IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 60 of 2026
Date of Decision: 05.08.2026

Ishwar Singh Kanwar ...Appellant.

Versus

Lal Singh & others ...Respondents.

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

Whether approved for reporting?[1]

For the appellant: Mr. Arun Kumar, Advocate.

For the respondents: Mr. Y.P.Sood, Advocate, for respondent No.1.

Mr. Deepak Sharma, Advocate, for respondent No.2.

Romesh Verma, Judge(oral)

The instant Regular Second Appeal arises out of the judgment and decree as passed by the learned District Judge, Shimla, HP dated 16.12.2025, whereby the appeal filed by the plaintiff/appellant was dismissed, and the judgment and decree as passed by the learned Senior Civil Judge, Court No. 1, Shimla, dated 16.05.2017, was affirmed, whereby the suit filed by the plaintiff was dismissed.

2. The facts as emerge in the present case are that plaintiff-appellant, filed a suit for permanent prohibitory injunction restraining the defendants from interfering in any manner in the plot and the

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

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building of the plaintiff situated over the land comprised in Khata Nos. 44, 46, Khatauni Nos. 354, 356, Khasra Nos. 442, 443, 444 and 570, measuring 4 biswas, situated at Mauja Sangti, Sanjauli, Shimla, H.P. as per the Jamabandi for the year 2001–02, with further prayer for grant of a decree of permanent prohibitory injunction restraining the defendant from throwing rain and drain water from the plot and building known as "Satya Sadan". Further, a prayer was also made that the defendant be directed, by way of mandatory injunction, to demolish and remove the encroachment found to have been made by him over the suit property.

3. As per the case set up by the plaintiff, he is the owner-in-possession of the plot and building situated over Khasra Nos. 442, 443, 444, and 570, measuring 4 biswas, situated at Mouza Sangti, Sanjauli, Tehsil and District Shimla. The defendant has got no right, title, or interest of any kind over the suit land. Plaintiff constructed a three-storeyed house, and the construction for the same was started in the year 1996. The plaintiff completed the construction of two storeys and laid a lintel for the third storey on the same in the year 2000. As per plaintiff, the defendant is in possession of the building known as "Satya Sadan", adjoining to the plot and the building of the plaintiff. The defendant started raising construction of his building in the year 2000 and raised two floors on the same in the year 2000, and recently in August 2007, with an intention of raising a third and

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fourth floor, he started raising construction over the same. As per plaintiff, the defendant has failed to leave proper setbacks as are required under the provisions of law. Since the third and fourth floor of the building of the defendant is on the same elevation as the plot of the plaintiff, and the slope of defendant's third and fourth floor is towards the building of the plaintiff, therefore dirty and filthy, rain and drain water from the building of the defendant has started to come down towards and over the plot and building of the plaintiff.

4. As per plaintiff, the unlawful activities and unauthorized construction was reported to defendant No. 2, and a complaint in that regard was also lodged. But despite filing of the complaint, defendant No. 2 has failed to take any action against defendant No. 1. Therefore, the plaintiff filed a suit for permanent prohibitory injunction restraining the defendants from raising any type of unauthorized construction, interfering, and throwing rain and drain water from his building known as "Satya Sadan" towards and over the plot and building of the plaintiff situated over Khasra Nos. 442, 443, 444 and 570 at Mouza Sangti, Tehsil and District Shimla.

5. Further, mandatory injunction was sought against the defendant by directing him to take necessary steps for proper outlet and discharge of the rain and drain water so that it should not come down and cause damage to the property of the plaintiff. He also prayed to demolish the unauthorized and illegal construction raised

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by the defendant by not complying with the Rules and Regulations as required under the Himachal Pradesh Municipal Corporation Act, 1994, and to remove the encroachments made on and over the plot of the building of the plaintiff by raising unauthorized construction.

