IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 127 of 2026

Date of decision: 23.09.2026

The State of H.P. & others ...Appellants.

Versus

Prakash Chand & others ...Respondents.

Coram:

The Hon'ble Mr. Justice Romesh Verma, Judge.
Whether approved for reporting?[1]

For the appellants : Mr. Manish Thakur, Deputy Advocate General.

For the respondents : Mr. Vikrant Chandel, Advocate.

Romesh Verma, Judge (Oral):

The present appeal arises out of the judgment and decree, dated 01.12.2025, passed by learned Additional District Judge, Ghumarwin, District Bilaspur, H.P., whereby appeal preferred by the respondents/plaintiffs has been allowed and the judgment and decree dated 01.12.2023, passed by Senior Civil Judge, Court No.1, Ghumarwin, District Bilaspur, H.P. has been set-aside, whereby the suit filed by the respondents/plaintiffs was dismissed.

2. The facts giving rise to the present case are that the respondent-plaintiffs filed a suit for possession, damages, and

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

High Court of H.P.

::: Downloaded on - 07/11/2026 16:46:53 :::CIS

mandatory injunction in the Court of learned Senior Civil Judge, Court No. 1, Mandi, on 29th October, 2015. As per the case as set up by the plaintiffs, the land comprising in Khewat Khatauni Number 168/185, Khasra Number 1353/1715/1 measuring 0-1-0 bighas and Khewat Khatauni No. 169/186, Khasra No. 2355/1715/1 measuring 0-2-0 bighas, and land comprising in Khewat Khatauni No. 151/168, Khasra No. 1728 measuring 1-1-0 bighas (hereinafter referred to as the "suit land"), is owned by the plaintiffs and the same was utilized by the defendants for the construction of the road, namely, Bara-Da-Ghat Salaon-Bum Road. As per the case of the plaintiffs, the road was constructed by the defendants by taking forceful possession on 10th August, 1991.

3. The present appellants-defendants, in pursuance to the utilization of the land for the construction of the road, issued notification under Sections 4, 6 and 7 of the Land Acquisition Act, and the plaintiffs were assured that the appropriate amount of compensation on account of loss of the land shall be paid very soon to the plaintiffs. It has been contended that despite making assurance to the plaintiffs, the defendants failed to pay the amount of compensation to the plaintiffs in any manner, though they kept on waiting for the

High Court of H.P.

::: Downloaded on - 07/11/2026 16:46:53 :::CIS

same. Even the acquisition proceedings which were initiated by the State/appellants were allowed to be dropped or elapsed for the reasons best known to them.

4. Apart from the suit land, which was utilized for the construction of the road, the remaining land of the plaintiffs has also been damaged, and now the said land cannot be utilized for any other purpose. Various requests were made to the present appellants-defendants for acquiring the suit land and to pay the amount of compensation, but nothing was done by the officials of the present appellants.

5. When the State/appellants failed to redress the grievances of the plaintiffs, they were constrained to file Civil Writ Petition bearing No. 3335/2010 before this Court. In the said petition, this Court had directed the plaintiffs to file appropriate civil proceedings for grant of compensation in the Civil Court. Thereafter, the suit was instituted by the plaintiffs for seeking decree of possession, injunction, damages, and mandatory injunction against the defendants on the ground that the defendants are legally bound to restore the possession of the suit land by removing the construction in the shape of road and to restore the suit land to its original position as it was prior to the construction of the road. Further, it was prayed

High Court of H.P.

::: Downloaded on - 07/11/2026 16:46:53 :::CIS

that the defendants are liable to pay the damages, including the trees, fruit, or fruit-bearing trees, which were damaged by the defendants since the year 1991 till the land is restored to its original position.

6. The suit as filed by the plaintiffs-respondents came to be contested by the defendants by raising preliminary objections with respect to the maintainability, cause of action, limitation, etc.. It was contended by the defendants in the written statement that as a matter of fact, the road was constructed in the year 1974-75 with the express consent of the land owners. As per the defendants, after construction of the road in the year 1974-75, it is being used by the general public, and the HRTC is plying its buses on the said road since 1980. It is contended by the defendants that no objection of any kind was raised by the plaintiffs while raising the construction of the road, and the same was done with their express consent.

