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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

UJJAL BHUYAN; J., ATUL S. CHANDURKAR; J.

CIVIL APPEAL NOS.9923-9924 OF 2026; AUGUST 12, 2026

BASSANNA SINCE DECEASED BY LRS. AND OTHERS *versus* BHIMANNA AND OTHERS

Code of Civil Procedure, 1908 (CPC) — Section 96, Section 11, Section 151, Order XLI Rule 1 — Maintainability of Composite First Appeal against Common Judgment dismissing two consolidated suits filed by the same plaintiff — Procedural defect vs. Substantive right — Defect of Form - A single/composite appeal filed under Section 96 CPC challenging a common judgment of the trial court dismissing two consolidated suits instituted by the same plaintiff is maintainable, provided certified copies of both decrees are filed, requisite court fees payable for both appeals are paid, and a specific prayer challenging the dismissal of both suits is made - The absence of a separate memorandum of appeal for each suit is merely a defect of *form* and not of *substance*, which is curable in nature and not fatal - The right of appeal is a substantive right, and rules of procedure under the CPC, being the handmaid of justice, cannot be utilized as a sword to deprive a party of an adjudication on merits. [Paras 12-20]

Code of Civil Procedure, 1908 (CPC) — Section 11 — Res Judicata qua Common Judgment in Consolidated Suits - Where two suits filed by the same plaintiff are consolidated, tried together on common evidence, and disposed of by a single common judgment, a composite appeal challenging the common judgment and both decrees is not barred by the principle of *res judicata* - *Res judicata* applies qua a judgment and not a decree; where there is one trial, one finding, and one decision, two decrees drawn are in substance one. [Relied on *Charan Singh v. Ram Saroop*, Civil Appeal Nos. 1585–1586 of 2025; *Narhari and others v. Shankar and others*, 1950 INSC 24; *P.A. Oommen v. Moran Mar Baselius Marthoma*, 1992 INSC 175; Paras 14-18].

For Petitioner(s): Mr. Basava Prabhu S. Patil, Sr. Adv. Mr. Anirudh Sanganeria, AOR Mr. Arijeet Shukla, Adv. Mr. Shivanand Lahiri, Adv. Mr. Samarth Kashyap, Adv.

For Respondent(s): Mr. Sharanagouda Patil, Adv. Mrs. Supreeta Patil, Adv. Mr. Kotresh A M, Adv. Mr. Vinod Kumar Srivastava, Adv. M/S. S-legal Associates, AOR Mr. Siddhartha Sinha, AOR

J U D G M E N T

ATUL S. CHANDURKAR, J

1. The question that arises for consideration in these civil appeals is whether a composite appeal filed under Section 96 of the Code of Civil Procedure, 1908¹ raising a challenge to a common judgment of the trial Court rendered in two civil suits filed by the same plaintiff would be maintainable, especially when certified copies of the decrees passed in both the suits were filed along with the said appeal, a prayer for dispensing with filing of more than one certified copy of the common judgment was made and the court fees payable for challenging both the decrees was also paid?

2. The predecessor of the appellants² filed two suits, one for declaration that a registered sale deed executed by one defendant in favour of another was null and void. The other suit was for perpetual injunction seeking to restrain the defendants from

¹ For short, 'the Code'

² For short, 'the plaintiff'

interfering with the joint possession of the plaintiff. Both the suits were clubbed together and a common trial was held. The parties thereafter led evidence and by a common judgment dated 07.12.1990, both the suits were dismissed. The plaintiff filed a composite appeal under Section 96 of the Code raising a challenge to the common judgment rendered in both the suits. Along with the appeal, certified copies of the judgment as well as the decrees passed in both the suits were filed. Court fees payable on two separate appeals were also paid along with the memorandum of appeal. It was prayed that the common judgment of the trial Court dismissing both the suits be set aside and the appeal be allowed. The appellate Court by its judgment dated 17.08.2007 allowed the said appeal and decreed both the suits. Two second appeals filed by the defendants were allowed by the High Court of Karnataka³ on the ground that since two separate suits had been filed before the trial Court, it was necessary for the unsuccessful plaintiff to have filed two separate appeals under Section 96 of the Code. Since a composite appeal was filed, the High Court allowed the second appeals and set aside the judgment of the first appellate Court. Consequently, both the suits were dismissed.

