

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

RSA No. 395 of 2006

Decided on: 25.04.2026

Jamuna Devi and others.

.....Appellants

Versus

State of HP and others

....Respondents

Coram:

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

Whether approved for reporting?¹

For the Appellants: Ms. Devyani Sharma, Sr. Advocate with
Ms. Srishti Negi, Advocate.

For the Respondents: Mr. Diwakar Sharma, Addl. Advocate
General for respondent No.1.

Mr. Divya Raj Singh, Advocate, for
respondent No.2.

None for respondents No.3 to 7.

Romesh Verma, Judge(Oral)

The present appeal arises out of the judgment and decree dated 15.6.2006, whereby the appeal filed by the plaintiffs was dismissed and the appeal filed by the State was accepted and the findings of the learned Trial Court were modified to the extent that entries of Kabizan in the name of the

¹Whether reporters of the local papers may be allowed to see the judgment? Yes.

appellants were ordered to be deleted. It was further held that the appellants have no right, title or interest in the suit land as the same stood legally vested in the name of State of Himachal Pradesh.

2. Brief facts of the case are that Kishan Dass and others have filed a suit against Jamuna Devi and others including the Collector (Deputy Commissioner) Una, District Una, H.P. for declaration. It was averred in the plaint that the plaintiffs are in possession of land measuring 0-23-44 hectares being inhabitant of village Amb from the time of their forefathers, as they are grazing their cattle over the land bearing Khata No. 323min Khatauni No. 598 Khasra Nos. 574min, 574min, 574min(old) and new Khasra Nos. 80, 81, 83, 314 situated in Muhal Adarash Nagar, Amb, Tehsil Amb, District Una, HP and entry in the name of defendants No.1 to 10 as Kabizan is wrong, incorrect and void as against the rights of plaintiffs and same is liable to be corrected in favour of plaintiffs with consequential relief of injunction for restraining the defendants from interfering in the suit land and cutting and removing the mango trees. It was further averred that the suit land was in possession of the forefathers of plaintiff and defendants No.1 to 10, who used to graze their cattle in the suit land and the suit land vested in the Gram Panchayat and

became Panchayat Deh but possession remained with the ancestors of defendants No.1 to 10 and plaintiffs. The suit land was vested in the State of HP. Defendants No. 1 to 10 are threatening to interfere with the possession of the plaintiffs and when inquiry was made, plaintiffs came to know that the name of plaintiffs have been deleted wrongly and name of defendants have been recorded without any notice. Consequently, a decree of permanent prohibitory injunction was sought against defendants No.1 to 10 not to interfere in any manner, whatsoever, and not to remove the possession of the plaintiff over the suit land.

3. The defendants No.1 to 10 filed the written statement by raising various preliminary objections regarding maintainability, jurisdiction, limitation, estoppel, non-joinder of necessary parties and locus standi. On merits, it was averred in the written statement that the consolidation had taken place in the year 1965-66 and names of ancestors of defendants No.1 to 10 were rightly recorded, as they were in actual possession of the suit land. The plaintiffs never remained in possession after consolidation in the village for the last more than 35 years and have not taken any steps for filing any appeal, revision or objections after the consolidation before the Consolidation Authority. Now at this stage, the same cannot be challenged

before the Civil Court as the jurisdiction of the Civil Court is barred. Further it was averred that the suit is barred by limitation and defendants No.1 to 10 prayed for dismissal of the suit.