7. According to defendants, the road was constructed on the popular demand of the plaintiffs along with the other co-villagers, therefore, no question of compensation arises in the present proceedings. As the road has been constructed with the consent of the plaintiffs and their predecessor-in-interest, and none of the predecessors of the plaintiffs had demanded the

High Court of H.P.

::: Downloaded on - 07/11/2026 16:46:53 :::CIS

compensation from the defendants, therefore, the suit as instituted by the plaintiffs is an afterthought and not maintainable in its present form. It was also contended that the plaintiffs are not entitled for any amount of compensation, as they have permitted the land for the construction of the road. The defendants prayed for the dismissal of the suit as filed by the plaintiffs.

8. The plaintiffs filed replication to the written statement as filed by the defendants and reiterated all the averments as made in the plaint.

9. The learned Trial Court had framed the issues on 7th November, 2017 in the following manner:

> 1. Whether the defendants have unlawfully encroached upon the suit land by way of construction of road upon it otherwise then in due course of law, as alleged ? OPP
>
> 2. If the issue no.1 above is determined in affirmative in favour of the plaintiffs and against the defendants, then what is the nature, exact measurement and extent of the said land of the plaintiffs in possession of the defendants, as alleged?OPP.
>
> 3. Whether the plaintiffs are entitled for possession of the suit land, as prayed? OPP.
>
> 4. Whether the plaintiffs are entitled for mandate directing the defendants for acquiring the suit land as per law, as prayed? OPP.

High Court of H.P.

::: Downloaded on - 07/11/2026 16:46:53 :::CIS

5. Whether the suit of the plaintiffs is not maintainable, as alleged? OPD.

6. Whether the suit of the plaintiffs is barred by limitation, as alleged? OPP

7. Whether the plaintiffs have not approached the court with clean hands and have suppressed true and material facts, thus estopped for filing this court for their own acts and conduct, as alleged? OPD.

8. Whether the suit land was donated by the predecessors-in-interest of the plaintiffs to the defendants for construction of the road and the said road on the suit land was in the year 1974-75, as alleged? OPD.

9. 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 1st December, 2023, the suit as filed by the present respondents-plaintiffs was ordered to be dismissed, being barred by limitation.

11. Feeling aggrieved, plaintiffs preferred an appeal in the Court of learned Additional District Judge, Ghumarwin, District Bilaspur, HP. On 19th January, 2024, the learned First Appellate Court vide its impugned judgment dated 1st December, 2025 accepted the appeal as preferred by the plaintiffs-respondents, and the defendants-appellants were directed to acquire the suit property which has been used for

High Court of H.P.

::: Downloaded on - 07/11/2026 16:46:53 :::CIS

the construction of the road and to pay the amount of compensation to the plaintiffs in accordance with law.

12. Still feeling aggrieved, State/appellants have approached this Court by invoking Section 100 of the CPC against the impugned judgment as passed by learned First Appellate Court.

13. It is contended by Mr. Manish Thakur, learned Deputy Advocate General, 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 not appreciated the point in controversy and has wrongly decreed the suit as filed by the plaintiffs, which is hopelessly time-barred. He further submits that the road was constructed with the express consent of the plaintiffs and the suit land was donated to the State/Department for the construction of the road. He also submits that the principle of estoppel and acquiescence shall be applicable in the present case, therefore, after accepting the present appeal, the suit as filed by the plaintiffs-respondents deserves to be rejected.

14. On the other hand, Mr. Vikrant Chandel, learned counsel for the respondents has defended the impugned

High Court of H.P.

::: Downloaded on - 07/11/2026 16:46:53 :::CIS

judgment as passed by the learned First Appellate Court. He submits that it is basic principle of law that no person can be deprived of his properties without payment of compensation. He submits that the said exposition of law has been settled by the Hon'ble Apex Court, therefore, in view of that, this Court will not interfere in the well-reasoned judgment as passed by the Court below, that too in the findings which have been returned by the learned First Appellate Court exercising the power under Section 96 of the CPC.