6. The suit filed by the plaintiff was resisted by the defendants. In his written statement, defendant No.1 raised the preliminary objections with respect to maintainability, cause of action, estoppel, valuation, etc. On merits, all the averments as made were specifically refuted and denied. It was vehemently denied by the defendant that plaintiff is owner-in-possession of the plot and building situated over Khasra Nos. 442, 443, 444, and 570, measuring 4 biswas. As a matter of fact, as per defendant, plaintiff is owner of the land as entered against Khata No. 44, Khatauni No. 354, Khasra Nos. 442 and 443, Mauza Sangti, Tehsil and District Shimla. As regards Khasra Nos. 444 and 570, Khata No. 46, Khatauni No. 356, the said land along with the land comprised in Khasra No. 573, Mauza Sangti, is jointly owned by the plaintiff and the defendant, and the same has not been partitioned as yet. As per defendant, the plaintiff had made a false averment regarding his exclusive ownership with respect to Khasra Nos. 444 and 570. All the allegations of encroachment and illegal construction alleged to have been raised by the plaintiff were specifically denied. As per defendant, the plaintiff, while raising the construction, had extended illegally and

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unauthorizedly some part of his building on Khasra Nos. 444 and 570 in the year 2004–05, despite the fact that suit was filed against the plaintiff. The said suit was partly decreed by the learned Civil Judge (Junior Division), Court No. 5, Shimla. As per the stand of defendant No.1, the matter is pending in appeal before the learned Additional District Judge, Shimla, where both the parties have been directed to maintain status quo qua nature and possession of the suit property. It was admitted by the defendant that the building of the plaintiff is on the higher level in comparison to the building and the land of the replying defendant. However, the allegations with respect to the encroachment and illegal construction were refuted.

7. As per defendant, he has raised the construction in accordance with law, thereafter, the completion plan of his building was approved by defendant No. 2. It was contended by defendant No. 1 that the staircase, which is about 4 feet wide, was constructed by the defendant, which is built on part of Khasra No. 437 owned by the defendant, and Khasra No. 442 is owned by the plaintiff. The said staircase was constructed in the year 2000, and the same was constructed with the express consent of the plaintiff with the understanding that the said staircase will be used and utilized by both the parties. The defendant No. 1 denied all the allegations as levelled in the plaint and prayed for the dismissal of the suit.

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8. Defendant No. 2 filed its separate written statement and raised the preliminary objections with respect to maintainability, cause of action, valuation, non-joinder, mis-joinder, estoppel, etc. On merits, it was stated by defendant No. 2 that plaintiff as well as defendant No. 1 have carried out illegal and unauthorized construction, for which proceedings against both of them have been initiated, and the said proceedings are pending adjudication before the Commissioner, Municipal Corporation, Shimla. The said defendant raised a specific objection that since notice under Section 392 of the H.P. Municipal Corporation Act was not served upon them, therefore, the suit as instituted by the plaintiff against them is not maintainable.

9. The learned trial Court framed the issues on 30th August, 2008 in the following manner:

1. Whether the plaintiff is entitled for the relief of permanent prohibitory injunction as prayed for?.....OPP.

2. Whether the defendant No. 1 has encroached upon the suit land, as alleged?.....OPP.

3. Whether the water of the building of the defendant No. 1 is flowing towards the suit land if so its effect?.....OPP.

4. Whether the plaintiff is entitled for the relief of mandatory injunction?.....OPP.

5. Whether the plaintiff has cause of action to file the present suit?.....OPD.

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6. Whether the suit is not maintainable in the present form, as alleged?.....OPD
7. Whether the plaintiff is estopped to file the present suit on account of his acts, deeds etc as alleged?...OPD1&2.

8. Whether the suit has not been properly valued for the purpose of Court fee and jurisdiction?.....OPD1&2.

9. Whether the suit is bad for want of notice under Section 392 of HPMC Act?.....OPD1&2.

10. Relief.

10. The learned trial Court directed the respective parties to adduce evidence in support of their contentions, and vide its judgment and decree dated 16th May, 2017, dismissed the suit as filed by the plaintiff/appellant.