4. Defendant No.11, Collector, Una filed written statement by raising preliminary objections of estoppel, limitation, locus standi, suit having not been properly valued for the purpose of Court fee and jurisdiction. On merits, defendant no.11 admitted that the suit land was Shamlat Deh and forefathers of the plaintiffs and defendants No.1 to 10 were recorded as tenants without payment of rent. The suit land is vested in the Gram Panchayat, but the names of the forefathers of the plaintiffs and defendants remained in Khana Kashat. The suit land was legally vested in the State of HP and the State of HP is owner in possession of the suit land. According to Misal Hakiat Consolidation Khasra No. 626/1 out of the suit land measuring 0-14 kanals came under the road of the State Government and has been rightly entered in the ownership of the State Government and possessed by the then District Board. The entire property of District Board has now been transferred in the HP PWD. The names of the plaintiffs did not appear in the Misal Hakiat Consolidation for the year 1965-66 and the names of the only defendants No.1 to 10 figured as

non-occupancy tenants without payment of rent and the same entry has been repeated vide Jamabandi for the year 1965-66 and in the jamabandi for the year 1980-81. However, during the settlement operation in the year 1993-94, the names of defendants No.1 to 10 were entered as Kabizan, which entry is also against the spot situation. The suit land is Banzar Kadim and is owned by the State Government and the plaintiffs and defendants No.1 to 10 have no right, title or interest in the suit land. The suit land was vested in the State of HP free from all encumbrances under the provisions of the Himachal Pradesh Village Common Lands Vesting and Utilization Act, 1974. Therefore, defendant No.11 has prayed for dismissal of the suit.

5. The learned Trial Court framed the following issues on 12.12.2002:

1. Whether the plaintiffs are possessing the suit land as alleged?OPP
2. Whether revenue entries in the name of defendant No.1 to 10 in the column of possession are wrong and illegal?OPP
3. Whether defendants are interfering in the suit land in an illegal manner?OPP
4. Whether suit is not maintainable in present form, as alleged?OPD
5. Whether this Court has no jurisdiction to decide the suit?OPD
6. Whether suit is barred by limitation?OPD
7. Whether plaintiffs are estopped by their act or conduct to file suit?OPD
8. Whether suit is bad for non-joinder of necessary parties?OPD
9. Whether plaintiffs have no locus standi to file the suit?OPD
10. Relief.

6. After appreciating the oral as well as documentary evidence placed on record, the learned Trial Court vide its judgment and decree dismissed the suit of the plaintiffs.

7. Feeling dissatisfied, plaintiff Kishan Dass and others preferred Appeal No. 65 of 2004 on 18.12.2004. Independent appeal was also filed by the State bearing Appeal No. 26 of 2005 on 26.2.2005.

8. The learned First Appellate Court vide its judgment and decree while passing a common judgment dismissed the appeal preferred by the plaintiffs/present respondents No. 2 to 9 and accepted the appeal as filed by the State.

9. Learned First Appellate Court after dismissing the appeal filed by the plaintiffs, decreed the appeal filed by the State to the effect that the entries of Kabijan in the name of defendants No. 1 to 10 are wrong and be deleted being against the spot position and defendants No.1 to 10 have no right, title or interest in the suit land, as the same stood legally vested in the State of HP.

10. That feeling aggrieved against the judgment and decree as passed by the learned First Appellate Court, defendants No.1 to 10 has filed the present RSA.

11. The appeal was admitted by this Court on 8.5.2007 on following substantial questions of law:-

“1. Whether the impugned judgment and decree is the result of complete misreading, misconstruction and mis-appreciation of Exhibits D1 to D5.

2. Whether the learned lower appellate court is right in not considering the provisions of Section 96 of the Code of Civil Procedure perusal of which would go to show that the appeal filed by the respondent No.1 ought not to have been entertained by the learned lower appellate court.

3. Whether the impugned judgment and decree is the result of non-consideration of the provisions of Section 10 of the HP Village Common Lands Vesting and Utilization Act, 1973.

4. Whether the learned Lower appellate Court is right in not considering the provisions of Section 57 of the HP Consolidation of Holdings and Prevention of Fragmentation Act.”

12. Ms. Devyani Sharma, learned senior counsel has raised preliminary objection with regard to maintainability of the appeal before the learned First Appellate Court. It is contended by Ms. Devyani Sharma, learned Senior Counsel that the suit filed by the plaintiffs was dismissed and there was no adjudication with respect to the rights of the State.