3. Mr. Basava Prabhu S. Patil, learned Senior Advocate appearing for the appellants submits that the High Court gave more importance to the technical requirement of filing of two separate appeals without taking into consideration the fact that the composite appeal as filed was accompanied by certified copies of both the decrees along with requisite court fees required to be paid, assuming that two separate appeals would have been filed. According to him, the trial Court having consolidated both the suits as a result of which parties led common evidence and the suits having been decided by a common judgment, there was no reason, whatsoever, for the High Court to have non-suited the appellants on the technical ground that two separate appeals had not been filed. He further submitted that the impugned judgment of the High Court left the appellants remediless inasmuch as the judgment of the first appellate Court allowing the appeals preferred by the appellants was set aside without any further direction. There was no adjudication of the appellants' claim on merits as the second appeals were allowed on technical grounds. The learned Senior Advocate sought to distinguish the decisions in **Mallanna alias Appaiah Vs. Smt. Muninanjamma alias Nanjamma**⁴ and **Karnataka State Agro Corn Products Ltd. Vs. M/s Kerala Agro Seeds**⁵ that were referred to by the High Court while allowing the second appeals. It was, thus, submitted that the impugned judgment be set aside and the proceedings be remanded for being decided afresh by the High Court on merits.

4. Per contra, Mr. Sharanagouda Patil, learned counsel appearing for the respondents⁶ supported the impugned judgment of the High Court. According to him, notwithstanding the fact that the trial Court decided both the suits through a common judgment, the plaintiff ought to have filed two separate appeals under Section 96 of the Code. A singular appeal filed in such circumstances was rightly held to be not maintainable by the High Court. The law in this regard was rightly followed by the High Court in the impugned judgment. It, therefore, could not be said that any error was committed by the High Court when it held that a singular appeal in such circumstances was not tenable. He referred to the decisions in **M/s S.A.L. Steel Limited Vs. M/s Sreenidhi Trading Company and others**⁷ and **Sri Dinesh Poojary Vs. Sri Venkappa Gowda**⁸ wherein

³ For short, 'the High Court'

⁴ R.S.A. No.90 of 1996 decided on 12.02.2001

⁵ R.F.A. No.554 of 2012 decided on 02.12.2019

⁶ For short, 'defendants'

⁷ R.F.A. No.100242 of 2017 decided on 20.05.2024

⁸ R.S.A. No.2011 of 2016 decided on 03.03.2025

similar issues were considered. He further submitted that the view taken in *Mallana alias Appaiah (supra)* was the correct view. He, thus, submitted that there was no merit in the present appeals and the same were liable to be dismissed.

5. Having given due consideration to the rival submissions, the relevant provisions of the Code and material factual aspects obtaining from the record, we are of the considered view that the composite appeal preferred for challenging the common judgment of the trial Court deciding two suits filed by the same plaintiff was rightly entertained on merits. The judgment of the first appellate Court could not have been set aside on the ground that two separate appeals had not been filed. In any event, the lacuna, if any, of not filing a separate memorandum of appeal was curable in nature and could not be held to be fatal as the composite appeal was accompanied by both decrees passed by the trial Court.

