IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 92 of 2019
Date of Decision: 28.07.2026

Tule Ram ...Appellant.

Versus

Chet Ram ...Respondent.

2026:HHC:31643

Coram
Hon'ble Mr. Justice Romesh Verma, Judge.

Whether approved for reporting?[1]

For the appellant: Mr. Vaibhav Tanwar, Advocate.

For the respondent: Mr. G.R.Palsra, Advocate.

Romesh Verma, Judge (oral)

The present regular second appeal arises out of the judgment and decree dated 16.11.2018, as passed by learned Additional District Judge, Kullu, District Kullu, H.P., whereby the appeal filed by the plaintiff/respondent was allowed and judgment and decree as passed by learned Senior Civil Judge, Kullu, District Kullu, H.P. dated 23.06.2018 was reversed and set-aside, whereby suit instituted by the plaintiff for recovery of Rs. 62, 255/- was dismissed.

2. The facts as emerge in the present case are that the plaintiff-respondent filed a suit against the appellant/defendant for recovery of ₹62,255/-, i.e. ₹49,020/- as sale proceeds of 129

[1] Whether reporters of Local Papers may be allowed to see the judgment?

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boxes of apples and ₹13,235/- as interest @ of 9% per annum from 20th April 2011 to 20th April 2014, along with future interest @ of 9% per annum from 21st April 2014 till realization of the entire amount.

3. As per the case set up by the plaintiff, he is an orchardist and is having apple and pear orchard at Village Rambi, Phati Kalwari, Kothi Palach, Tehsil Banjar, District Kullu, H.P., and he used to sell his fruits at his native place after packing the same in the boxes.

4. As per plaintiff, the defendant is also an orchardist who used to purchase the apple and pear boxes of the other fruit growers in the area and used to sell the same in the market at Delhi. On 8th September 2005, the defendant approached the plaintiff and requested him to sell his apple boxes to him by carrying the same to roadside and assured that he would pay the sale price of the same which would be received at Delhi.

5. Plaintiff sold 129 boxes of Royal Apple weighing 20 kg each to the defendant after having carried the same to the road side. The defendant purchased the same on credit basis with the assurance that after sale of the same at Delhi, he will make the payment of the same as per its price index at Delhi. The

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defendant sold the apple boxes at Delhi at the rate of ₹ 380/- per box, as is evident from the agreement dated 20th April 2011.

6. That when defendant came back from Delhi, he told plaintiff that he had sold the fruit consignment @ ₹380 per box. However, he did not make the payment and sought time to make the said payment. On 20th April 2011, the plaintiff went to the defendant and asked him to make the payment of 129 boxes of Royal Apple @ of ₹380 per box, which comes to ₹49,020/- in total, then he assured and undertook that he will return 129 boxes of the apple to the plaintiff till 15th August 2011, failing which the defendant agreed to pay the sale price of the said apple boxes along with cost and interest. This acknowledgment was executed by the defendant in favour of the plaintiff vide agreement dated 20th April 2011 in the presence of the witnesses and the scribe. As per plaintiff, though defendant was asked time and again to make the payment of the suit amount, but he failed to do so. Under such circumstances, the plaintiff filed the suit for the grant of decree of ₹62,255/- as sale proceeds of 129 boxes of apple and ₹13,235/- as interest at the rate of 9% per annum from 20th April 2011 to 20th April 2014,

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along with future interest @ of 9% per annum from 21st April 2014 till realization of the entire decretal amount.

7. The suit came to be resisted by the defendant-appellant by raising preliminary objections with respect to cause of action, maintainability and limitation, etc.

8. On merits, all the averments as made in the plaint were specifically refuted and denied. It was averred by the defendant that neither he purchased the fruits from other fruit growers nor from the plaintiff. As per the defendant, he used to sell his own fruit crop only in market. It was specifically denied by the defendant that any agreement was executed *inter se* the parties. He stated that the agreement, if any, placed by plaintiff on record is the result of fraud and the same is not binding on the rights of the defendant.

9. The plaintiff filed the replication to written statement and reiterated all the averments as made in the plaint.

10. The learned trial Court had framed issues on 16th May 2015 and 18th June 2018 in the following manner:

> 1. Whether the defendant has executed an agreement dated 20.04.2011 in favour of the plaintiff, as alleged ? OPP.

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2. Whether the plaintiff is entitled for recovery of ₹ 62,255/- alongwith future interest from the defendant, as prayed for ? OPP.

2-A. Whether the suit of the plaintiff is within time ? OPP.