15. I heard the learned counsel for the parties. With the consent of the parties, the appeal is finally taken up for disposal on the following substantial question of law:

> " Whether the judgment and decree of learned Appellate Court below are based on mis-appreciation and mis-interpretation of the evidence and legal provision ?"

16. In the present case, the plaintiffs have approached the learned Trial Court for the grant of decree of possession, mandatory injunction and damages on the ground that the State has utilized the suit land being owned by the plaintiffs in the year 1991. As per the case as set up by the plaintiffs, after utilizing the suit land, notification under Sections 4, 6 and 7 of the Land Acquisition Act were issued by the State for acquisition of law, however, the same were allowed to be

High Court of H.P.

::: Downloaded on - 07/11/2026 16:46:53 :::CIS

elapsed for the reasons best known to them. During the course of construction of the road, apart from the land which was utilized for the construction of the road, the remaining land was also damaged, and fruit-bearing plants and trees were destroyed by the State/present appellants.

17. It is a case of the plaintiffs that being a welfare State, it is incumbent upon the defendants/appellants to either restore the possession of acquired land which stood utilized by the State for the construction of the road or to pay the amount of compensation in lieu of the same.

18. In order to corroborate or substantiate their case, the plaintiffs has examined PW1 Parkash Chand, PW2 Jai Singh, PW3 Roshan Lal, PW4 Krishana Ram, and PW5 Bablu Ram. Plaintiff Prakash Chand filed his affidavit Ex. PW1/A and all the averments as made in the plaint have been reiterated. As per the statement of this witness, the road was constructed over the suit land. He stated that he does not know when the road was constructed, and there was no promise by the department for any compensation. He stated that the predecessor-in-interest of the plaintiff died before 1980. He admitted that before the construction, there was no connectivity for the mobility of the inhabitants of the area. He

High Court of H.P.

::: Downloaded on - 07/11/2026 16:46:53 :::CIS

stated that people in their village had got the compensation, however, the plaintiffs have been deprived of the same.

19. PW2, PW3, PW4 and PW5 have also supported the case of the plaintiffs on the similar lines as has been contended in the plaint.

20. In order to rebut the case of the defendants, the Executive Engineer, DW1 Hans Raj, entered the witness box. He admitted that in the record, suit land has been shown to be notified for acquisition. He admitted that the land mentioned in mark 'G' to mark 'K' has been acquired by notification issued by the government.

21. On the same analogy, DW4 Krishan Kumar Bhardwaj has tendered his affidavit Exhibit DW4/A. In the cross-examination, he has stated that there is no document to show that the suit land was donated by the inhabitants of the area. He categorically admitted that there was a notification regarding the acquisition of land, and the copies of the notification are Mark 'G' to Mark 'K'. He admitted that notification was issued in the year 1990-1991. He admitted that Public Works Department is in possession of the suit land and the road has been constructed, on the same, but the plaintiffs are shown as owners of the suit land.

High Court of H.P.

::: Downloaded on - 07/11/2026 16:46:53 :::CIS

22. The plaintiffs have also placed on record the copies of the Jamabandies, field book, tatima, copy of the legal notice along with the postal receipts. In the defence, the defendants have taken the plea of maintainability of the suit on the ground of limitation. It is case of the defendants that the people of village allowed the construction work of the road, namely, 'Bara-Da-Ghat Salaon-Bum Road' without any protest. As per defendants, the plaintiffs have approached the court belatedly in order to get the compensation after availing the facilities of the road. As the road was constructed way back in the year 1975, therefore, the suit is liable to be dismissed being barred by the provisions of limitation.

23. The learned Trial Court dismissed the suit as filed by the plaintiffs primarily on the ground of limitation after holding that there is admission on the part of the plaintiffs and their witnesses that the road was constructed way back in the year 1974-75.

24. Learned First Appellate Court had passed the decree of mandatory injunction by directing the State to acquire the suit land and to pay the amount of compensation to the plaintiffs. Only defence which has been taken by the defendants-appellants in their written statement is that suit as

High Court of H.P.

