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Reserved on : 14.05.2024

Pronounced on : 22.05.2024

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|----|------------------------------|---------------|--|
| 1. | RSA-581-2021(O&M) | | |
| | Hansi Town Improvement Trust | ...Appellant | |
| | Vs. | | |
| | Sham Sunder | ...Respondent | |
| 2. | RSA-582-2021(O&M) | | |
| | Hansi Town Improvement Trust | ...Appellant | |
| | Vs. | | |
| | Ram Sarup | ...Respondent | |
| 3. | RSA-583-2021(O&M) | | |
| | Hansi Town Improvement Trust | ...Appellant | |
| | Vs. | | |
| | Jai Pal Reddu | ...Respondent | |
| 4. | RSA-584-2021(O&M) | | |
| | Hansi Town Improvement Trust | ...Appellant | |
| | Vs. | | |
| | Anup Singh | ...Respondent | |
| 5. | RSA-585-2021(O&M) | | |
| | Hansi Town Improvement Trust | ...Appellant | |
| | Vs. | | |
| | Rajinder Singh | ...Respondent | |
| 6. | RSA-586-2021(O&M) | | |
| | Hansi Town Improvement Trust | ...Appellant | |
| | Vs. | | |
| | Raj Kumar | ...Respondent | |



CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. B.R. Mahajan, Sr. Advocate with
Mr. Vasu Gupta, Advocate
for the appellant(s).

Mr. Arav Gupta, Advocate
for the respondent(s).

ANIL KSHETARPAL, J.

1. Brief Facts of the Case:-

1.1 A concise yet noteworthy issue has arisen for examination before this Court. The question is noted below:-

“If the trial Court passes a composite judgment and decree while deciding both the suit and the counter-claim, whether one appeal or two separate appeals are required to be filed?”

1.2. The learned counsel representing the parties are *ad idem* that the same issue is involved in all these connected six appeals. With the consent of the learned counsel representing the parties, these connected regular second appeals filed against the judgment and decree passed by the First Appellate Court shall be disposed of by this common order.

1.3. Before this Court proceeds to examine the question involved in the present case, the relevant facts, in brief, are required to be narrated from the lead case i.e RSA No.581 of 2021, in order to comprehend the controversy involved in the present case.

1.4. The respondent i.e the plaintiff-Sham Sunder filed a suit for permanent injunction as well as mandatory injunction restraining the appellant (defendant) from demolishing any part of plot No.234, Model Town, Hansi and



also for declaration that the notice dated 15.05.2017 sent by the appellant is illegal, null and void. The appellant while filing the written statement claimed that the respondent was allotted 232 sq. yards plot, whereas, he has constructed over plot measuring 255.33 sq. yards by encroaching upon the excess land. The Appellant Trust issued a notice to the respondent to remove the construction from the excess land i.e. encroached area. While filing the written statement, the appellant filed counter claim to seek relief of possession by removal of encroachment.

1.5. The trial Court decreed the suit, whereas dismissed the counter-claim by passing a composite judgment and decree dated 30.03.2019, which was the subject matter of challenge in Civil Appeal No.46 of 2019, filed by the appellant. The First Appellate Court has dismissed the appeal on the ground that two separate appeals were required to be filed whereas only one has been filed and also held that the judgment passed while dismissing the counter-claim shall be deemed to have become final and hence it operates as *res judicata*.

2. Arguments put forth by the learned counsel representing the parties:-

2.1. Learned Senior counsel representing the appellant while relying upon the judgments passed in '**Surat Singh @ Surta and others vs. Ram Mehar (died) through Lrs and others**' 2019(1) PLR 363, the Division Bench judgment of the Kerala High Court in '**Cholapilakkal Abdul Nazeer vs. Kuttanparambath K. Lakshmana Das**', 2016(3) ILR (Karala) 864 and '**Ranjan Sood Vs. Om Prakash**, 2019(2) RCR (Civil) 761 submits that in case of a composite decree, a single appeal is maintainable.

2.2 *Per contra*, the learned counsel representing the respondents relies



upon the judgments in '*Rajni Rani and another vs. Khairati Lal and others*', Civil Appeal No. 6862 of 2014, decided on 14.10.2014 and '*Harbans Singh and others vs. Sant Hari Singh and others*', 2009(2) SCC 526 and '*Samay Singh vs. Mona Yadav and another*', RSA No. 1759 of 2019, decided on 12.04.2019, and submits that the First Appellate Court has correctly dismissed the first appeal. He contends that the appellants were required to file two separate appeals.