3. Whether the plaintiff has no enforceable cause of action to file the present suit against the defendant, as alleged ? OPD.

4. Whether the suit of the plaintiff is not maintainable, as alleged ? OPD.

5. Relief.

11. Learned trial Court directed the respective parties to adduce evidence in support of their contentions. Learned Senior Civil Judge, Kullu, District Kullu, H.P. vide its judgment and decree dated 23rd June 2018, dismissed the suit as filed by the plaintiff. The learned Trial Court decided the issues against the plaintiff and came to the conclusion that the suit of the plaintiff has been filed beyond the period of limitation.

12. Feeling dissatisfied, the plaintiff filed an appeal under Section 96 of the CPC in the Court of learned Additional District Judge, Kullu on 13th July 2018. Learned First Appellate Court, vide its impugned judgment dated 16th November 2018, accepted the appeal as filed by the plaintiff, and the suit was ordered to be decreed by passing a decree for recovery of ₹62,255/- in favour of the plaintiff and against the defendant,

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along with interest @ of 9% per annum from 21st April 2014 till payment.

13. Feeling dissatisfied, the defendant has approached this court by invoking the provisions of Section 100 of the CPC.

14. It is contended by Mr. Vaibhav Tanwar, learned counsel for the appellant that the impugned judgment as passed by the learned First Appellate Court is erroneous and liable to be quashed and set aside. He submits that the learned First Appellate Court has wrongly decreed the suit as filed by the plaintiff which on the face of record, is time-barred. He further submits that the learned First Appellate Court has misconstrued and mis-appreciated the oral as well as documentary evidence placed on record, as a result of which great prejudice has been caused to the defendant. He also submits that after accepting the present appeal, the suit filed by the plaintiff deserves to be dismissed.

15. On the other hand, Mr. G.R.Palsra, Advocate, for the respondent has defended the impugned judgment as passed by the learned First Appellate Court. He submits that this Court will not disturb the well-reasoned judgment as passed by the

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learned First Appellate Court, and the present appeal deserves to be dismissed.

16. This Court on 10th September 2019 had admitted the appeal on the following substantial questions of law.

> (1) Whether the learned First Appellate Court was legally justified in holding that the suit of the respondent was within the period of limitation by ignoring the provisions contained in Section 18 of the Limitation Act, and thus the findings are perverse?
>
> (2) Whether the findings recorded by learned First Appellate Court are perverse and illegal by misinterpreting the pleadings as well as the evidence on record?

17. I have heard the learned counsel for the parties and perused the record.

18. In the present case, the plaintiff-respondent had filed a suit for recovery of ₹62,255/- against the defendant on the ground that the plaintiff is an orchardist and defendant approached him and requested him on 8th September 2005 to sell his apple boxes to him by carrying the same to roadside and he assured the plaintiff that he would pay the sale price of the same which would be received at Delhi.

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19. The plaintiff sold 129 boxes of the Royal Apple weighing 20 kg each to the defendant and thereafter, defendant sold the said apple boxes at Delhi @ of ₹380 per box. Though the apple boxes were sold by the defendant, but he failed to make the payment to the plaintiff. That when the payment was sought by the plaintiff, the defendant on one pretext or the other failed to do so. Thereafter, defendant undertook and assured that he would return 129 boxes of apple to the plaintiff till 15th August 2011, failing which the defendant agreed to pay the sale price of the aforesaid apple boxes along with the cost and interest. The said acknowledgment was executed by the defendant in favour of the plaintiff vide agreement dated 20th April 2011 in the presence of the witnesses and the scribe.

20. The defendant has vehemently denied all the averments in the written statement. As per the defendant, neither any agreement was entered between the parties, nor he ever purchased the fruits from the plaintiff. In the written statement, it has been averred that all the allegations/averments are false and incorrect.

21. Before entering into the merits of the case, it is contended by Mr. Vaibhav Tanwar, learned counsel for the

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appellant that the learned First Appellate Court has failed to adhere to the provisions of Order 41 Rule 31 CPC, whereby while accepting the appeal and reversing the findings of the learned trial Court, the learned First Appellate Court has failed to give its finding on the issue of limitation. He has drawn the attention of this Court to the entire judgment, whereby the learned First Appellate Court has failed to discuss, adjudicate or determine the point of limitation as has been done by the learned Trial Court. The learned Trial Court, while answering issue No. 2-A, has specifically come to the conclusion that the suit filed by the plaintiff is time-barred. As rightly pointed out by Mr. Vaibhav Tanwar, learned counsel for the appellant that from the perusal of the entire judgment which has been passed by the learned Additional District Judge, Kullu, there is no iota of discussion on the point of limitation. In the entire judgment, the learned First Appellate Court has not adverted to the point of limitation and after discussing the material placed on record, the learned First Appellate Court has accepted the appeal and decreed the suit as filed by the plaintiff.