11. Feeling aggrieved, the plaintiff approached the learned District Judge, Shimla, by invoking the provisions of Section 96 of the CPC on 13th July, 2017. The first appellate Court vide its impugned judgments and decree dated 16th December, 2025, dismissed the appeal as filed by the plaintiff/appellant and affirmed the findings as returned by the learned trial Court, whereby the suit as instituted by the appellant was ordered to be dismissed.

12. Still feeling dissatisfied by the judgments and decrees as passed by the learned Courts below, the plaintiff has instituted the instant Regular Second Appeal under Section 100 of the CPC.

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13. It is contended Mr. Arun Kumar, learned counsel for the appellant that the impugned judgments and decrees as passed by the learned Courts below are erroneous and liable to be quashed and set aside. He submits that the Courts below have erred by dismissing the suit filed by the plaintiff, whereas there is a lot of material placed on record in order to corroborate and substantiate his case. As per learned counsel for the appellant, the Courts below have erred by ignoring the report of the Local Commissioner, whereby the case as set up by the plaintiff has been corroborated. He submits that after accepting the present Regular Second Appeal the suit as instituted by the plaintiff deserves to be decreed.

14. On the other hand, Mr. Y. P. Sood, learned Counsel for respondent No.1 has defended the impugned judgments and decrees as passed by the learned Courts below. He submits that both the courts below have returned the findings which are purely findings of fact, and while invoking the provisions of Section 100 of the CPC, this Court will not interfere in the well-reasoned judgments and decrees.

15. With the consent of the parties, the present appeal is finally heard on the following substantial question of law:

> "Whether finding and conclusion arrived at by the ld. Courts below without appreciating the pleadings and evidence on flimsy grounds is sustainable under law especially when the suit property alleged to be un-partitioned, its effect ?"

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16. I have heard the learned counsel for the parties and gone through the case file.

17. The plaintiff-appellant has primarily based his claim on the ground that he is exclusive owner-in-possession of plot and building situated over Khata Nos. 44, 46, Khatuni Nos. 354 and 356, Khasra Nos. 442, 443, 444 and 570, measuring 4 biswas, situated at Mauja Sangti, Sanjauli, Distt. Shimla, H.P. It is the case of the plaintiff that the defendant has got no right, title, or interest over the suit land and he is raising illegal construction over the same. As per plaintiff, the defendant is raising the construction in such a manner, as a result of which the easementary right to sun, air, and light of the plaintiff has been infringed, and his building has dampened, as a result of which the same has become useless, thus causing irreparable loss and injury to plaintiff.

18. Further, as per the plaintiff, the defendant is illegally discharging the rain and drain water which is causing loss and damage to the property of the plaintiff. Therefore, he sought a decree for mandatory injunction on that count against the defendant.

19. On the other hand, the defendant has placed on record his defence on the ground that Khasra Nos. 442 and 443 is exclusively owned by the plaintiff, however, Khasra Nos. 444, 570 and 573 are jointly owned and possessed by the plaintiff and defendant, and the same has not been partitioned as yet.

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20. It is the case of the defendant that the averments of the plaintiff that he is the exclusive owner-in-possession of the suit land bearing Khasra Nos. 442, 443, 444, and 570 are totally incorrect, and that he has not approached the Court with clean hands. As per the case of the defendant, the plaintiff has failed to place on record correct facts and has suppressed the material fact qua the joint land, i.e., Khasra Nos. 444 and 570 and the present defendant had instituted a Civil Suit before the learned trial Court, which came to be partly decreed.

21. It is contended by Sh. Y. P. Sood, learned counsel for the respondent, that against the judgment as passed by the learned trial Court, his client (the defendant in the present proceedings) and the plaintiff in the previous round of litigation instituted a ***Civil Appeal No. 35-S/13 of 2007***, titled ***Lal Singh v. Ishwar Singh*** on 25th August 2007 before the Court of learned Additional District Judge, Shimla, which was decided on 10th December 2008 and the copy of the same has been placed on record as Exhibit DW-2/C, whereby the suit as filed by the present defendant was allowed, and the present plaintiff was injuncted in respect of Khasra No. 573, and he was restrained from making any construction so as to cover any more land on any part of the joint land, i.e., Khasra Nos. 444 and 570, though it was ordered that he may raise upper storeys on the part already covered.