::: Downloaded on - 07/11/2026 16:46:53 :::CIS

instituted has been filed at a belated stage and that the road was constructed with the consent of the plaintiffs and other co-villagers, as such, the suit as filed by the plaintiffs is not maintainable. Further, it is the case of the defendants that the road was constructed on the demand of the villagers, including the plaintiffs, and while raising the construction, no objection of any kind was raised by anybody.

25. The plaintiffs have been able to plead and prove on the strength of the oral as well as documentary evidence placed on record that they are the owners of the suit land. The defendants raised the construction of the road, namely, Bara-Da-Ghat Salaon-Bum without their implied and express consent. Therefore, plaintiffs were constrained to file the suit for possession, injunction, damages, and mandatory injunction against the defendants.

26. It is well-settled principle of law that no person can be deprived of his properties save and except without adopting due process of law. The Court of first instance has held that land of the plaintiffs/respondents was utilized for the construction of road, namely, 'Bara-Da-Ghat Salaon-Bum' without payment of compensation to them. No dispute has been raised as to such findings of fact. It has only been contended on

High Court of H.P.

::: Downloaded on - 07/11/2026 16:46:53 :::CIS

behalf of the defendants/State that the suit has been filed by the plaintiffs after a considerable period, therefore, the same is time-barred. In alternative, it was contended that since the plaintiffs/respondents remained silent for such a long period, they were estopped from raising the stale claim. The principle of acquiescence has also been sought to be applied against the plaintiffs/respondents on the premise that they were aware about the construction of the road and the said road was constructed with their implied consent, and now they cannot turn around to raise objections against the construction of the road.

27. The defendants-appellants are the constituents of a welfare State. It is well settled that welfare State cannot claim adverse possession against its own citizens. Thus, the suit on the basis of the title cannot be said to be time-barred, which right could only be defeated by proof of perfection of title by way of adverse possession by the other. Admittedly, as held by the learned First Appellate Court, and in view of the documentary evidence placed on record, the plaintiffs are the title holders of the suit land. Being owners of the suit property, the plaintiffs can file a suit at any stage, until and unless the said right is defeated by the defendants by perfection of title by way of

High Court of H.P.

::: Downloaded on - 07/11/2026 16:46:53 :::CIS

adverse possession. Being the owners of the suit land, the plaintiffs are well within their right to file a suit for possession, injunction, damages and mandatory injunction, as their land was utilized for the construction of the road in question without adopting due process of law, including the payment of amount of compensation.

28. Admittedly, the appellants were not in possession of any document to show that plaintiffs had consented for construction of the road through their suit lands. Learned Deputy Advocate General has not been able to demonstrate from the record or to show any material which may reveal or indicate that any consent was given by the plaintiffs for the construction of the said road. No document has been appended to demonstrate that the plaintiffs had orally consented for the construction of the road in question.

29. The Hon'ble Apex Court in ***Vidya Devi*** vs. ***State of Himachal Pradesh & others (2020) 2 SCC 569*** has held that no person can be forcibly dispossessed of his property without any legal sanction and without following the due process of law and depriving him/her of payment of just and fair compensation. The State being a welfare State governed by the rule of law cannot arrogate to itself a status beyond what is

High Court of H.P.

::: Downloaded on - 07/11/2026 16:46:53 :::CIS

provided by the Constitution. The Hon'ble Apex Court has further held that the State cannot be permitted to utilize the land of its own citizens without the payment of compensation. The plea of title cannot be defeated until and unless the title is acquired by virtue of adverse possession by the other side. The relevant paras of the same are reads as under:-

> *"12.2. The right to property ceased to be a fundamental right by the Constitution (Forty Fourth Amendment) Act, 1978, however, it continued to be a human right 2 in a welfare State, and a Constitutional right under Article 300 A of the Constitution. Article 300 A provides that no person shall be deprived of his property save by authority of law. The State cannot dispossess a citizen of his property except in accordance with the procedure established by law. The obligation to pay compensation, though not expressly included in Article 300 A, can be inferred in that Article The State of West Bengal v. Subodh Gopal Bose and Ors. AIR 1954 SC 92. 2 Tukaram Kana Joshi & Ors. v. M.I.D.C. & Ors. (2013) 1 SCC 353.*
>
> *12.3. To forcibly dispossess a person of his private property, without following due process of law, would be violative of a human right, as also the constitutional right under Article 300 A of the Constitution. Reliance is placed on the judgment in Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chenai4, wherein this Court held that:*
>
> > *" 6. ... Having regard to the provisions contained in Article 300A of the Constitution, the State in exercise of its power of "eminent domain" may interfere with the right of property of a person by acquiring the same but the same must be for a*

High Court of H.P.