13. Perusal of the judgment and decree as passed by the learned Trial Court reveals that no findings have been recorded against the State. The learned First Appellate Court while entertaining the appeal filed by the State under the provisions of Section 96 of CPC ordered that the entries of kabizan in favour of defendants No.1 to 10 were held to be wrong and it was ordered that the said entry be deleted against the State.

14. It is well settled principle of law that Sections 96 and 100 of 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. Further no appeal lies against a mere finding. It is significant to note that both the Sections 96 and 100 CPC provide for an appeal against decree and not against judgment.

15. The Hon'ble Apex Court in **Banarsi and others Vs. Ram Phal (2003) 9 Supreme Court Cases 606** has held as under:

“xx xx xx 8. Sections 96 and 100 of 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. Further no appeal lies against against a mere finding. It is significant to note that both the Sections 96 and 100 CPC provide for an appeal against decree and not against judgment.”

16. Similarly the Hon'ble Apex Court in **Hardevinder Singh Vs. Paramjit Singh and others (2013) 9 Supreme Court Cases 261** has held as under:

“xx xx xx 17. Presently, it is apt to note that Sections 96 and 100 of the Code make provisions for preferring an appeal from any original appeal or from a decree in an appeal respectively. The aforesaid provisions do not enumerate the categories of persons who can file an appeal. If a judgment and decree prejudicially affects a person, needless to emphasize, he can prefer an appeal. In this context, a passage from *Jatan Kanwar Golcha v. M/s. Golcha Properties (P) Ltd.*[3] is worth noting: (SCC p. 575, para 3)-

“3... It is well settled that a person who is not a party to the suit may prefer an appeal with the leave of the appellate Court and such leave should be granted if he would be prejudicially affected by the judgment.”

18. In *State of Punjab v. Amar Singh, Sarkaria, J.*, while dealing with the maintainability of an appeal by a person who is not a party to a decree or order, has stated thus: (SCC P. 104, para 83)

“83. Firstly there is a catena of authorities which, following the [doctrine] of Lindley, L.J., in *re Securities Insurance Co.*, (1894) 2 Ch 410 have laid down the rule that a person who is not a party to a decree or order may with the leave of the Court, prefer an appeal from such decree or order if he is either bound by the order or is aggrieved by it or is prejudicially affected by it. As a rule, leave to appeal will not be refused to a person who might have been made ex nomine a party – see *Province of Bombay v. W.I. Automobile Association*, AIR 1949 Bom 141; *Heera Singh v. Veerka*, AIR 1958 Raj 181 and *Shivaraya v. Siddamma*, AIR 1963 Mys 127; *Executive Officer v. Raghavan Pillai*, AIR 1961 Ker 114. In *re B, an Infant* (1958) QB 12; *Govinda Menon v. Madhavan Nair*, AIR 1964 Ker 235.” (emphasis in original)

19. In *Baldev Singh v. Surinder Mohan Sharma and others*, a three Judge- Bench opined that an appeal under Section 96 of the Code would be maintainable only at the instance of a person aggrieved by and dissatisfied with the judgment and decree. In the said case, while dealing with the concept of ‘person aggrieved’, the Bench observed thus:-(SCC pp. 39-40, para 15)

“15... A person aggrieved to file an appeal must be one whose right is affected by reason or the judgment and decree sought to be impugned. It is not the contention of Respondent 1 that in the event the said judgment and decree is allowed to stand, the same will cause any personal injury to him or shall affect his interest otherwise.”

Be it noted, in the said case, the challenge in appeal was to the dissolution of marriage of the appellant therein and his first wife which, this Court held, would have no repercussion on the property in the suit and, therefore, the High Court was not justified in disposing of the civil revision with the observation that the revisionist could prefer an appeal.

