C.R. (Civil) 16** relying upon the decision of the Hon'ble Apex Court in **Harbans Singh and others's case (supra)** and **Premier Tyres Limited's case (supra)** held as under :-

“12. The Hon'ble Apex Court in the matter of **Harbans Singh and others v. Sant Hari Singh and others reported in 2009 (3) RCR (Civil) 862 : 2009 (4) R.A.J. 582 : (2009) 2 SCC 526** in paragraph Nos.15 and 18 has observed as under:-

“15. 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.

18. In **Premier Tyres Limited vs. Kerala State Road Transport Corporation**, this Court held: ‘4...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:

‘15....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 9 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.”

13. In view of the above, the settled position of law emerges is, if two suits, filed by the parties against each other pertaining to the same property involving same questions, were consolidated, heard and decided by the Court by a common judgment, then appeal filed against one of the decree would not be maintainable and would be barred by principle of res judicata.”

The above said decisions squarely cover the issue involved in the present appeal. In such circumstances, no fault can be found in the judgment and decree passed by the learned Additional District Judge, Amritsar.

The appeal is bereft of any merits and is dismissed.

(AVNEESH JHINGAN)
JUDGE

30.11.2017
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1. Whether the order is speaking/reasoned: Yes

2. Whether the order is reportable : Yes