2.3. This Court has considered the submissions made by the learned counsel representing the parties.

3. Discussion by this Court:-

3.1 To understand the concept of filing appeals with respect to the procedural law, it is significant to take note of various important provisions of CPC, as these provisions will provide better comprehension. The various provisions are discussed hereunder:-

3.2 Section 96 of the Code of the Civil Procedure, 1908 (hereinafter referred to as 'CPC') expressly provides that an appeal shall lie from every decree passed by the Court of original jurisdiction.

Section 96 “(1) *Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such Court.*

(2) *An appeal may lie from an original decree passed ex parte.*

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

(4) *No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognizable by Courts of*



Small Causes, when the amount or value of the subject-matter of the original suit does not exceed [ten] thousand rupees.”

3.3 By amendment carried out in the CPC, which came to effect from 01.07.2002, Order XLI Rule 1 of the CPC was amended and the word 'decree' was substituted with the word 'judgment'. The same is extracted as under:-

*“1. **Form of appeal-What to accompany memorandum.**-(1) Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or to such officer as it appoints in this behalf. The memorandum shall be accompanied by a copy ⁷⁸[judgment]:*

⁷⁹[Provided that where two or more suits have been tried together and a common judgment has been delivered therefor and two or more appeals are filed against any decree covered by that judgment, whether by the same appellant or by different appellants, the Appellate Court dispense with the filing of more than one copy of the judgment.”

“78. Substituted by the Code of Civil Procedure (Amendment) Act, 1999, S.31 for “decree appealed from and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded.” (w.e.f.1-7-2002)”

3.4. However, Order XLI Rule I is only an enabling provision. It enables the aggrieved party to file appeal instantaneously accompanied by a copy of judgment and not the decree. However, the copy of the decree is required to be filed as and when prepared by the Court against which the appeal is filed. Thus, there is no substantive change even after amendment, in the position of procedural law to the effect that the appeal against the final and preliminary decree is maintainable. Before the amendment, the parties were not able to file an appeal without a decree, but after the Amendment Act, 1999, this issue has been resolved efficaciously as it has dispensed with the condition of filing the appeal instantaneously with decree. Now, the decree can be filed after



it is prepared and appeal can be filed instantly.

3.5. At this stage, it is important to take note of Order XX Rule 19 CPC, as the aforesaid provision prescribes the manner in which the decree is required to be drawn where the defendant has been allowed to file a set off or counter claim. The said provision is reproduced hereunder:-

Order XX Rule 19

- “1. Where the defendant has been allowed a set-off or counter-claim against the claim of the plaintiff, the decree 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.*
- 2. Appeal from decree relating to set-off or counter-claim— Any decree passed in a suit in which a set-off or counter-claim is claimed shall be subject to the same provisions in respect of appeal to which it would have been subject if not set-off or counter-claim had been claimed.*
- 3. The provisions of this rule shall apply whether the set-off is admissible under rule 6 of Order VIII or otherwise.”*

3.6 On a careful study of Order XX Rule 19 (1), of the CPC, 1908, it becomes evident that the code envisages that in a case where defendant has been allowed a set-off or counter-claim against the claim of plaintiff, the decree shall state the amount that is due to the plaintiff and amount that is due to the defendant separately; in the same decree. Sub Rule (2) provides that the appeal from the decree relating to set off or counter claim shall be subject to the same provisions in respect of appeal to which it would have been subject if no set-off or counter-claim had been claimed. To state simply, the provision



signifies that the similar provisions of appeal shall apply to the appeal filed from decree related to set-off or counter claim. The statute does not mandate filing of separate appeals against the decision in the suit and counter-claim. CPC has nowhere laid down that filing of separate appeals is mandatory.

3.7 Moreover, in the matter at hand, the suit as well as counter-claim was disposed of by a composite judgment and decree. A composite decree was passed by the trial Court in accordance with Order XX Rule 19 CPC, 1908, which is extracted as under:-

“This suit coming on this 30th day of March, 2019, for final disposal before me (Ms. Santosh Bagotia, Civil Judge, (Jr. Divn.) Hansi in the presence of Sh. R.P. Chaudhary, Advocate for the plaintiff and Sh. R.S. Duhan, and Sh. Anil Saini, Advocates for defendants.

