IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PRANAY VERMA

SECOND APPEAL No. 2692 of 2022

BETWEEN:-

1. RAMESH

2. MOTISINGH

.....APPELLANTS

(BY SHRI V.K. KATKANI - ADVOCATE)

AND

1. DECEASED SAJJAN BAI

2. DECEASED SAJJAN BAI

3. DECEASED SAJJAN BAI

This appeal having been heard and reserved for orders, coming on for pronouncement this day, ***HON'BLE JUSTICE PRANAY VERMA*** *pronounced the following.*

ORDER

This appeal under Section 100 of the CPC has been preferred by legal representatives of deceased defendant No.2 Mahila Sajjanbai against the judgment and decree dated 26.08.2022 passed in RCA No.2400018/2015 by the IInd District Judge, District - Ratlam arising out of the judgment and decree dated 10.02.2011 passed in Civil Suit No.147-A/2008 by the IVth Civil Judge, Class-I, District Ratlam.

2. The plaintiffs/respondents No.1 to 4 instituted an action against the defendants for declaration of their title to the suit lands and for possession. The defendants including defendant No.2 contested the plaintiff's claim by filing their written statement. By judgment and decree dated 10.02.2011 the trial Court answered all the issues in favour of plaintiffs but upon recording a finding to the effect that the suit is barred by time, dismissed the same. The plaintiffs did not prefer any appeal against the judgment and decree passed by the trial Court. The legal representatives of deceased defendant No.2 however preferred an appeal under Section 96 of the CPC before the lower appellate Court to challenge the findings recorded by the trial Court against defendant No.2. By the impugned judgment and decree the appeal has been dismissed by the lower appellate Court on merits.

3. The appellants have challenged the aforesaid judgment and decree dismissing their appeal and affirming the findings recorded by the trial Court against them. However, it is observed that though findings had been recorded by the trial Court in favour of plaintiffs and against defendant No.2

on merits but the claim was ultimately dismissed by it. There was hence no decree against defendant No.2. She or her legal representatives had no right to prefer an appeal under Section 96 of the C.P.C. against the said decree as it is well settled that an appeal can be preferred only against a decree and not against any adverse finding recorded by the Court below. Since the ultimate decree was in favour of defendant No.2, no appeal could have been preferred by her legal representatives, the appellants. The appeal preferred by them before the lower appellate Court was hence itself not maintainable and ought to have been dismissed as such by it which has however illegally proceeded to dismiss the same on merits. The judgment passed by the lower appellate Court is hence wholly without jurisdiction.

4. In **Banarsi and others vs. Ram Phal 2003(9) SCC 606**, it has been held in paragraph 8 as under :

> **"8.** Sections 96 and 100 CPC make provision for an appeal being preferred from every original decree or from every decree passed in appeal respectively; none of the provisions enumerates the *person who can file an appeal*. However, it is settled by a long catena of decisions that to be entitled to file an appeal the person must be one *aggrieved* by the decree. Unless a person is prejudicially or adversely affected by the decree he is not entitled to file an appeal. (See *Phoolchand* v. *Gopal Lal* [AIR 1967 SC 1470 : (1967) 3 SCR 153] , *Jatan Kumar Golcha* v. *Golcha Properties (P) Ltd.* [(1970) 3 SCC 573] and *Ganga Bai* v. *Vijay Kumar* [(1974) 2 SCC 393] .) No appeal lies against a mere finding. It is significant to note that both Sections 96 and 100 CPC provide for an appeal against *decree* and not against *judgment."*

5. In **AIR 1951 P&H 444 Ali Ahmad vs. Amarnath** it was held that where a decree is absolutely in favour of party but some issues are found against him, he has no right of appeal against the findings because he is, firstly not adversely effected thereby secondly because such findings are not embodied in and do not form part of the decree. **In AIR 1961 Calcutta 39**

(FB) The Commissioner for the Port of Calcutta vs. Bhairadinram Durga Prosad, it was held that the decree of the lower appellate Court was entirely in favour of the appellants/tenant hence the appellants could not have any right of appeal against the finding when that finding does not effect the decree. **In AIR 1973 Patna 22 Jugal Kishore Singh and others vs. Sheonandan**, it was held that a party aggrieved by certain findings of the Court does not have a right of appeal against those findings when the ultimate decision is in favour of such party and the decree is not based on those findings but is made in spite of those findings. **In AIR 1974 Rajasthan 21 Tarasingh vs. Smt. Shakuntla**, it was held that a party in whose favour goes the ultimate result of the case is not bound by any finding adverse against him in the judgment and as such the party cannot go in appeal against that judgment. **In AIR 1977 Madras 25 Corporation of Madras vs P.R. Ramachandran and others**, it was held that a party not aggrieved by a decree is not competent to appeal against the decree on the ground that an issue is found against him.

6. Learned counsel for the appellants has submitted that since the trial Court has recorded specific findings against the appellants on various issues, it is necessary for the appellants to challenge those findings else the same would remain to be binding against them and shall operate as res-judicate at a subsequent stage. The aforesaid contention of learned counsel for the appellants is wholly misconceived.

7. In AIR **1922 Privy Council 241 Midnapur Zamindari Company Limited v. Naresh Narayan Roy**, it was held that the findings recorded against the defendants by the Court below will not form an actual plea of res-judicata, for the defendants, having succeeded on the other plea, had no occasion to go further as to the findings against them. **In 1961 JLJ 238**

Draboo vs. Bansilal, it was held that defendant succeeding on one point has no chance to appeal against an adverse finding on other point and the other point does not operate as res-judicata in a subsequent suit. In **State of M.P. and others vs. Gajrajsingh, 1971 MPLJ, 837 (DB**), it was held that parts of order of dismissal cannot be used against winning party since it could not go in appeal against them.

8. In **Tara Singh (supra)**, it was held that a party in whose favour goes the ultimate result of the case is not bound by any finding adverse to him in the judgment. **In AIR 1977 Orissa 59, Bhima Jally and others vs. Nata Jally and others**, it was held that where the original suit has been dismissed though there was a finding against the defendants, the defendants had no opportunity to appeal because the ultimate decree was in their favour and in such circumstances, the same could not operate as res-judicata.

9. Thus in all the aforesaid decisions, it has been emphatically held that a defendant succeeding on one point has no chance to appeal against adverse findings recorded against him on another points. Those adverse findings on other points hence do not operate as res-judicata against him in a subsequent suit.

10. The relevant part of Section 11 of the CPC for the purpose of the present case is as under:

> **"11. 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.**

11. The primary requirement of applicability of res-judicata is that the issue raised must have been heard and finally decided by the Court in the

former suit. Finally decided would mean that the issue or finding which is against a party is challenged by him before the higher Court and the challenge is decided against him. Since in case of dismissal of a suit of plaintiff on one point, the issue or finding recorded against the defendant cannot be challenged by him by preferring an appeal, it cannot be said that such issue and finding has been finally decided against him as for there to be final adjudication on the same, the defendant ought to have a right to challenge them before the higher Court. Since he has no such right and cannot challenge them, they cannot be held to be operative as res-judicate against him.

12. Thus, in view of the aforesaid discussion, the lower appellate Court has committed an illegality in entertaining the appeal preferred by the appellants despite the same not being maintainable and dismissing the same on merits. It ought to have dismissed the appeal as not maintainable. Since in either case the result of the appeal would be its dismissal, I do not find involvement of any substantial question of law in this appeal which is accordingly dismissed in *limine*.

(PRANAY VERMA)
JUDGE

jyoti