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22. It is further contended by the learned counsel for the respondent that against the judgment as passed by the Additional District Judge, Shimla, dated 10th December 2008, the present plaintiff filed Regular Second Appeal bearing No. 99 of 2009 before this Court, and the same came to be dismissed vide its judgment dated 18th November 2016.

23. Against the dismissal of his RSA, the present plaintiff filed SLP (C) No. 10364 of 2017, and in the said SLP, the Hon'ble Apex Court ordered that it would be appropriate if the present plaintiff first approaches the High Court by way of a review petition.

24. The present plaintiff filed Review Petition No. 46 of 2017 before this Court, and the same came to be dismissed on 26th November 2025. As fairly admitted by learned counsel for the parties, the dismissal of the review petition has not been assailed before the Hon'ble Apex Court. It has been stated by the learned counsel for the respondent that with respect to Khasra Nos. 444 and 570, the Court had injuncted the present plaintiff to raise any construction over and above his share over Khasra Nos. 444 and 570. However, in the present case, he has withheld those facts and suppressed material facts from this Court, as a result of which the discretionary relief of injunction cannot be granted to the plaintiff.

25. In order to substantiate his case, the plaintiff examined himself as PW-1. In his examination-in-chief, he stated that he is the

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owner of 5 biswas of land, and the copies of the Jamabandies are Exhibit PW-1/A and Exhibit PW-1/B. He stated that when he raised the construction of the house, at that time this area was not in the jurisdiction of the Municipal Corporation. The defendant is a co-sharer with the plaintiff over Khasra Nos. 444, 570, and 573. He stated that out of those two Khasra Nos. 444 and 570 is in his possession. His house is situated on a higher pedestal as compared to defendant No.1. The defendant started raising the construction of his house in the year 2000. At the relevant time, he had raised construction of two-storeyed house, and thereafter in 2007, he raised the construction of his third and fourth storeys. Even thereafter, the defendant carried out the construction. As per the plaintiff, the area was included in the Municipal Corporation in 2004. The defendant is not raising the construction as per the bye-laws and provisions of the Municipal Corporation Act. On account of the raising of the construction by defendant No. 1, the sun and air of the ground floor of the storey constructed by the plaintiff has been blocked. The defendant has not left proper setbacks, and he has overlapped towards the side of the plaintiff.

26. As per PW-1, on account of illegal construction, the rain and drain water comes to the side of the plaintiff, as a result of which he is facing a lot of difficulties. That defendant raised the construction of staircase over his stairs and by doing so, he has encroached upon the suit land.

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27. In the cross-examination, he stated that he had purchased 2 biswas of land in the year 1994. He did not purchase 2 biswas land from the joint land. He stated that when he purchased the plot, at the relevant time the length and breadth of the same was 9 x 5 karams. When he purchased 2 biswas of land, at that time the Kanungo had shown the boundaries of the said land. He had raised the construction within the boundaries as defined by the Revenue authority. He admitted that prior to the construction of the house, he did not obtain the map. Self stated that he submitted a plan for its sanction, and the same was submitted at SADA, Dhalli. He admitted that the Municipal Corporation till date has not accorded any sanction for the construction of the house. He admitted that the length and width of his plot is 9 x 5 karams. He admitted that Khasra Nos. 444, 570, and 573 is jointly owned and possessed by the parties, including defendant No. 1. He stated that the said land has not been partitioned till date. He stated that he cannot tell that the allegation which he has levelled that defendant No. 1 has not left the setbacks is contrary to the plan of defendant No. 1. He admitted that in order to obtain the demarcation, he had applied for the same on the basis of the fresh revenue record.

