

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.89 of 2010

Sachchidanand Das, S/o Laxman Das Vaishnav, aged about 65 years, R/o  
 Village Jantar, Post Kokpur, Tahsil Dongargaon, Distt. Rajnandgaon (C.G.)  
 (Plaintiff)  
 ---- Appellant

Versus

1. Yogeshwar Das, S/o Laxman Das Vaishnav, R/o Village Manki, Post  
 Somani, Distt. Rajnandgaon (C.G.)
2. Government of Chhattisgarh, Through the Collector, Rajnandgaon (C.G.)  
 (Defendants)  
 ---- Respondents

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 For Appellant / Plaintiff: -

Mr. Rishi Rahul Soni, Advocate.

For Respondent No.1 / Defendant No.1: -

Mr. Goutam Khetrapal, Advocate.

For Respondent No.2 / State: -

Mr. Ravi Kumar Bhagat, Deputy Government Advocate.

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Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

19/02/2020

1. This second appeal preferred by the plaintiff / appellant herein was  
 admitted for hearing on the following substantial question of law: -

"Whether the first appellate Court has committed an error of law by dismissing the entire suit of the plaintiff which was partly decreed by the trial Court and there was no appeal or cross-appeal by defendant No.1 before the first appellate Court?"

(For the sake of convenience, parties hereinafter will be referred as per their status shown and ranking given in the plaint before the trial Court.)

2. The plaintiff and defendant No.1 both are brothers. The plaintiff filed suit stating inter alia that so far as the property shown in Schedule B of the plaint, he is the exclusive owner and he is entitled for possession from

defendant No.1 which was opposed by defendant No.1 by filing written statement.

3. The trial Court after appreciation of oral and documentary evidence available on record partly allowed the suit of the plaintiff holding that the plaintiff is entitled for 4/9 share out of 4.11 acres of land shown in Schedule B of the plaint, defendant No.1 is also entitled for 4/9 share out of 4.11 acres of land and sister of the plaintiff & defendant No.1 is entitled for 1/9 share out of 4.11 acres of land against which only the plaintiff preferred first appeal before the first appellate Court stating that he is the exclusive title holder of the property shown in Schedule B of the plaint which the first appellate Court did not accept that he is entitled for the entire property and dismissed the appeal, but simultaneously also set aside the decree already granted in favour of the plaintiff which was not assailed by defendant No.1 by filing cross-appeal or regular appeal. Being aggrieved by the judgment & decree of the first appellate Court, the plaintiff has preferred this second appeal in which substantial question of law has been formulated which has been set-out in the opening paragraph of this judgment.
4. Mr. Rishi Rahul Soni, learned counsel appearing for the appellant herein / plaintiff, would submit that the first appellate Court could not have set aside the judgment & decree of the trial Court which was partly in favour of the plaintiff and there is no regular appeal or cross-appeal filed by defendant No.1 or by any other aggrieved person against that part of the judgment. He relied upon the decision of the Supreme Court in the matter of Banarsi and others v. Ram Phal<sup>1</sup> to buttress his submission.

5. Mr. Goutam Khetrapal, learned counsel appearing for respondent No.1

1 2003 AIR SCW 1494 : (2003) 9 SCC 606

herein / defendant No.1, would support the impugned judgment & decree.

6. I have heard learned counsel for the parties and considered their submissions and also went through the record with utmost circumspection.

7. It is true that the trial Court held that the plaintiff is entitled for 4/9 share in the property shown in Schedule B of the plaint and that part was not assailed by any party to the suit including defendant No.1, as such that finding has become final. Only the plaintiff filed first appeal being aggrieved of not holding him to be the exclusive owner of the property shown in Schedule B of the plaint. In that view of the matter, the first appellate Court could not have set aside the judgment & decree of the trial Court whereby the suit has already been partly decreed in favour of the plaintiff.

8. The Supreme Court in Banarsi (supra) held as under: -

“9. 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 by laying challenge to a *finding* recorded in the impugned judgment against him. Where a plaintiff seeks a decree against the defendant on grounds (A) and (B), any one of the two grounds being enough to entitle the plaintiff to a decree and the Court has passed a decree on ground (A) deciding it for the plaintiff while ground (B) has been decided against the plaintiff, in an appeal preferred by the defendant, in spite of the finding on ground (A) being reversed the plaintiff as a respondent can still seek to support the decree by challenging finding on ground (B) and pursuance the appellate court to form an opinion that in spite of the finding on ground (A) being reversed to the benefit of defendant-appellant the decree could still be sustained by reversing the finding on ground (B) though the plaintiff-respondent has neither preferred an appeal of his own nor taken any cross-objection. A right to file cross-objection is the exercise of right to appeal though in a different form. It was observed in *Sahadu Gangaram Bhagade v. Special Deputy Collector Ahmednagar and another*, (1971) 1 SCR 146 that the right given to a respondent in an appeal to file cross-objection is a right given to the same extent as is a right of appeal to lay

challenge to the impugned decree if he can be said to aggrieved thereby. Taking any cross-objection is the exercise of right of appeal and takes the place of cross-appeal though the form differs. Thus it is clear that just as an appeal is preferred by a person aggrieved by the decree so also a cross-objection is preferred by one who can be said to be aggrieved by the decree. A party who has fully succeeded in the suit can and needs to neither prefer an appeal nor take any cross-objections though certain finding may be against him. Appeal and cross-objection – both are filed against *decree* and not against *judgment* and certainly not against any finding recorded in a judgment. This was well-settled position of law under the unamended CPC.

