

A

SHRI RAM PRAKASH  
v.  
SMT. CHARAN KAUR AND ANR.

FEBRUARY 3, 1997

B

[K. RAMASWAMY AND AND G.T. NANAVATI, JJ.]

*Code of Civil Procedure, 1908 :*

C

*S.11—Res judicata—Suit—Decree of dismissal against the petitioner—  
Would operate as res judicata in the appeal against which he had filed the  
second appeal.*

CIVIL APPELLATE JURISDICTION : Special Leave Petition (C)  
No. 1523 of 1997.

D

From the Judgment and Order dated 18.9.96 of the Himachal Pradesh High Court in R.S.A. No. 215 of 1987.

A.K. Goel and Mrs. Sheela Goel for the Petitioner.

The following Order of the Court was delivered :

E

This special leave petition arises from the judgment of the Himachal Pradesh High Court, made on September 18, 1996 in Second Appeal No. 215 of 1987. Admittedly, both the petitioner and the respondents had filed civil suits claiming damages against each other. The petitioner's suit was dismissed and the respondents' suit was also dismissed by the trial Court but on appeal filed by the respondents, it was allowed and was decreed for recovery of Rs. 24,875. The petitioner filed second appeal against the decree which was admitted. However, the petitioner did not carry the matter in second appeal against his suit for damages and was content with filing an appeal against the decree of damages granted against him. The High Court recording the findings has held thus :

F

G

"Thus, on the basis of the aforesaid factual as well as legal proposition, it can safely be said that where two connected suits have been tried together and the findings recorded in one of the suit have become final in absence of an appeal, the appeal preferred against

H

the findings recorded in the other suit would definitely be barred by the principles of *res judicata*. This is the ratio of the above cited case law decided by the apex Court of the country. Thus, there is absolutely no necessity to go into other aspects of the appeal, especially when on factual side, as detailed above, the decree, not appealed against by the present appellant, passed by the first appellate Court, has become final between the parties, which has created a legal bar for the maintainability of present appeal whereby the decree passed in the other suit has been assailed."

It would be obvious that since the claims of the petitioner and the respondents have arisen from the same cause of action and the finding of the appellate Court that damages had accrued to the respondents due to misfeasance or malfeasance having been allowed to become final, the decree which is subject matter of the special leave petition cannot be assailed. The self-same question was directly in issue and was the subject matter of both the suits. The same having been allowed to become final, it cannot be gone into since the same had attained finality, the petitioner having not filed any appeal against appeal dismissing the suit. In view of this situation, the High Court was right in concluding that the decree of dismissal of the suit against the petitioner would operate as *res judicata* under Section 11 CPC in the appeal against which the petitioner has filed the second appeal.

The special leave petition is accordingly dismissed.

G.N.

Petition dismissed.