28. The plaintiff, in order to corroborate his case, examined PW-2, Rajesh Malhotra, Junior Engineer from the Municipal Corporation, Shimla. In his statement, he stated that Municipal Corporation, Shimla, had initiated the proceedings on account of

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unauthorized construction by defendant No. 1. The copy of the complaint is Exhibit PW-2/A, and the same is correct as per the record. As per PW-2, defendant No. 1 raised construction of four-storeyed house. He stated that defendant No. 1 was accorded sanction only for the construction of complete ground floor, first floor structure, second floor complete structure, and column in third floor. Thereafter, without any sanction from the authority, he had put the lintel and had further raised the construction.

29. In the cross-examination, he has admitted that when notice under Section 253 of the MC Act was issued to defendant No. 1, prior to that he had not seen the sanctioned plan which was accorded in his favour. He stated that he cannot tell whether the map of the plaintiff has been approved by the Municipal Corporation, Shimla. He cannot tell that the entire structure of the plaintiff is illegal. He admitted that when the plan as submitted by defendant No. 1 was sanctioned, at the relevant time first and second floor were already constructed.

30. PW-3 is the statement of Sh. Yashwant Singh, Clerk, A.P. Branch, M.C.Shimla. In his deposition he has stated that he has brought the sanctioned plan of defendant No.1. He stated that as per record defendant No.1 was accorded sanction for the construction of three storeyed building and for the constructions of the column over the fourth floor.

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31. In the cross-examination, he has admitted that as per record with respect to fourth floor the said structure has been compounded and the compounding fee was duly paid by defendant No.1.

32. PW-4 is the statement of Balwant Singh and in his testimony he has stated that is residing at Sangti for the last more than 10-12 years and he knew both the parties. He stated that the house of the plaintiff is on higher pedestal as compared to defendant No.1. He has reiterated all the averments as made by PW-1.

33. In the cross-examination, he has admitted that plaintiff has raised the construction of his projections towards the house of defendant No.1. He denied the suggestions that while raising the construction by the plaintiff, he did not left proper setbacks as per the Rules and Regulations.

34. In order to rebut the case of the plaintiff, the defendant examined DW-1, Sh. Jitender Kumar, Junior Engineer, A.P. Branch, Municipal Corporation, Shimla. He stated that on 28.07.2001, the building plan of defendant No.1 was sanctioned under the retention policy for three storeys and fourth storey with ten columns on payment of the compounding fee. He further deposed that, as per official record, the construction raised by the plaintiff was without any sanction.

35. In his cross-examination, DW-1 stated that compounding fee of ₹10,213/- was paid by defendant No.1 under the retention policy.

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However, he admitted that defendant No.1 had not depicted any path or stairs in his map.

36. Defendant No.1, Sh. Lal Singh Kanwar, stepped into the witness box as DW-2. In his examination-in-chief, he reasserted and reaffirmed the contents of his written statement and denied the claims as set up by the plaintiff in the suit.

37. In his cross-examination, DW-2 admitted that proceedings regarding unauthorized construction were initiated against him before the Commissioner, Municipal Corporation, Shimla, which are still pending. He stated that his plan was duly sanctioned under the retention policy upon payment of the compounding fee of ₹10,213/-. He stated that he had purchased 8 *biswas* of land. He admitted the copy of the demarcation report, Ext. P-3, consisting of three sheets/pages. Overall, the plaintiff could not extract anything material or favourable to his case during the cross-examination of the defence witnesses.

38. The plaintiff placed on record copy of the *Jamabandi* for the year 2000–2001 (Ext. PW-1/A), showing him as an owner/co-owner in Khasra Nos. 442, 570 and 573 along with the defendant and other co-sharers.

39. To substantiate his claim, the trial Court, on the request of the plaintiff, appointed a Local Commissioner, namely, Sh. Prem Singh Thakur. A perusal of the demarcation report, submitted by the Local Commissioner, shows that there was no encroachment of any kind over

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the suit land by the defendant. The report categorically states that the plaintiff was present during the demarcation, examined the report on the spot, and made a statement confirming that he found the demarcation to be correct.

40. The demarcation report falsifies the case of the plaintiff that the defendant has raised unauthorized construction over the suit land, which was owned by the plaintiff. It is contended by learned counsel for the appellant that he had objected to the report of the Local commissioner by filing appropriate objections. He stated that the report as submitted by Local commissioner has not been prepared in view of the provisions and Instructions issued by the Financial Commissioner.

