

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NOS. 10916-10917 OF 2016**

**DESHRAJ SINGH PARMAR & ORS** .....APPELLANT(S)

**VERSUS**

**RAM BABU AGARWAL & ORS** ...RESPONDENT(S)

**WITH**

**CIVIL APPEAL NO. 10448 OF 2016**

**ORDER**

1. Application for substitution is allowed after condoning the delay and setting aside abatement.
2. The present appeals are directed against the judgment and decree dated 29.07.2009 in F.A. No. 263 of 2004 (hereinafter referred to as “**impugned judgment**”) passed by the High Court of Madhya Pradesh, Bench at Gwalior (hereinafter referred to as “**the High Court**”), whereby the High Court has partly allowed the appeal filed by the plaintiffs. The order dated 10.08.2009 passed by the High Court in Case No. M.C.C. No. 329 of 2009 has also

been challenged in these appeals, whereby the High Court modified certain details in paragraphs 7, 10, and 22 respectively of the impugned judgment.

**3.** For the sake of convenience, the parties are referred as per their position before the Trial Court. The Appellants in Civil Appeal Nos. 10916-10917 of 2016 are the plaintiffs and the Appellant in Civil Appeal No. 10448 of 2016 is the defendant No. 1.

**4.** A concatenation of facts required for disposal of the present appeals are that the plaintiffs had filed Civil Suit No. 3-A of 2001 before the Ist Additional District Judge, Gwalior (hereinafter referred to as “**the Trial Court**”) in a representative capacity under Order 1 Rule 8 of Civil Procedure Code, 1908 (hereinafter referred to as “**C.P.C.**”) for declaration and permanent injunction, *inter alia*, praying the following:

- I. To declare that the suit temple is a public temple and owned by the deity of Shri Hanumanji;
- II. To declare that the defendants have no right to interfere in doing worship by the plaintiffs and public at all;

III. Permanently injunct against the defendants to not to remove Deity of Hanumanji, Deity of Shivji, Deity of Parvatiji, Deity of Ganeshji, Nadiyahi, Bharonji installed in the suit temple and not to interfere in doing their worship to the public at all.

IV. Restrain the defendant from cutting the pipal tree.

V. Declare the sale deed dated 11.07.1978, as executed by defendant No. 3 in favour of defendant No. 1, as void.

**5.** The defendant No. 1 resisted the said suit by filing a counter-claim pleading that the suit property is under his exclusive ownership and that the defendant is the owner of the temple. The Trial Court framed fourteen (14) issues on the basis of rival pleadings of the parties.

**6.** The Trial Court *vide* judgment and decree dated 15.10.2004 dismissed the suit of the plaintiff as well as the counter-claim filed by the defendant. Aggrieved, the plaintiff filed F.A. No. 263/2004 before the High Court.

**7.** As noticed above, the High Court *vide* the impugned judgment partly allowed the appeal by declaring that the temple

and an open place around the temple is a public temple and the defendants have no right to raise any construction or obstruct worship in the temple. Further, the High Court also declared the sale deed dated 11.07.1978, upto the extent as stated above, executed by the defendant No. 3 in favour of defendant No. 1 as void and further restrained the defendant No. 1 from interfering with the worshipers in the temple. The High Court, however, clarified that the rest of the area pursuant to the sale deed dated 11.07.1978 as purchased by the defendant No. 1 is as per the law.

**8.** Being aggrieved by the impugned orders passed by the High Court, the Appellants have filed the present appeal.

**9.** Learned counsel for the Appellants in Civil Appeal Nos. 10916-10917 of 2016 has outrightly submitted that they do not find any infirmity with the impugned judgment, however, the High Court ought to have rendered a finding with regard to the two (2) rooms adjacent to the public temple as belonging to the public temple. The learned counsel further prayed that the Civil Appeal No. 10448 of 2016 may be dismissed.

