

(2025) 07 SHI CK 1036
In the High Court Of Himachal Pradesh
Case No : FAO No. 392 Of 2004

Krishnu alias Krishan Chand (deceased) through LRs	APPELLANT
Vs	
Hukam Chand (deceased) through LRs. & Others	RESPONDENT

Date of Decision : 09-07-2025

Acts Referred:

Indian Penal Code — Section 279, 304A, 337, 338
Probation Of Offenders Act, 1958 — Section 4

Citation : (2025) 07 SHI CK 1036

Hon'ble Judges : Virender Singh, J

Bench : Single Bench

Advocate : H.S. Rangra, Anup Rattan, Tejasvi Sharma, Rohit Sharma

Final Decision : Partly Allowed

Judgement

Vivek Singh Thakur, J

1. Appellants/plaintiffs have filed this appeal against order dated 4.10.2004 passed by Presiding Officer, Fast Track Court, Mandi District Mandi, H.P. in Civil Appeal No. 12/2002/2001, 85/2004, titled as Roop Dev and Another Vs. Kishanu and another, whereby judgment and decree dated 19.1.2001, passed by Sub Judge Court No. 2 Mandi, District Mandi, H.P. in Civil Suit No. 292/99/96, titled as Kishanu Vs. Roop Dev & others has been set-aside and matter has been remanded for trial afresh.

2. For convenience, hereinafter, parties shall be referred as per their status in the Trial Court.

3. Plaintiff Kishanu, predecessor-in- interest of present appellants, had filed a suit against defendants Roop Dev, Hikam Chand and Damodar for declaration and consequential relief, which was decreed in favour of plaintiff to the following effect:-

"23. In view of my findings and conclusion on issues discussed above, the suit f

the plaintiff is hereby decreed to the effect that the compromise deed Ext.C-1 in Civil Suit No. 137/1988, which is Ext.PA in the present suit is the result of fraud played by the defendants No. 1 and 2 upon the plaintiff and the subsequent judgment and decree dated 27.2.1989 on the basis of the said compromise, are also, therefore, wrong, null and void and also the mutation No. 122 attested in favour of the defendant No. 3 Damoder is wrong, null and void. No order as to costs. Decree sheet be prepared accordingly. File after, due completion, be considered to the record room."

4. The aforesaid judgment and decree was assailed by defendant No. 1 Roop Dev and defendant No. 2 Hukam Chand by filing Civil Appeal No. 12/2002/2001, 85/2004.

5. Defendant No. 3 Damodar had also assailed the judgment and decree passed by the Trial Court by filing separate Civil Appeal No. 37/01, 87/2004, titled as Damodar Vs. Kishanu and others.

6. First Appellate Court vide common order (judgment) dated 4.10.2004 had allowed the appeals in following terms:-

"20. In view of my findings on point No. 1 above, the appeals are accepted and the impugned judgment and decree of the Ld. Trial Court are set-aside. The case is remanded to the Ld. Trial Court for trial afresh in accordance with law with the direction to afford an opportunity to both the parties to adduce evidence in support of the issues framed vide Para No. 18 above."

7. The order dated 4.10.2004 has been assailed by appellants/plaintiffs by filing present appeal against order passed in Civil Appeal No. 12/2002/2001, 85/2004, i led Roop Dev and another Vs. Kishanu and another, for setting aside the order passed in First Appeal.

8. No appeal has been preferred either by the appellants/plaintiffs r any b dy else against common order passed in Civil Appeal No. 37/01, 87/2004, titled as Damodar Vs. Kishanu and others.

9. In aforesaid facts and circumstances, it has been contended on behalf of respondents that in view of judgment passed by Division Bench of this High Court in Ramesh Chand Vs. Om Raj and others, reported in 2022 (2) Shim. LC 1145, present appeal is liable to be dismissed, as no appeal has been preferred against the common order passed in connected Civil Appeal No. 37/01, 87/2004.

10. Learned counsel for the appellants/plaintiffs has submitted that plaintiffs are not aggrieved by order dated 4.10.2004 passed in Civil Appeal No. 37/01, 87/2004 preferred by Damodar, with submission that in case Civil Appeal No. 12/2002/2001, 85/2004 preferred by Roop Dev is directed to be heard on merits after setting aside remand order and is decided in favour of appellants/plaintiffs, then Damodar (now legal heirs of Damodar) shall loose their right in the suit.

11. In Ramesh Chand's case Division Bench of this Court has summarized the

principles in such a situation as under:

"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."

12. In present case, suit preferred by appellants/plaintiffs was decreed. There are two sets of defendants. First set i.e. defendants No. 1 and 2 preferred Civil Appeal No. 12/2002/2001, 85/2004 against judgment and decree passed by the Trial Court, and second set i.e. defendant No. 3 Damodar filed separate Civil

Appeal No. 37/01, 87/2004. These both appeals were decided by First Appellate Court by common order dated 4.10.2004. Appellants/plaintiffs, whose predecessor-in-interest Kishanu was respondent before the First Appellate Court in both appeals, preferred against common order dated 4.10.2004 passed in Civil Appeal No. 12/2002/2001, 85/2004.