6. At the outset, a brief reference to certain factual aspects that are available on record would be necessary. The plaintiff filed O.S. No.14 of 1986 against the defendants seeking a declaration that the registered sale deed dated 16.04.1977 executed by the second defendant in favour of the first defendant of land admeasuring eight acres eleven guntas from Survey No.132/1-A was null and void, thus, not binding on the plaintiff. Shortly thereafter, the plaintiff filed O.S. No.135 of 1987 against the first defendant praying that the said defendant be restrained from interfering with the plaintiff's possession of land admeasuring four acres five guntas from Survey No.132/1-Aa. Thus, while the first suit sought a declaration as regards nullity of the sale deed dated 16.04.1977 in respect of a larger area of land from Survey No.132/1-A, the second suit sought relief of permanent injunction against one of the defendants in respect of a smaller portion of land from Survey No.132/1-Aa. On behalf of the common defendant, an application under Section 151 of the Code was moved with a prayer to club the second suit with the first suit. The plaintiff's counsel did not object to the said prayer and, accordingly, the proceedings in the second suit were ordered to be clubbed with the first suit vide order dated 16.06.1988. As a result, common evidence was recorded in the first suit. The trial Court in its judgment dated 07.12.1990 noted that the parties in both the suits were common and the subject matter of the two suits was same. It further observed that both suits had been clubbed together and common evidence had been recorded. After considering the entire material on record, the trial Court was pleased to dismiss both the suits filed by the plaintiff. A copy of the common judgment was directed to be preserved in the second suit.

7. The plaintiff being aggrieved by the dismissal of both the suits preferred an appeal under provisions of Order XLI Rule 1 of the Code, being R.A. No.2 of 1991. In the cause title of the appeal, reference was made to the fact it was a composite appeal laying challenge to the common judgment of the trial Court. Paragraphs 2 and 3 of the memorandum of appeal read as under:

"2. This appeal is directed against the Judgment and Decrees passed in O.S.No. 14/86 and 135/87 of the Munisiff at Shahapur, dated. 7-12-1990 whereunder both the suits instituted by the present appellant for appropriate reliefs. to which he was lawfully entitled, which he claimed, came to be dismissed, for the reasons stated in the Judgment, which is passed in common, in both the above referred suits, which were clubbed by the Trial Court and tried together.

3. The certified copy of the Judgment and decrees in both the suits are filed herewith claiming dispensation a copy of Judgment from Hon'ble court. u/o 41 rule 1 CPC."

[emphasis supplied by us]

The plaintiff valued the appeal by calculating the court fees payable for challenging both the decrees. In paragraph 5 of the memorandum of appeal, it was stated as under:

“5. (a) The Valuation of the reliefs as made in the Trial court of the subject matter of dispute in O.S. No. 14 of 1986 was at Rs. 1000/- u/s 24 (d) and paid court fee of Rs.100/- on the relief of declaration that the sale deed No. 54 of 1977-78 dt. 16-4-77 executed by Deft. No.2 in favour of Deft. No.1 in respect of suit land Sy.No. 132/1A measuring (8) acres (11) guntas of village Channur (K) Tq. Shahapur is null and void and not binding on the pltf.

(b) In O. S.No.135/87, which was for the relief of Permanent injunction simplicitor in respect of the suit land Sy.No. 132/1 measuring (4) acres (5) guntas of Channur (K) Tq. Shahapur. This was valued at Rs.1000/- U/s 26(c) of the Court Fees Act, 1958 and a C.F. of Rs. 100/- was, paid thereon.

(c) Thus, the court fee paid in the Reliefs sought for in the Trial Court was Rs.200/- in all on the valuation of Rs.2,000/ and each suit relief was valued at Rs. 1000/ each and C.F. paid was Rs. 100/-each under appropriate provision of the Kar.C.P.S.V. Act, 5. There the same court fee of Rs. 200/- is being paid in the appeal also as per section (49) of the said Act, which is sufficient.”

Various grounds of challenge to the common judgment were raised by the plaintiff. The prayer made in the memorandum of appeal was as under:

“It is therefore humbly played that Hon'ble court be pleased to set aside the Judgments and decreed in O.S.Nos.14/86 and 135/87 dt. 7-11-1990, by decreeing the suits as prayed for with costs throughout, & thereby promote the ends of justice.”