**10.** It has been submitted by the learned Senior Counsel on behalf of the Appellant in Civil Appeal No. 10448 of 2016, that during the course of the trial, the plaintiffs filed an application under Order VI Rule 17 CPC for amendment of plaint by including a prayer to declare the sale deed dated 11.07.1978 as void. The Trial Court *vide* order dated 03.08.2001, allowed the proposed amendment to the plaint with a specific direction that the issue regarding limitation to the said prayer (amended) would be dealt with at the time of disposal of the plaint. Evidently, the Trial Court while finally deciding the suit, did not frame any issue relating to limitation, and proceeded to deciding the suit finally.

**11.** It is further averred by the learned Senior Counsel for the Appellant in Civil Appeal No. 10448 of 2016 that the High Court has grossly erred in not identifying the points for determination while deciding the first appeal in contravention to Order XLI Rule 31 CPC and more pertinently did not even touch upon the issue of limitation.

**12.** We have heard the rival submissions made at the bar and perused the material on record.

**13.** As a matter of fact it is evident that the Trial Court while finally deciding the suit, did not frame any issue with respect to limitation. Section 96 of C.P.C. states that an appeal would lie from every decree passed by the court of original jurisdiction to any Court authorized to hear such appeal. As such, in the present case, the High Court while deciding the appeal was acting as a court of first appeal. Order XLI Rule 31 C.P.C. provides that the contents of the judgment in appeal shall state the following:

- (a) points for determination;
- (b) the decision thereon;
- (c) the reasons for the decision; and
- (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.

**14.** It is a settled law that the appellate court has the jurisdiction to reverse or affirm the findings of the trial court. In doing so, the appellate court has to evaluate the findings on facts as well as the law, as arrived at by the trial court, and re-appreciate them from scratch in order to ascertain the validity of the said judgment of the trial court.

**15.** In the light of Section 96 of the C.P.C. read with Order XLI Rule 31, it is a firm position that the judgment in a first appeal shall adhere to the points laid down in Rule 31 and any non-compliance to that extent would render the judgment infirm. In the case at hand, the High Court failed to identify the points for determination on the said aspect. Moreover, since the Trial Court did not decide upon the issue of limitation, it was incumbent upon the High Court to deal with the same and render its findings. However, the High Court failed to consider the issue of limitation let alone provide any findings on the same.

**16.** This Court in the judgment of ***Manjula and Others vs. Shyamsundar and Others***, reported in (2022) 3 SCC 90, was faced with a similar situation, wherein the High Court did not comply with the requirements as stated in Order XLI Rule 31. It was held therein that non-conformity with the said requirements would result in infirmity and set aside the judgment of the High Court. The relevant portion from the said judgment is reproduced hereunder:

*“.....8. Section 96 of the Civil Procedure Code, 1908 (for short “CPC”) provides for filing of an appeal from the decree passed by*

a court of original jurisdiction. Order 41 Rule 31 CPC provides the guidelines to the appellate court for deciding the appeal. This rule mandates that the judgment of the appellate court shall state:

(a) points for determination;

(b) the decision thereon;

(c) the reasons for the decision; and

(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.

Thus, the appellate court has the jurisdiction to reverse or affirm the findings of the trial court. It is settled law that an appeal is a continuation of the original proceedings. The appellate court's jurisdiction involves a rehearing of appeal on questions of law as well as fact. The first appeal is a valuable right, and, at that stage, all questions of fact and law decided by the trial court are open for reconsideration. The judgment of the appellate court must, therefore, reflect conscious application of mind and must record the court's findings, supported by reasons for its decision in respect of all the issues, along with the contentions put forth and pressed by the parties. Needless to say, the first appellate court is required to comply with the requirements of Order 41 Rule 31 CPC and non-observance of these requirements lead to infirmity in the judgment.

**9.** In the instant case, the High Court has not complied with any of the aforesaid requirements. In view of the above, we are of the considered opinion that the High Court has to reconsider the matter in the light of the observations made above.

**10.** In the result, the appeal succeeds and is accordingly allowed in part. The judgment and decree of the High Court of Karnataka in RFA No. 468 of 2004 dated 7-9-2006 [Manjula v. Shyamsundar, RFA No. 468 of 2004, order dated 7-9-2006 (Kar)] is hereby set aside and the matter is remanded to the High Court for fresh disposal of the same in accordance with law. We request the High Court to dispose of the matter as expeditiously as possible but not later than six months from the date of receipt of a copy of this order. All contentions of the parties are left open. Pending applications, if any, shall stand disposed of. The parties shall bear their own costs."