13. Findings returned by the First Appellate Court in both appeals, referred supra, preferred by defendants are common and inseparable and both appeals have been disposed of by issuing one and the same direction, referred supra, to the Trial Court to decide Civil Suit afresh in terms of observations made in the order dated 4.10.2004.

14. The order dated 4.10.2004 is common in two appeals. Findings returned therein and directions passed to the Trial Court are common and inseparable. The order, passed in one appeal only, has been assailed, whereas common order passed in another appeal has not been assailed.

15. In case present appeal is allowed and order dated 4.10.2004 is set aside in Civil Appeal No. 12/2002/2001, 85/2004, then there will be a situation that same order, i.e. common order dated 4.10.2004 shall be set aside in one appeal and the First Appellate Court shall have to decide the said appeal afresh on merits, whereas the same common order shall remain in force in Civil Appeal No. 37/01, 87/2004 and as such judgment passed in favour of plaintiffs shall remain set aside and direction to the Trial Court to decide the suit afresh in terms of order dated 4.10.2004 shall also remain in force.

16. If present appeal is accepted, then Civil Appeal No. 12/2002/2001, 85/2004 shall revive before the First Appellate Court and shall have to be adjudicated against the judgment dated 19.1.2001, passed by the Trial Court. At the same time, for existence of order dated 4.10.2004 passed in other Civil Appeal No. 37/01, 87/2004, the Trial Court shall be bound to decide the Trial afresh and judgment and decree dated 19.1.2001 shall remain set aside. Such a converse and contrary situation cannot be allowed to arise.

17. Considering the ratio of law laid down in Ramesh Chand's case by Division Bench of this High Court, present appeal is not maintainable for not filing appeal against order passed in another appeal decided by the same common order and by passing the same direction to the Trial Court.

18. Learned counsel for the appellants/plaintiffs has referred judgment passed by the Supreme Court in Charan Singh Vs. Ram Saroop SLP (C) D. No. 59467/2024 and has submitted that appellants/plaintiffs should be permitted to file separate memorandum of appeal assailing impugned order in second Civil Appeal No. 37/01, 87/2004 also in order to do substantial justice.

19. The facts in Charan Singh's case are different and distinguishable and, therefore, this judgment is of no help to the appellants/plaintiffs in present matter.

20. In Charan Singh's case the common judgment of the Trial Court had been challenged in a composite appeal, i.e. by filing one and the same appeal but against judgment passed in both appeals. In present case there is no composite appeal preferred by the appellants/plaintiffs, but appeal has been preferred only against order passed in one appeal. For filing composite appeal, it was observed by the Apex Court in Charan Singh's case, that as the composite appeal was filed well within the period of limitation and, therefore, except for the fact that a separate memorandum of appeal was not filed, no other defect, far less serious defect, was shown to exist and, therefore, even if separate memorandum of appeal was allowed to be filed at the stage of arguments then the second appeal would have been within a period of limitation.

21. In present case, as no appeal has been preferred against the order passed in the year 2004. We are in 2025. Therefore, for expiry of limitation period to assail the order dated 4.10.2004 in another Civil Appeal No. 37/01, 87/2004, the second appeal shall be time barred.

22. Present case is squarely covered by the ratio contained in para 42 (iv) and (vi) of Ramesh Chand's case.

23. In aforesaid facts and circumstances, I am of the considered opinion that for not filing appeal against common order passed in another Civil Appeal No. 37/01, 87/2004, principle of res judicata is attracted and thus present appeal is not maintainable and accordingly dismissed alongwith pending applications, if any.

24. In present matter suit was filed by the plaintiff in the year 1996. About 30 years have passed, therefore, parties are directed to appear before the Trial Court on 4th August, 2025. It is made clear that as parties are duly represented here, no fresh notice shall be issued to the parties and failure on the part of any party in appearing before the Trial Court on the aforesaid date, shall invite adverse order without adjourning the matter on that date.

25. As some of original parties have expired during pendency of litigation including during pendency of appeal, therefore, it is also directed that legal heirs/legal representatives of deceased party brought on record in this appeal, shall be deemed to have been brought on record/deleted in Civil Suit also without any further requirement of filing of application for such purpose. However, plaintiffs shall file amended memo of parties with formal application by giving details of death of parties alongwith date of death and legal heirs of such party brought on record/deletion of any party. Amended memo of parties shall also be filed alongwith such application on very first date of appearance, i.e. 4th August, 2025.

26. As directed by the First Appellate Court, opportunity to both parties will be given to adduce evidence in support of issues framed by the First Appellate Court, however, it is made clear that plaintiffs shall adduce their evidence on or before 4th September, 2025 by availing one or more opportunities, but none of the opportunity shall be given beyond 4th September, 2025. Similarly, defendants shall lead their evidence on or before 15th October, 2025 by availing

one or more opportunities during this time, but after 15th October, 2025 no opportunity shall be granted to lead evidence by defendants. Evidence in rebuttal, if any, considered to be necessary by the Court/party in accordance with law, then such evidence in rebuttal shall also be lead on or before 15th November, 2025. Thereafter Trial Court shall hear the arguments and decide the suit as expeditiously as possible, preferably within three months thereafter.

The appeal is disposed of in aforesaid terms.