8. The appellate Court decided the composite appeal by its judgment dated 17.08.2007. While doing so, it referred to the common evidence recorded in both the suits pursuant to they being clubbed. It, thereafter, concluded that the common judgment and decrees passed in both the suits was required to be set aside. Accordingly, the appeal was allowed and both the suits were decreed. The sale deed dated 16.04.1977 was declared to be not binding on the plaintiff and a decree for permanent injunction restraining interference with the plaintiff's possession in respect of a smaller portion of the suit property was also passed.

9. The defendants being aggrieved by the aforesaid judgment preferred two second appeals under Section 100 of the Code. One of the grounds raised by them was with regard to maintainability of a single appeal against the common judgment in the two suits. The learned Judge of the High Court after referring to the decisions in *Mallana alias Appaiah* and *Karnataka State Agro Corn Products Ltd. (supra)* held that a singular appeal under Section 96 of the Code by the plaintiff raising a challenge to the common judgment in two suits was not tenable and the first appellate Court ought not to have entertained a single appeal. On that reasoning, both the second appeals were allowed and the judgment of the first appellate Court was set aside. This adjudication is the subject matter of challenge in these civil appeals.

10. From the aforesaid factual matrix, the undisputed position that emerges is as follows:

- a) The plaintiff in both the suits was the same.
- b) While one defendant was common in both the suits, one suit had an additional defendant.
- c) At the request of the common defendant in both the suits, the proceedings in both the suits were clubbed together. As a result, common evidence was led in both the suits.
- d) Though the plaintiff preferred a composite appeal challenging the dismissal of both the suits through a common judgment, the court fees payable on separate appeals raising challenge to the common judgment of the trial Court were paid. A specific prayer seeking

setting aside of the common judgment in both the suits was also made. Certified copies of both the decrees were also filed along with the memorandum of appeal.

e) No objection, whatsoever, was raised by the defendants to the filing of a composite appeal under Section 96 of the Code before the first appellate Court and they contested the proceedings on merits.

f) Challenge to the filing of a composite appeal was raised by the defendants only in the second appeals preferred by them.

11. The clubbing of two or more suits is usually undertaken by the trial Court in case the parties to the proceedings are common, the subject matter of the suits is similar or for other analogous reasons. Clubbing of proceedings is usually for the convenience of parties contesting the same so as to avoid multiplicity of proceedings, delay in adjudication as well as expenses incurred therein. In **M/s Chitivalasa Jute Mills Vs. M/s Jaypee Rewa Cement**⁹, this Court noticed the practice of consolidation of two or more proceedings before the trial Court. It was observed that the Code does not specifically provide for consolidation of suits but the same could be done under the inherent powers of the Court flowing from Section 151 of the Code. Consolidation was usually done for meeting the ends of justice after noticing substantial or sufficient similarity of issues arising for decision in the suits. By virtue of consolidation of proceedings, the parties are relieved of adducing similar documentary and oral evidence in two suits but in different trials. As noted above, consolidation of the two suits filed by the plaintiff was at the request of the first defendant with the plaintiff consenting to the same. Thus, even the common defendant was of the view that both the suits needed to be tried together.

12. The trial Court having clubbed both the suits, considered the common evidence led by the parties and thereafter by its common judgment dismissed both the suits. It specifically directed that copy of the common judgment be preserved in the second suit. The specific averments made by the plaintiff in the memorandum of appeal filed under Section 96 of the Code have been referred to hereinabove. The proviso to Order XLI Rule 1(1) of the Code empowers the appellate Court to dispense with the filing of more than one copy of the judgment of the trial Court whenever two or more suits are tried together and a common judgment is delivered. The object behind the said provision, as noticed in **P.A. Oommen Vs. Moran Mar Baselius Marthoma**¹⁰, is to avoid extra expenses where more cases than one are disposed of by a common judgment by empowering the appellate Court to dispense with the necessity of filing more than one copy of the judgment. Such request for dispensing with filing of an additional copy of the judgment of the trial Court was also made by the plaintiff. Significantly, the requisite court fees payable for challenging the common judgment and decrees in both suits was also paid by the plaintiff. The prayer made in the memorandum of appeal was clear seeking setting aside of the common judgment in both the suits. The composite appeal was filed along with certified copies of the common judgment and decrees passed in both suits.