10. CPC Amendment of 1976 has not materially or substantially altered the law except for a marginal difference. Even under the amended Order 41, Rule 22, sub-rule (1) a party in whose favour the decree stands in its entirety is neither entitled nor obliged to prefer any cross-objection. However, the insertion made in the text of sub-rule (1) makes it permissible to file a cross-objection against a *finding*. The difference which has resulted we will shortly state. A respondent may *defend* himself without filing any cross-objection to the extent to which decree is in his favour; however, if he proposes to *attack* any part of the decree he must take cross-objection. The amendment inserted by 1976 amendment is clarificatory and also enabling and this may be made precise by analysing the provision. There may be three situations:-

(i) The impugned decree is *partly* in favour of the appellant and *partly* in favour of the respondent;

(ii) The decree is *entirely* in favour of the respondent though an *issue* has been decided against the respondent.

(iii) The decree is *entirely* in favour of the respondent and all the *issues* have also been answered in favour of the respondent but there is a *finding* in the judgment which goes against the respondent.

11. In the type of case (i) it was necessary for the respondent to file an appeal or take cross-objection against that part of the decree which is against him if he seeks to get rid of the same though that part of the decree which is in his favour he is entitled to support without taking any cross-objection. The law remains so post amendment too. In the type of cases (ii) and (iii) pre-amendment CPC did not entitle nor permit the

respondent to take any cross-objection as he was not the person aggrieved by the decree. Under the amended CPC, read in the light of the explanation, 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 and he may support the decree without cross-objection, the amendment made in the text of sub-rule (1), read with the explanation newly inserted, gives him a right to take cross-objection to a *finding* recorded against him either while answering an issue or while dealing with an issue. The advantage of preferring such cross-objection is spelled out by sub-rule (4). In spite of the original appeal having been withdrawn or dismissed for default the cross-objection taken to any *finding* by the respondent shall still be available to be adjudicated upon on merits which remedy was not available to the respondent under the unamended CPC. In pre-amendment era, the withdrawal or dismissal for default of the original appeal disabled the respondent to question the correctness or otherwise of any *finding* recorded against the respondent.”

9. The principles of law enunciated by the Supreme Court in Banarsi (supra) have been followed with approval in the matter of Y. Nagaraj v. Jalajakshi and others<sup>2</sup> in which their Lordships of the Supreme Court held as under: -

“27. We shall now deal with the appellant’s challenge to the decree passed in favour of Respondent 1. It is not in dispute that Respondent 1 had not challenged the findings recorded by the trial court on various issues framed by it. She also did not file cross-objections in the appeal preferred by the appellant. Though, it is possible to take the view that even in the absence of an appeal having been preferred by Respondent 1, the learned Single Judge could have exercised power under Order 41 Rule 33 CPC, as interpreted by this Court in *Nirmala Bala Ghose v. Balai Chand Ghose*<sup>3</sup>, *Giani Ram v. Ramjilal*<sup>4</sup> and *Banarsi v. Ram Phal*<sup>1</sup>, after having carefully examined the entire record, we are convinced that the impugned judgment cannot be sustained by relying upon Order 41 Rule 33.”

10. Thereafter, again in the matter of *Lakshmanan and others v. G. Ayyasamy*<sup>5</sup>, similar proposition has been held by the Supreme Court relying upon Banarsi (supra) and it has been observed as under: -

2 (2012) 2 SCC 161

3 AIR 1965 SC 1874

4 (1969) 1 SCC 833

5 (2016) 13 SCC 165

“8. In support of the same proposition of law, the learned counsel for the appellants placed reliance upon another judgment of this Court in *Pralhad v. State of Maharashtra*<sup>6</sup>, wherein this Court after interpretation of Order 41 Rule 33 CPC has clearly held that in the absence of an independent appeal or cross-objection being filed by the aggrieved party, the relief which was denied by the courts below cannot be granted in the second appeal filed by the appellant.”

11. In view of the aforesaid analysis, the first appellate Court could not have set aside the judgment & decree of the trial Court which was decreed in favour of the plaintiff in absence of any cross-appeal or regular appeal by defendant No.1. As such, judgment & decree of the first appellate Court is set aside and that of the trial Court is restored. The substantial question of law is answered accordingly.

12. The second appeal is allowed to the extent indicated herein-above leaving the parties to bear their own cost(s).

13. Decree be drawn-up accordingly.

Sd/-  
(Sanjay K. Agrawal)  
Judge

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