It is ordered that the suit of the plaintiff succeeds and is hereby decreed with cost, while counter claim of defendant stands dismissed. No order as to cost of counter claim. Defendant is restrained from demolishing any area of Plot No. 234 measuring 232 Sq. yards of plaintiff, except in due course of law.”

“COSTS OF THE SUITS		
	Plaintiff/s	Defendant/s
1. Stamp on plaint	50.00	00.00
2. Stamp on power	02.00	02.00
3. Pleader’s fee	00.00	00.00
4. Sub. For witnesses	00.00	00.00
5. Stamp on exhibits	00.00	00.00
6. Process fee	50.00	02.00
7. Misc. fee	10.00	20.00
Total	112.00	24.00”

3.8 Now the Bench proceeds to analyze the arguments put forth by the



learned counsel representing the parties.

3.9 The first judgment relied upon by the learned counsel representing the respondent is passed in ***Rajni Rani's*** case (Supra). In the aforementioned case, the Supreme Court considered the issue in the context of counter-claim being barred by the provision envisaged in Order II Rule 2 of the CPC. The apex Court held that the order passed in the counter-claim can not be set aside in exercise of revisional jurisdiction under Section 115 of the CPC or in exercise of power of superintendence under Article 227 of the Constitution of India. In ***Rajni Rani's*** case (Supra) the question involved was, “whether an appeal can be preferred after the decision of the counter-claim or can it be challenged in a revision petition?” The Court held that an appeal can be filed. Hence, the question before the Supreme Court in ***Rajni Rani's case*** (Supra) was not related to composite decree. In ***Harbans Singh's case*** (Supra), the Supreme Court examined the issue in the context of two separate suits. Hence, the aforesaid judgment is distinguishable. The next judgment relied upon by the learned counsel has been passed in ***Samay Singh's case*** (Supra). In the aforesaid case, this issue was directly answered, however, the SLP (Civil) No. 14117 of 2019 was filed and the Supreme Court issued notice. Subsequently, the appellant withdrew the appeal with permission to file two separate appeals before the First Appellate Court alongwith the application for condonation of delay. Hence, the matter was not finally decided on merits by the Hon’ble Supreme Court.

3.10 On the other hand this issue has been examined directly by a Coordinate Bench in ***Surat Singh's case*** (Supra), while relying upon a Division Bench judgment of the Kerala High Court. It has been held that if a



composite decree has been passed by the trial Court while deciding the suit as well as counter-claim then the same can be challenged by filing a single appeal against the composite decree. Special Leave petition filed against the aforesaid judgment was dismissed by the Hon'ble Supreme Court.

3.11 The next judgment passed by the Division Bench of the Kerala High Court in ***Cholapilakkal Abdul Nazeer's case*** (Supra) has again answered the aforesaid issue in favour of the appellant. Another co-ordinate Bench in ***Ranjan Sood's case*** (Supra) has examined the aforesaid issue and held that single appeal against a composite decree in suit and counter-claim is maintainable.

3.12 After this Court reserved the judgment, the learned counsel representing the respondent has produced a copy of the judgment passed by the Division Bench of Shimla High Court in ***Ramesh Chand and others vs. Om Parkash and others, 2022 (2) Shimla LC, 1145***, wherein it has been held that two separate appeals are required to be filed against the judgment passed by the trial Court while deciding the plaint as well as counter-claim. The Division Bench passed the aforesaid judgment based on the reasoning that the counter-claim is considered an independent suit, as a consequence, even in absence of a formal decree, it assumes the status of a decree, as the counter-claim finally decides the rights of the parties. Hence, the Bench held that the decree passed in a counter-claim needs to be challenged separately. This Court appreciates the sincere efforts put in by the young lawyer representing the respondent.