It can, thus, be seen that all necessary requisites for challenging the common judgment of the trial Court were satisfied by the unsuccessful plaintiff. The requirements of Order XLI Rule 1 (1) and (2) of the Code were fully complied with and the composite appeal as filed was complete in all respects. All statutory requirements were satisfied by the plaintiff while preferring an appeal under Section 96 of the Code.

⁹ T.P.(C) No.16 of 2002 decided on 04.02.2004

¹⁰ 1992 INSC 175

13. At this stage, we may notice some situations which require filing of separate appeals by aggrieved parties, notwithstanding the adjudication of the proceedings by a common judgment. In a case where two different plaintiffs file separate suits against a common set of defendants and the proceedings are clubbed together, on dismissal of the suits by virtue of a common judgment, both plaintiffs would be required to independently challenge the adverse outcome rendered in their respective suits. Where in a suit, the defendant files a counter-claim and the suit as well as the counterclaim are dismissed, both parties would be required to file separate appeals raising a challenge to the dismissal of the suit and counter-claim, respectively. There could be various other situations requiring an aggrieved party to specifically challenge a common judgment and decree passed in the matter. However, in the present case, the plaintiff in both the suits is one and the same. Both his suits were dismissed by the trial Court by a common judgment. He did challenge the common judgment, though in a single appeal but after paying requisite court fees payable on separate appeals. He specifically prayed for setting aside the judgment and decree passed in both the suits. All necessary ingredients contemplated in Section 96 read with Order XLI Rule 1 of the Code were satisfied. The deficiency, if any, was the absence of a separate memorandum of appeal for each appeal. In other words, what could be challenged by filing two separate appeals was done by filing a composite appeal. The deficiency was more of 'form' and not of 'substance'. This deficiency was curable and did not render the composite appeal not maintainable. In our view, the composite appeal preferred by the plaintiff was liable to be entertained on merits. If at all the High Court was of the view that a separate memorandum for each appeal was necessary for challenging the common judgment rendered in two suits filed by the same plaintiff, an opportunity to cure said deficiency ought to have been afforded to the plaintiff. The defect was not of such a nature so as to entail setting aside the judgment of the appellate Court without any adjudication on merits.

14. For considering the maintainability of a composite appeal at the behest of an aggrieved party, the test of *res judicata* would also be crucial. Various situations in which the bar of *res judicata* would apply are contemplated by Section 11 of the Code. It is material to note that *res judicata* would apply only qua a judgment and not a decree. We may with advantage refer to the judgment of the Nagpur High Court in **Manohar Vinayak and others Vs. Laxman Anandrao Deshmukh and others**¹¹ wherein it was held as under:

"29. In order that a decision should operate as *res judicata* it should be quite independent of the proceedings to which it is pleaded as a bar. The principle of *res judicata* cannot apply in the same proceeding in which the decision is given and by parity of reasoning it cannot apply to the consolidated proceedings. When by consent of parties or by an order of the Court the two suits are consolidated they have no independent existence and nothing decided in one of the two consolidated suits can operate as *res judicata* if that decision was appealed against. This is because there are no two independent decisions."

This position has been further explained in **Narhari and others Vs. Shankar and others**¹² as far back in 1950. This Court observed therein as under:

"...The plaintiffs in their appeal to the High Court have impleaded all the defendants as respondents and their prayer covers both the appeals and they have paid consolidated court fee for the whole suit. It is now well settled that where there has been one trial, one finding, and one decision, there need not be two appeals even though two decrees may have been drawn up.