**(Emphasis Supplied)**

**17.** In the instant case as well, the High Court failed to fulfil the requirements as laid down under Order XLI Rule 31 of the C.P.C.

and therefore, the impugned judgment cannot be sustained in law.

**18.** In result, the present appeals shall stand allowed. The judgment and decree dated 29.07.2009 passed in F.A. No. 263/2004 and order dated 10.08.2009 passed by the High Court in M.C.C. No. 329/2009 are both set aside. The matter is remitted back to the High Court for a fresh decision on the first appeal, to be considered on all issues and also by framing additional issues on the question of limitation. All contentions of the parties shall remain open.

**19.** Pending application(s), if any, shall stand disposed of.

....., **J.**  
**(VIKRAM NATH)**

....., **J.**  
**(SANDEEP MEHTA)**

....., **J.**  
**(VIJAY BISHNOI)**

NEW DELHI;  
APRIL 23, 2026.

ITEM NO.107

COURT NO.2

SECTION III

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 10916-10917/2016

DESHRAJ SINGH PARMAR & ORS.

Appellant(s)

VERSUS

RAM BABU AGARWAL . & ORS.

Respondent(s)

WITH

C.A. No. 10448/2016 (III)

FOR [I/A FOR SETTING ASIDE ABATEMENT - DEFECTIVE AS PER OFFICE REPORT] ON IA 101308/2017

FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES ON IA 38649/2019

FOR EXEMPTION FROM FILING O.T. ON IA 39086/2019

FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES ON IA 41352/2019

FOR EXEMPTION FROM FILING O.T. ON IA 41355/2019

IA No. 62674/2017 - APPLICATION FOR SUBSTITUTION

IA No. 62675/2017 - CONDONATION OF DELAY IN FILING

IA No. 41355/2019 - EXEMPTION FROM FILING O.T.

IA No. 39086/2019 - EXEMPTION FROM FILING O.T.

IA No. 101308/2017 - I/A FOR SETTING ASIDE ABATEMENT - DEFECTIVE AS PER OFFICE REPORT

IA No. 41352/2019 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

IA No. 38649/2019 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

Date : 23-04-2026 These appeals were called on for hearing today.

**CORAM :**

**HON'BLE MR. JUSTICE VIKRAM NATH  
HON'BLE MR. JUSTICE SANDEEP MEHTA  
HON'BLE MR. JUSTICE VIJAY BISHNOI**

**For Appellant(s) : Mr. Puneet Jain, Sr. Adv.  
Mrs. Christi Jain, Adv.  
Mr. Harsh Jain, Adv.  
Mr. Om Sudhir Vidyarthi, Adv.  
Mr. Aditya Jain, Adv.  
Mr. Siddharth Jain, Adv.  
Ms. Akriti Sharma, Adv.  
Ms. Pratibha Jain, AOR  
  
Mr. Navin Prakash, AOR  
Ms. Srishti Prakash, Adv.**

**For Respondent(s) :Mr. Navin Prakash, AOR  
Ms. Srishti Prakash, Adv.  
  
Mr. Puneet Jain, Sr. Adv.  
Mrs. Christi Jain, Adv.  
Mr. Harsh Jain, Adv.  
Mr. Om Sudhir Vidyarthi, Adv.  
Mr. Aditya Jain, Adv.  
Mr. Siddharth Jain, Adv.  
Ms. Akriti Sharma, Adv.  
Ms. Pratibha Jain, AOR  
  
Ms. Puja Sharma, AOR  
  
Mr. Faisal Sherwani, AOR  
Mr. Shikher Deep Aggarwal, Adv.**

**UPON hearing the counsel the Court made the following  
O R D E R**

**Application for substitution is allowed after  
condoning the delay and setting aside abatement.**

**The appeals shall stand allowed in terms of  
the signed order.**

Pending application(s), if any, shall stand disposed of.

(SONIA BHASIN)  
ASSISTANT REGISTRAR-CUM-PS

(RANJANA SHAILEY)  
ASSISTANT REGISTRAR

[Signed order is placed on the file]