22. The provisions of Order 41 Rule 31 CPC reads as follows:

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> *"31. Contents, date and signature of judgment.—The judgment of the Appellate Court shall be in writing and shall state—*
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> *(a) the points for determination;*
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> *(b) the decision thereon;*
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> *(c) the reasons for the decision; and*
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> *(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled, and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein."*

23. It is well-settled principle of law that right to file First Appeal against the decree under Section 96 of the CPC is a valuable legal right of the litigant. The jurisdiction of the learned First Appellate Court while hearing the First Appeal is very wide, like that of Trial Court, and it is open to the appellant to attack all findings of fact and law in First Appeal.

24. It is the duty of the First Appellate Court to appreciate the entire evidence and arrive at its own independent conclusion for reasons assigned either of affirmance or reversal. Ordinarily, an Appellate Court is the final Court of fact and therefore, a litigant is entitled to a full and fair and independent consideration of the evidence at the appellate stage. Anything less than this is unjust to him. The Appellate Court has the jurisdiction to reverse or affirm the findings of the Trial Court. The judgment of the Appellate Court must, therefore, reflect its

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conscious application of mind and record findings supported by reasons on all the issues arising along with the contentions put forth and pressed by the parties for decision of the Appellate Court while reversing a finding of fact, the Appellate Court must come into close quarters with the reasoning assigned by the Trial Court and then assign its own reasons for arriving at a different finding.

25. The Hon'ble Apex Court in its judgment in ***C. Venkata Swamy versus H.N. Shivanna (dead) by legal representatives and another (2018) 1 SCC 604***, while discussing the scope of First Appellate Court under Order 41 Rule 31 of CPC, has held as follows:

> "10. The need to remand the case to the High Court has occasioned for the reason that the Single Judge dismissed the appeals very cursorily and without undertaking any appreciation of evidence, dealing with various issues arising in the case and discussing the arguments raised by the parties in support of their case. In other words, the disposal of the two first appeals could not be said to be in conformity with the requirements of Section 96 read with Order 41 Rule 31 of the Code.
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> 11. It is a settled principle of law that a right to file first appeal against the decree under Section 96 of the Code is a valuable legal right of the litigant. The jurisdiction of the first Appellate Court while hearing the first appeal is very wide like that of the Trial Court and it is open to the appellant to attack all findings of fact or/and of law in first appeal. It is the duty of the first Appellate Court to appreciate the entire evidence and arrive at its own independent conclusion, for reasons assigned, either of affirmance or difference.

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12. Similarly, the powers of the first Appellate Court while deciding the first appeal are indeed well defined by various judicial pronouncements of this Court and are, therefore, no more res integra. It is apposite to take note of the law on this issue.

13. As far back in 1969, the learned Judge V.R. Krishna Iyer, J (as His Lordship then was the judge of Kerala High Court) while deciding the first appeal under Section 96 ofthe Code in Kurian Chacko vs. Varkey Ouseph, 1969 AIR(Ker) 316, reminded the first Appellate Court of its duty to decide the first appeal. In his distinctive style of writing with subtle power of expression, the learned judge held as under: (SCC OnLine Ker paras 1-3).

> "1. The plaintiff, unsuccessful in two Courts, has come up here aggrieved by the dismissal of his suit which was one for declaration of title and recovery of possession. The defendant disputed the plaintiff's title to the property as also his possession and claimed both in himself. The learned Munsif, who tried the suit, recorded findings against the plaintiff both on title and possession. But, in appeal, the learned Subordinate Judge disposed of the whole matter glibly and briefly, in a few sentences.
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> 2. An appellate court is the final Court of fact ordinarily and therefore a litigant is entitled to a full and fair and independent consideration of the evidence at the appellate stage. Anything less than this is unjust to him and I have no doubt that in the present case the learned Subordinate Judge has fallen far short of what is expected of him as an appellate Court.
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> 3. Although there is furious contest between the counsel for the appellant and for the respondent, they appear to agree with me in this observation..…".
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> (emphasis supplied)

14. This Court also in various cases reiterated the aforesaid principle and laid down the powers of the Appellate Court under Section 96 of the Code while deciding the first appeal. We consider it apposite to refer to some of the decisions.