¹¹ AIR 1947 Nagpur 248

¹² 1950 INSC 24

As has been observed by Tek Chand J. in his learned judgment in *Mst. Lachmi v. Mst. Bhuli*¹³ mentioned above, the determining factor is not the decree but the matter in controversy. As he puts it later in his judgment, the estoppel is not created by the decree but it can only be created by the judgment. The question of *res judicata* arises only when there are two suits. Even when there are two suits, it has been held that a decision given simultaneously cannot be a decision in the former suit. When there is only one suit, the question of *res judicata* does not arise at all and in the present case, both the decrees are in the same case and based on the same judgment, and the matter decided concerns the entire suit. As such, there is no question of the application of the principle of *res judicata*. The same judgment cannot remain effective just because it was appealed against with a different number or a copy of it was attached to a different appeal. The two decrees in substance are one...”

15. In the present case, as the plaintiff had challenged the common judgment and decrees passed in the two suits filed by him in a composite appeal, the bar of *res judicata* would not be attracted. A specific challenge having been mounted to the common judgment by raising numerous grounds in the memorandum of appeal, the appeal was liable to be entertained on merits notwithstanding the fact that it was a composite appeal filed along with requisite court fees, certified copies of the common judgment and both the decrees. Thus, even on this count, the plaintiff cannot be non-suited.

16. Another aspect to be noted is that the High Court after holding that the composite appeal preferred by the plaintiff was not tenable, proceeded to allow both the second appeals and consequently, set aside the common judgment and decrees passed in both the suits. Resultantly, the plaintiff has been left remediless without there being any adjudication of either of his suits on merits. The deficiency in the composite appeal preferred by the plaintiff under Section 96 of the Code was more in its ‘form’ than ‘substance’. Hence, an opportunity ought to have been granted to the plaintiff to cure the deficiency which merely required presentation of an additional memorandum of appeal. This requirement is purely procedural in nature and the plaintiff cannot be made to suffer for such deficiency, if it could be called so. It must be borne in mind that the right of appeal is a substantive right of a party who cannot be deprived of the same merely for procedural defects. The attempt of Courts should always be to adjudicate the case on merits rather than to put an end to the proceedings for failure to comply with procedural requirements. ‘Form’ should not be permitted to prevail over ‘substance’. The rules of procedure enumerated in the Code are treated as the handmaid of justice and are not to be utilised as a sword to curtail the proceedings. On the question of granting an opportunity to a party to cure a procedural deficiency, we may refer to the observations made in paragraph 7 of the decision in **Charan Singh Vs. Ram Saroop**¹⁴ wherein it has been observed as under:

“7. ...Once the first appellate court found, correctly, that challenge to the common judgment of the trial court dated 16th March, 2021 had been laid in a composite appeal but it is the requirement of law to file two appeals with separate memoranda of appeal, which had not been filed by the appellant, the court ought to have at least alerted the appellant by making him aware of the requirement of law and giving him the liberty to file a separate memorandum of appeal. In fact, in terms of Order XLI Rule 1 of the CPC, the appellate court has the power to even dispense with the requirement of law of filing copy of the impugned judgment twice over if it is part of the memorandum of appeal already filed. In any event, the defect was not such that it was incurable. The composite appeal was filed well within the period of limitation and, except for the fact that a separate memorandum of appeal was not filed, no other defect, far less serious defect, was shown to exist. If even after being alerted the appellant had failed to file a separate memorandum,

¹³ AIR 1927 Lah. 289

¹⁴ Civil Appeal Nos.1585-1586 of 2025 decided on 03.02.2025

the first appellate court would have been perfectly justified in dismissing the appeal. It is not shown to us that any such endeavour was made.”