41. Learned Courts below have concurrently held that the report has been prepared by Local Commissioner, after hearing the respective parties which was duly acknowledged by the plaintiff and the same has been prepared even otherwise as rightly held by the Courts below that once the plaintiff has admitted the demarcation on the spot, he cannot turn around to challenge the same. Therefore, subsequently this plea is not available to the plaintiff.

42. This Court is of the considered view that the plaintiff has not approached this Court with clean hands. A perusal of the plaint shows that the plaintiff has claimed exclusive ownership and possession over Khasra Nos. 442, 443, 444 and 570 measuring 4 biswas sitauted at Mauja Sangti, Sanjauli, Shimla, H.P., whereas from

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perusal of the revenue record it is evident that the suit land is jointly owned and possessed by the plaintiff, defendants and other co-sharers.

43. The learned Courts below have correctly come to the conclusion that the plaintiff has suppressed the material facts from the Courts, as the institution of the Civil Suit which was instituted by the defendant in the previous round of litigation has not been mentioned. The Civil Suit previously filed by the present defendant was decreed and the copy of the Judgment has been placed on record, whereby decree of injunction was passed against present plaintiff qua khasra Nos. 444 and 570.

44. The said findings were affirmed by this Court in RSA No 99 of 2009 and thereafter, SLP(C) No. 10364 of 2017 was preferred before Hon'ble Apex Court and the same was disposed of by ordering the present appellant to approach the High Court by way of review petition, which review petition also stood dismissed on 26.11.2025.

45. Consequently, *inter se* dispute and rights regarding the joint land stand adjudicated up to the Hon'ble Apex Court. Further, a fresh suit seeking to re-agitate the same controversy qua Khasra Nos. 444 and 570 without proving any interference has rightly been rejected by the Courts below.

46. It is settled law that a person, who approaches the Court is required to come to the Court with clean hands, however, in the considered opinion of this Court, the plaintiff has concealed the material

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facts while filing the suit that earlier a suit was filed by the defendant against him. Even otherwise, oral evidence as has been led by the parties in their favour nowhere states that there is any kind of interference on the part of the defendant over the suit land.

47. Learned counsel for respondent No.1 has vehemently submitted that in the statement as made by the plaintiff he has stated that plaintiff purchased 2 Biswas of land in the year 1994. He further stated that his land was increased during settlement in which length was increased to 13 meters whereas width was increased to 8 meters towards land of the defendant. In the entire evidence it nowhere suggests that there is any kind of interference on the part of the defendant, especially in khasra Nos. 442 and 443 and even from the report of the local commissioner this Court is convinced that findings as returned by the learned Courts below are legal, valid and there is no jurisdictional error.

48. The Hon'ble Supreme Court while dealing with scope of interference under Section 100 of CPC in ***Hero Vinoth (minor)*** vs. ***Seshammal, (2006) 5 SCC 545*** has held as under:

> *"18. It has been noted time and again that without insisting for the statement of such a substantial question of law in the memorandum of appeal and formulating the same at the time of admission, the High Courts have been issuing notices and generally deciding the second appeals without adhering to the procedure prescribed under Section 100 of the CPC. It has further been found in a number of cases that no efforts are made to distinguish between a question of law and a substantial question of law. In exercise of the powers under this section in several cases, the findings of*

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fact of the first appellate court are found to have been disturbed. It has to be kept in mind that the right of appeal is neither a natural nor an inherent right attached to the litigation. Being a substantive statutory right, it has to be regulated in accordance with law in force at the relevant time. The conditions mentioned in the section must be strictly fulfilled before a second appeal can be maintained and no court has the power to add or to enlarge those grounds. The second appeal cannot be decided on merely equitable grounds. The concurrent findings of facts will not be disturbed by the High Court in exercise of the powers under this section. Further, a substantial question of law has to be distinguished from a substantial question of fact. This Court in Sir Chuni Lal Vs. Mehta and Sons Ltd. v. Century Spg. & Mfg. Co. Ltd. (AIR 1962 SC 1314) held that:

"The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law."