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15. In Santosh Hazari vs. Purushottam Tiwari (Deceased) by L.Rs., (2001) 3 SCC 179,this Court held as under (SCC pp. Pages 188-189 para 15:

> "15....the appellate court has jurisdiction to reverse or affirm the findings of the trial court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court while reversing a finding of fact the appellate court must come into close quarters with the reasoning assigned by the trial court and then assign its own reasons for arriving at a different finding. This would satisfy the court hearing a further appeal that the first appellate court had discharged the duty expected of it …."

16. The above view was followed by a three-Judge Bench decision of this Court in Madhukar & Ors. v. Sangram & Ors., (2001) 4 SCC 756, wherein it was reiterated that sitting as a Court of first appeal, it is the duty of the High Court to deal with all the issues and the evidence led by the parties before recording its findings.

17. In H.K.N. Swami v. Irshad Basith, (2005) 10 SCC 243, this Court stated as under: (SCC p.244, para 3)

> "3. The first appeal has to be decided on facts as well as on law. In the first appeal parties have the right to be heard both on questions of law as also on facts and the first appellate court is required to address itself to all issues and decide the case by giving reasons. Unfortunately, the High Court, in the present case has not recorded any finding either on facts or on law. Sitting as the first appellate court it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording the finding regarding title."

18. Again in Jagannath v. Arulappa & Anr., (2005) 12 SCC 303, while considering the scope of Section 96 of the Code, this Court observed as follows (SCC p. 303, para 2):

> "2. A court of first appeal can reappreciate the entire evidence and come to a different conclusion …"

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19. Again in B.V Nagesh & Anr. vs. H.V. Sreenivasa Murthy, (2010) 13 SCC 530, this Court taking note of all the earlier judgments of this Court reiterated the aforementioned principle with these words: (SCC pp.530-31, paras 3-5)

> "3. How the regular first appeal is to be disposed of by the appellate court/High Court has been considered by this Court in various decisions. Order 41 CPC deals with appeals from original decrees. Among the various rules, Rule 31 mandates that the judgment of the appellate court shall state:
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> a) the points for determination;
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> (b) the decision thereon;
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> (c) the reasons for the decision; and
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> (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.
>
> 4. The appellate court has jurisdiction to reverse or affirm the findings of the trial court. The first appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court. Sitting as a court of first appeal, it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording its findings. The first appeal is a valuable right and the parties have a right to be heard both on questions of law and on facts and the judgment in the first appeal must address itself to all the issues of law and fact and decide it by giving reasons in support of the findings. (Vide Santosh Hazari v. Purushottam Tiwari, (2001) 3 SCC 179 at p. 188, para 15 and Madhukar v. Sangram, (2001) 4 SCC 756 at p. 758, para 5.)
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> 5. In view of the above salutary principles, on going through the impugned judgment, we feel that the High Court has failed to discharge the obligation placed on it as a first appellate court. In our view, the judgment under appeal is cryptic and none of the relevant aspects have even been noticed. The appeal has been decided in an unsatisfactory manner. Our careful perusal of the judgment in the regular first appeal shows that it falls short of

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> considerations which are expected from the court of first appeal. Accordingly, without going into the merits of the claim of both parties, we set aside the impugned judgment and decree of the High Court and remand the regular first appeal to the High Court for its fresh disposal in accordance with law."

26. In view of the exposition of law as laid down by the Hon'ble Apex Court, this Court is in agreement with the contention as raised by the learned counsel for the appellant that the learned First Appellate Court has not adhered to the provisions of Order 41 Rule 31 CPC, as a result of which, the findings as returned by the learned First Appellate Court are not sustainable, and this Court has no other option but to quash and set aside the judgment and decree as passed by the learned First Appellate Court. The substantial questions of law are answered accordingly.

27. Consequently, the present appeal is accepted and the judgment and decree as passed by the learned First Appellate Court is quashed and set aside by remitting the case back to the Court of learned Additional District Judge, Kullu, H.P., with a direction to decide the appeal afresh on all the points which have been urged, argued, or contended by the parties.

28. Learned counsel for the parties undertake to appear before the learned First Appellate Court on **12.08.2026.**

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29. It is made clear that the learned First Appellate Court shall not issue fresh notices to the parties. As agreed upon by the learned counsel for the parties, they shall remain present before the said Court, on the next date of hearing.

30. In view of the observations made here-in-above, the present appeal stands disposed of.

All the pending miscellaneous application(s), if any, shall also stand disposed of.

(Romesh Verma)
Judge

July 28, 2026
(Nisha)

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