20. In *Sahadu Gangaram Bhagade v. Special Deputy Collector*, it was observed that: (SCC p. 689, para 8)

“8... the right given to a respondent in an appeal is to challenge the order under appeal to the extent he is aggrieved by that order. The memorandum of cross-objection is but one form of appeal. It takes the place of a cross appeal.

In the said decision, emphasis was laid on the term ‘decree’.

21. After the 1976 amendment of Order 41 Rule 22, the insertion made in sub-rule (1) makes it permissible to file a cross-objection against a finding. The difference is basically that a respondent may defend himself without taking recourse to file a cross-objection to the extent the decree stands in his favour, but if he intends to assail any part of the decree, it is obligatory on his part to file the cross-objection. In *Banarsi and others v. Ram Phal*, it has been observed that the amendment inserted in 1976 is clarificatory and three situations have been adverted to therein. Category No. 1 deals with the impugned decree which is partly in favour of the appellant and partly in favour of the respondent. Dealing with such a situation, the Bench observed that in such a case, it is necessary for the respondent to file an appeal or take cross-objection against that part of the decree which is against him if he seeks to get rid of the same though he is entitled to support that part of the decree which is in his favour without taking any cross-objection. In respect of two other categories which deal with a decree entirely in favour of the respondent though an issue had been decided against him or a decree entirely in favour of the respondent where all the issues had been answered in his favour but there is a finding in the judgment which goes against him, in the pre-amendment stage, he could not take any cross-objection as he was not a person aggrieved by the decree. But post-amendment, read in the light of explanation to sub-rule (1), though it is still not necessary for the respondent to take any cross-objection laying challenge to any finding adverse to him as the decree is entirely in his favour, yet he may support the decree without cross-objection. It gives him the right to take cross-objection to a finding recorded

against him either while answering an issue or while dealing with an issue. It is apt to note that after the amendment in the Code, if the appeal stands withdrawn or dismissed for default, the cross-objection taken to a finding by the respondent would still be adjudicated upon on merits which remedy was not available to the respondent under the unamended Code.

22. At this juncture, we may usefully reproduce a passage from Banarsi wherein it has been stated thus: (Scc P. 615, para 8)

“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, Jatan Kumar Golcha V. Golcha Properties (P) Ltd and Ganga Bai v. Vijay Kumar. 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.” (emphasis in original)

17. The settled exposition of law, which has been laid down by the Hon'ble Apex Court declare that unless a person is prejudicially or adversely affected by the decree he is not entitled to file an appeal. In the present case the state preferred an appeal before the learned First Appellate Court without being affected by the judgment and decree as passed by the learned Trial Court. Neither the rights of the State has been adjudicated nor there is any finding against the State. Further, the record reveals that the defendant No.11/State did not lead any evidence, though the written statement was filed but they failed to adduce any evidence in support of their contention, if any. The submission as made by Ms. Devyani Sharma, learned

senior counsel that the appeal preferred by the State was not maintainable before the learned First Appellate Court in view of the fact that there is no determination by the learned Trial Court with respect to the rights of the State. It is a matter of fact that the plaintiffs did not file any appeal and the present appeal has been preferred by the defendant. This Court is of the opinion that the appeal, which was preferred by the State was not maintainable before the learned First Appellate Court, therefore, the present appeal is accepted and the judgment and decree as passed by the learned First Appellate Court accepting the appeal of the State is quashed and set aside on the point of maintainability. This Court is not adjudicating anything on the merits of the case and the present appeal is only accepted on the ground that the appeal preferred by the State before First Appellate Court under Section 96 was not maintainable. After setting aside the judgment as passed by the learned First Appellate Court the judgment and decree passed by the learned Trial Court is restored.

In view of above findings as passed by this Court on the maintainability of the appeal, especially on substantial question of law No.3, no findings are required to be passed on the other substantial questions of law.

Records of the learned courts below be send down
along with copy of the judgment.

25.04.2026
(Guleria)

(Romesh Verma)
Judge