

(2025) 06 SHI CK 0725
In the High Court Of Himachal Pradesh
Case No : RSA No. 78 Of 2019

Ashwani Kumar & Others

APPELLANT

Vs

Raj Kumar & Others

RESPONDENT

Date of Decision : 25-06-2025

Acts Referred:

Constitution of India, 1950 — Article 226

Himachal Pradesh Tenancy and Land Reforms Act, 1972 — Section 118

Citation : (2025) 06 SHI CK 0725

Hon'ble Judges : Tarlok Singh Chauhan, J; Sushil Kukreja, J

Bench : Single Bench

Advocate : Sunil Mohan Goel, Raman Jamalta, Anup Rattan, Ramakant Sharma, Navlesh Verma, Sharmila Patial, Sushant Keprate, Raj Negi

Final Decision : Dismissed

Judgement

Vivek Singh Thakur, J

1. Present appeal has been preferred against judgment and decree dated 26.9.2018 passed by Additional District Judge-III, Kangra at Dharamshala in Civil Appeal No. 97-D/XIII/2014/13/11, titled as Pritam Chand deceased through his LRs Pushpa Devi and others Vs. Jaishi Ram deceased through his LRs Raj Kumar and others, whereby appeal preferred by appellants against judgment and decree dated 19.11.2011 passed by Civil Judge (Junior Division) Court No. 2 Kangra, H.P. in Civil Suit No. 44/2004, titled as Pritam & Another Vs. Jaishi Ram and others, was dismissed.

2. Perusal of record indicates that vide judgment dated 19.11.2011 passed by Civil Judge (Junior Division) Court No. 2 Kangra H.P., two Civil Suits i.e. Civil Suit No. 44 of 2004, titled as Pritam & another Vs. Jaishi Ram & others and Civil Suit No. 95/2006, titled as Chuni Lal and others. Vs. Vinod Kumar and others were decided by passing a common judgment and common decree, whereby Civil Suit No. 44 of 2004 was dismissed and Civil Suit No. 95 of 2006 was decreed.

3. Dismissal of Civil Suit No. 44 of 2004 was assailed by plaintiffs, as appellants, by filing Civil Appeal No. 97-D/XIII/2014/13/11. However, judgment and decree in Civil Suit No. 95 of 2006 was not assailed by any party, including appellants herein.

4. The aforesaid Civil Appeal No. 97-D/XIII/2014/13/11, titled Pritam Chand (deceased) through LRs Pushpa and others Vs. Jaishi Ram (deceased) through LRs Raj Kumar and others, was also dismissed on 26.9.2018 and now present appeal has been preferred against the judgment and decree dated 26.9.2018.

5. From the record, it is apparent that both Civil Suit Nos. 44 of 2004 and 95 of 2006 were clubbed together for the purpose of recording evidence and passing of judgment and accordingly decided by passing common judgment and decree dated 19.11.2011.

6. From the record, it is also apparent that findings returned by the Trial Court for dismissing Civil Suit No. 44 of 2004 and decreeing Civil Suit No. 95 of 2006, are inseparable which are based on common evidence lead by parties after clubbing of the suits. There is not even a whisper about findings rendered by the Trial Court in Civil Suit No. 95 of 2006 in the grounds of First Appeal preferred against Civil Suit No. 44 of 2004 and, therefore, Additional District Judge, Kangra was justified in dismissing the appeal preferred only against the judgment and decree passed in Civil Suit No. 44 of 2004 but without assailing the same in Civil Suit No. 95 of 2006.

7. Otherwise also this issue is no longer res integra and appeal preferred before District Judge as well as present appeal is barred by principle of res judicata, as has been held by Division Bench of this High Court in judgment dated 17th May, 2022 Ramesh Chand Vs. Om Raj and others reported in 2022 (2) Shim. LC 1145, with following conclusion:-

"42. The principles deducible from the afore-discussed law can be summarized as follows:-

(i) When two suits are consolidated and tried together with common issues framed and common evidence led by the parties, resulting in a common judgment and decree, the same can be subjected to challenge by way of a single appeal at the instance of the aggrieved party;

(ii) Where a single appeal is filed questioning the judgment and decree passed in two suits, which were consolidated and decided by a common judgment, decision of such single appeal, by a common judgment, reversing or modifying the claim in one suit out of the two, can be challenged by the aggrieved party also, in a single appeal.

(iii) When two suits though not consolidated but are decided by a common judgment, resulting into preparation of two separate decrees, the aggrieved party would be required to challenge both of them by filing separate appeals;

(iv) When both the suit and the counter claim are decreed by a common judgment, regardless of whether separate decree has been prepared in the counter claim, both would be required to be challenged by separate appeals;

(v) In a case where two separate appeals are required to be filed against judgment of the suit and the counter claim and if appeal is filed only against one and not against the other, non-filing of appeal against such judgment and decree would attach finality thereto and would attract not only the principle of res judicata but also waiver and estoppel and the judgment and decree not appealed against would be taken to have been acquiesced to by the party not filing appeal;

(vi) When however, two appeals are filed against a common judgment passed by the trial Court, both by the plaintiff and the defendant, and are disposed of by the first appellate Court by modifying/reversing/affirming judgment of the trial Court, the aggrieved party, would be required to challenge both by two separate appeals, in absence of which, non-filing of appeal against one shall attract bar of the principles of res-judicata against another.

(vii) Where more than one appeals are required to be filed or are filed and one or more of them are dismissed for default, delay or any other similar reason, any such situation would attract res judicata and such dismissal would satisfy the requirement of appeal being heard and finally decided on merits "in a former suit" for the purpose of attracting principles of res judicata."

7. In view of aforesaid settled position of law, appeal preferred before the First Appellate Court as well as present appeal, are barred by principles of res judicata.

Accordingly appeal is dismissed.