3.13 While searching the case law on the subject, this Court has come across the judgment passed by the Supreme Court in ***Narhari and others vs. Shankar and others, 1953 AIR (SC) 419***. In the aforesaid case, a single



memorandum of appeal was filed challenging two separate decrees prepared by the First Appellate Court while deciding two appeals filed by two sets of defendants against the common judgment passed by the trial Court. The Hon'ble Supreme Court held that a single appeal is maintainable while following the judgment passed by the Lahore High Court in **MST. Lachmmi Vs. MST Bhulli, AIR 1927 Lahore, 289.** This Court has also come across a judgment passed by the Rajasthan High Court in **Iqbal Bano vs. Ramesh, 2018 Supreme (Rajasthan) 870, equivalent to 2019(1) WLN 65,** wherein it has been held that a single memorandum of appeal is maintainable for challenging the composite decree passed by the Court while disposing of the suit as well as counter-claim. Similarly, Bombay High Court in **Shiv Shankar Masu Dokare vs. Shobha Subhash Dokare and another, 2015 (2) Maharashtra Law Journal, 263** again held that once the memorandum of appeal contains common grounds of challenge for both decree in the suit and counter-claim, there is no need to file two appeals even though two separate decrees may have been drawn up.

3.14 This Court has also examined the following judgments passed by the Supreme Court.

3.15 In **Shri Gangai Vijay Nagar Temple vs. Meenakshi Aman and others, 2015 (3) SCC, 624,** multiple suits were filed which were disposed of by a common judgment. Separate decrees were drawn but only a single appeal was filed challenging the decree passed in one case. It was in that particular context the Hon'ble Supreme Court held that more than one appeals were required to be filed.

3.16 In **Ram Parkash vs. Charan Kaur, (1997) 9 SCC, 543,** two suits



for damages were filed which were dismissed by the trial Court. However, while filing the appeal decree in one suit was not challenged. Hence the matter involved a different point of determination.

3.17 In *Narayana Prabhu Venkateshwra Prabhu vs. Narayana Prabhu (1977) 2 SCC 181*, two suits were filed, one for partition and second was money suit. Two appeals were decided separately. Subsequently, an appeal was filed in the Hon'ble Supreme Court in relation to suit for partition but no appeal was filed in the money suit, which was also decided. The Hon'ble Supreme Court held that finality of the judgment is required to be maintained.

3.18 In *Lonan Kutti vs. Thoman and another, (1976) 3 SCC 528*, two suits were filed, whereas four cross appeals were filed which were decided on different dates. In that context the court examined the applicability of doctrine of *res-judicata*.

3.19 In *Bajrang Shiv Chandra Ruia vs. Shashi Kant Ruia, 2004(5) SCC 272*, an appeal filed by one of the defendants was pending, other defendant filed an appeal subsequently which was dismissed in default. The Court examined the effect of dismissal of the appeal and held that the doctrine of *res-judicata* will not be applicable to the facts of the case.

3.20 In *Badri Narayan Singh vs. Kam Deo Parsad, 1962 AIR SC 338*, separate appeals arising out of separate decrees were filed and the subject matter was wholly different. In that context, the Hon'ble Supreme Court examined the issue.

3.21 It shall be noticed here that in *Samay Singh's case* (Supra), the attention of the Bench was not drawn to Section 96 or Order XX Rule 19 CPC,



hence, the aforesaid judgment is *per incuriam*. Moreover, it relies upon the judgment passed in **Harbans Singh's case**(Supra). which is not applicable to the facts of this case. In the aforesaid judgment, reliance has been placed in **Bhajan Singh vs. Jasvir Kaur, 2016 (2) PLR 489**. In the aforesaid judgment also, the reliance is placed on **Harbans Singh's case** (Supra) judgment but the attention of the Bench was not drawn to Section 96 and Order XX Rule 19. Similar is the position in **Sukhdev Singh vs. Baldev Singh, 2014 (4) PLR 651**. In **Hans Raj and another vs. Bhagwan Dass, 2019 (4) PLR 229**, the Bench in turn relied upon **Sukhdev Singh's case**(Supra). The judgment passed in the case of **Kedar Singh vs. HPMC Ltd. 2017 (1) Shimla Law Cases 467**, has already been overruled by a Division Bench of Shimla High Court in **Ramesh Chand's case**(Supra).