17. Coming to the decisions as relied upon by the learned counsel for the parties, in *Mallanna alias Appaiah (supra)*, A had filed a suit for eviction of B from the suit property. B in turn had filed a suit for specific performance of an agreement with regard to the same property against A. The trial of these suits was held separately. The trial Court, however, passed a common judgment after which decrees were drawn separately. B preferred an appeal against the common judgment and decree passed in the suit filed by A. That appeal was allowed. In second appeal filed by A, it was urged that B not having challenged the judgment and decree passed in the suit filed by B, the judgment of the trial Court could not have been interfered with. In that context, it was held that both parties having filed separate suits against each other, the trial of the suits was separate. The judgment and decree in those suits were different. It was only for convenience that a common judgment was passed by the trial Court. Since B did not challenge the judgment of the trial Court passed in his suit, the first appellate Court could not have interfered in the single appeal preferred by B challenging the judgment and decree passed in the suit filed by A. The aforesaid facts indicate that the plaintiff in one suit was the defendant in the other suit filed by the defendant. For this reason, no support of this decision can be taken by the respondents inasmuch as in the present case, both the suits were filed by one and the same plaintiff.

18. In *M/s S.A.L. Steel Limited (supra)*, suit was filed by A for recovery of money against B while B filed a counter-claim against A. While the suit filed by A was decreed, the counter-claim filed by B was dismissed. The question as to maintainability of a single appeal against the decree passed in the suit as well as the counterclaim was raised. Reliance was placed on the decision of the Himachal High Court in **Ramesh Chand Vs. Om Raj and others**¹⁵. However, during the course of hearing, the prayer made in the counter-claim was not pressed by B. Hence, the question of maintainability was not decided by the High Court.

In *Sri Dinesh Poojary (supra)*, A had filed a suit for permanent injunction against B. In that suit, B filed a counter-claim. The suit filed by A was dismissed while the counter-claim filed by B was allowed. A filed an appeal challenging the dismissal of his suit but did not challenge the decree passed in the counter-claim. After referring to the decision in *Ramesh Chand (supra)*, it was held that a single appeal in such circumstances was not maintainable. Again, this decision does not assist the respondents in view of the facts therein. It cannot be disputed that if in a suit, a counterclaim is also filed, the plaintiff, if aggrieved, by the dismissal of the suit and grant of counter-claim would be required to challenge that adjudication in two separate appeals.

19. In *Ramesh Chand (supra)*, the Division Bench of the Himachal Pradesh High Court was considering a reference made to it in view of conflict of opinion between decisions of different Single Benches. The question was whether a common appeal questioning the correctness of the judgment and decree passed in a civil suit as well as in the counter-claim was legally maintainable. While answering the reference, the Division Bench in paragraph 42(i) held that when two suits were consolidated and tried together with common evidence being led by the parties resulting in a common judgment and decree, the same could be subjected to challenge by way of a single appeal at the instance of the aggrieved party. This conclusion, in our view, supports the case of the appellants and

¹⁵ R.S.A. No.57 of 2017 decided on 17.05.2022

reliance placed thereon is justified. It is not necessary for us to refer to the other principles laid down in the said decision as those issues do not arise in these appeals.

20. For all the aforesaid reasons, we are of the view that the judgment of the High Court cannot be sustained. The question as framed is answered by holding that the composite appeal filed by the plaintiff under Section 96 of the Code was maintainable in the circumstances in which it was presented. The first appellate Court rightly entertained it and adjudicated it on merits. The High Court committed an error in holding that the composite appeal filed by the plaintiff was not maintainable. Accordingly, the judgment of the High Court dated 02.09.2022 passed in RSA Nos.3214 of 2007 and 3215 of 2007 is set aside. Both the second appeals preferred by the respondents herein stand restored before the High Court for being adjudicated afresh on merits. We clarify that the respective contentions of the parties on merits have not been gone into in the present civil appeals and the second appeals be decided by the High Court on their own merits.

21. The Civil Appeals are allowed in aforesaid terms leaving the parties to bear their own costs. Pending interlocutory application is also disposed of.

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