19. It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court. It is true that the lower appellate court should not ordinarily reject witnesses accepted by the trial court in respect of credibility but even where it has rejected the witnesses accepted by the trial court, the same is no ground for interference in second appeal when it is found that the appellate court has given satisfactory reasons for doing so. In a case where from a given set of circumstances two inferences of fact are possible, one drawn by the lower appellate court will not be interfered by the High Court in second appeal. Adopting any other approach is not permissible. The High Court will, however, interfere where it is found that the conclusions drawn by the lower appellate court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at by ignoring material evidence.

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23. To be "substantial" a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question of law "involving in the case" there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstance of each case whether a question of law is a substantial one and involved in the case, or not; the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis."

49. The Hon'ble Supreme Court in ***Annamalai*** vs. ***Vasanthi, 2025 INSC 1267***, has held as follows:-

"16. Whether D-1 and D-2 were able to discharge the aforesaid burden is a question of fact which had to be determined by a court of fact after appreciating the evidence available on record. Under CPC, a first appellate court is the final court of fact. No doubt, a second appellate court exercising power(s) under Section 100 CPC can interfere with a finding of fact on limited grounds, such as, (a) where the finding is based on inadmissible evidence; (b) where it is in ignorance of relevant admissible evidence; (c) where it is based on misreading of evidence; and (d) where it is perverse. But that is not the case here.

17. In the case on hand, the first appellate court, in paragraph 29 of its judgment, accepted the endorsement (Exb. A-2) made on the back of a registered document (Exb. A-1) after considering the oral evidence led by the plaintiff-appellant and the circumstance that signature(s)/thumbmark of D-1 and D-2 were not disputed, though claimed as one obtained on a blank paper. The reasoning of the first appellate court in paragraph 29 of its judgment was not addressed by the High Court. In fact, the High Court, in one line, on a flimsy defense of use of a signed blank paper, observed that genuineness of Exb. A-2 is not proved. In our view, the High Court fell in error here.

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While exercising powers under Section 100 CPC, it ought not to have interfered with the finding of fact returned by the first appellate court on this aspect; more so, when the first appellate court had drawn its conclusion after appreciating the evidence available on record as also the circumstance that signature(s)/thumbmark(s) appearing on the document (Exb.A2) were not disputed. Otherwise also, while disturbing the finding of the first appellate court, the High Court did not hold that the finding returned by the first appellate court is based on a misreading of evidence, or is in ignorance of relevant evidence, or is perverse. Thus, there existed no occasion for the High Court, exercising power under Section 100 CPC, to interfere with the finding of the first appellate court regarding payment of additional Rs. 1,95,000 to D-1 and D-2 over and above the sale consideration fixed for the transaction. 18. Once the finding regarding payment of additional sum of Rs.1,95,000 to D-1 and D-2 recorded by the first appellate court is sustained, there appears no logical reason to hold that the plaintiff (Annamalai) was not ready and willing to perform its part under the contract particularly when Rs. 4,70,000, out of total consideration of Rs. 4,80,000, was already paid and, over and above that, additional sum of Rs.1,95,000 was paid in lieu of demand made by D-1 & D-2. This we say so, because an opinion regarding plaintiff's readiness and willingness to perform its part under the contract is to be formed on the entirety of proven facts and circumstances of a case including conduct of the parties. The test is that the person claiming performance must satisfy conscience of the court that he has treated the contract subsisting with preparedness to fulfill his obligation and accept performance when the time for performance arrives."

50. No other point was raised by the learned counsel for the parties.

51. Both the Courts below have rightly appreciated the point in controversy after considering the oral as well as documentary evidence placed on record. The substantial question of law is answered accordingly.

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52. In view of above, the present appeal being devoid of any merit deserves to be dismissed. Ordered accordingly. Pending application(s), if any, also stands disposed of.

(Romesh Verma)
Judge

August 05, 2026
(Nisha)

High Court of H.P.

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