3.22 After having examined the plethora of judgments which have come to the notice of this Court and also the statutory provisions, this Court proceeds to conclude. It is a well defined legal principle that the rules of procedure are the handmaids of justice. Hence, they shall not be narrowly construed. In **Sangram Singh vs. Election Tribunal, Kota and others, AIR 1955 SC, 425**, it was held that the procedural laws are designed to facilitate justice and interpreting them purely in a technical manner leaves no room for reasonable interpretation.

3.23 In **Narhari's case (supra)**, the Hon'ble Supreme Court while examining a single memorandum of appeal filed for challenging two decrees held that when there is only one suit involving a common dispute, the question of applicability of doctrine of *res-judicata* does not arise at all.

3.24 Though, a counter-claim by a legal fiction is treated as separate



suit, however, under Order VII Rule 6(a) of the CPC, the counter-claim is maintainable against the claim of the plaintiff which accrues to the defendant against the plaintiff. The counter claim has to be intricately interwoven with the claim of the plaintiff. Hence, though by legal fiction, it is a cross suit, however, in substance, it is a part of the same suit filed by the plaintiff. Order VII Rule 6(a) (2) of the CPC enables that the Court to pronounce a final judgment in the same suit both on the original claim and on the counter-claim. Hence, the judgment as well as decree envisaged are composite judgment and decree and not separate judgments and decrees. Hence, for the purpose of filing an appeal, the counter-claim is required to be treated as a part of the entire claim which has been decided by a composite judgment and decree.

3.25 As already noticed, Order XX Rule 19 CPC envisages only a single composite decree. As per Section 96 of the CPC, the appeal is maintainable against every decree passed by Court of original jurisdiction. The expression 'decree' has been defined in Section 2 (2) of the CPC. The aforesaid provision has no explicit mention of term 'judgment' that has been defined in Section 2(9) of the Code. In order to ease the process of Court and to avoid multiplicity of cases involving common grounds and questions, once a composite decree has been passed there will be no use of filing two appeals.

3.26 The attention of the Court has not been drawn to a single provision which prohibits the Courts from entertaining a single memorandum of appeal challenging a composite decree. While interpreting the provisions of 'CPC', the Court is expected to interpret the provisions in a reasonable manner, so that justice is not denied on technical grounds. Even if there is a procedural defect that falls within the purview of irregularity and is capable of being cured, it



should be allowed to be cured and should not be allowed to defeat substantive justice. Order XLI Rule 22 and Order XLI Rule 33 of the CPC enable the party to challenge the findings of the Court even without filing an appeal. The intention of the Code was to enable the First Appellate Court to pass any decree or make any order, which ought to have been passed or made. Order XLI Rule 33 CPC obviates the requirement of filing a separate memorandum of appeal. To uphold the principles of justice, the statute should be interpreted in a manner that allows for the correction of procedure defects, ensuring that these irregularities do not obstruct the achievement of substantive justice.

3.27 The First Appellate Court has also erred in observing that the judgment passed in a civil suit has become *res judicata* as no appeal has been filed. 'Doctrine of res judicata' is regulated by Section 11 of the CPC. The provision applies to cases where the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, in those cases the Courts are barred to try the subsequent suit as the issue has been already adjudicated in the former suit. Explanation 1 of Section 11 defines the expression 'former suit'. It provides that a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto shall be treated as a former suit. In the case involving the counterclaim, the aforesaid doctrine shall not be applicable because neither there is a former suit nor it has been decided by a separate judgment in a former suit. The essential requirement of the application of Section 11 are not fulfilled in the counter claim cases. The judgments discussed above shall not be applicable to the facts of the present case because the entire basis of the aforementioned judgments is Section 11, Res-judicata and the aforesaid provision is not



applicable to the counter-claim cases, as involved in the matter at hand.

4. Decision:-

4.1 Keeping in view the aforesaid facts and discussion, this Court is of the considered view that a single memorandum of appeal filed for challenging the correctness of the composite judgment and decree was maintainable and the First Appellate Court has erred in dismissing the same on technical grounds.

4.2 Consequently, the judgment passed by the First Appellate Court is set aside while remitting the matters back to the First Appellate Court to decide the case on merits.

4.3 The regular second appeals stand allowed.

4.4 The parties through their learned counsel are directed to appear before the First Appellate Court on 10.07.2024.

4.5 All the pending miscellaneous applications, if any, are also disposed of.

22.05.2024
neeraj

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No