::: Downloaded on - 07/11/2026 16:46:53 :::CIS

public purpose and reasonable compensation therefor must be paid." (emphasis supplied)

12.12. The contention advanced by the State of delay and laches of the Appellant in moving the Court is also liable to be rejected. Delay and laches cannot be raised in a case of a continuing cause of action, or if the circumstances shock the judicial conscience of the Court. Condonation of delay is a matter of judicial discretion, which must be exercised judiciously and reasonably in the facts and circumstances of a case. It will depend upon the breach of fundamental rights, and the remedy claimed, and when and how the delay arose. There is no period of limitation prescribed for the courts to exercise their constitutional jurisdiction to do substantial justice. 12.13. In a case where the demand for justice is so compelling, a constitutional Court would exercise its jurisdiction with a view to promote justice, and not defeat it.

12.14. In Tukaram Kana Joshi & Ors. v. M.I.D.C. & Ors.,10 this Court while dealing with a similar fact situation, held as follows : "There are authorities which state that delay and laches extinguish the right to put forth a claim. Most of these authorities pertain to service jurisprudence, grant of compensation for a wrong done to them decades ago, recovery of statutory dues, claim for educational facilities and other categories of similar cases, etc. Though, it is true that there are a few authorities that lay down that delay and laches debar a citizen from seeking remedy, even if his fundamental right has been violated, under Article 9 P.S. Sadasivaswamy v. State of T.N. (1975) 1 SCC 152. 10 (2013) 1 SCC 353. 32 or 226 of the Constitution, the case at hand deals with a different

High Court of H.P.

::: Downloaded on - 07/11/2026 16:46:53 :::CIS

scenario altogether. Functionaries of the State took over possession of the land belonging to the Appellants without any sanction of law. The Appellants had asked repeatedly for grant of the benefit of compensation. The State must either comply with the procedure laid down for acquisition, or requisition, or any other permissible statutory mode." (emphasis supplied)

13. In the present case, the Appellant being an illiterate person, who is a widow coming from a rural area has been deprived of her private property by the State without resorting to the procedure prescribed by law. The Appellant has been divested of her right to property without being paid any compensation whatsoever for over half a century. The cause of action in the present case is a continuing one, since the Appellant was compulsorily expropriated of her property in 1967 without legal sanction or following due process of law. The present case is one where the demand for justice is so compelling since the State has admitted that the land was taken over without initiating acquisition proceedings, or any procedure known to law. We exercise our extraordinary jurisdiction under Articles 136 and 142 of the Constitution, and direct the State to pay compensation to the appellant."

30. To the similar effect, the Hon'ble Apex Court in case titled as ***Sukh Dutt Ratra and another*** vs. ***State of H.P. and others, (2022) 7 SCC 508*** has laid down the exposition of law including the plea of limitation taken up by the State. The relevant paras of the same read as under:

High Court of H.P.

::: Downloaded on - 07/11/2026 16:46:53 :::CIS

"14. It is the cardinal principle of the rule of law, that nobody can be deprived of liberty or property without due process, or authorization of law. The recognition of this dates back to the 1700s to the decision of the King's Bench in Entick v. Carrington17 and by this court in Wazir Chand v. The State of Himachal Pradesh18. Further, in several judgments, this court has repeatedly held that rather than enjoying a wider bandwidth of lenience, the State often has a higher responsibility in demonstrating that it has acted within the confines of legality, and therefore, not tarnished the basic principle of the rule of law.

16. Given the important protection extended to an individual vis-a-vis their private property (embodied earlier in Article 31, and now as a constitutional right in Article 300-A), and the high threshold the State must meet while acquiring land, the question remains – can the State, merely on the ground of delay and laches, evade its legal responsibility towards those from whom private property has been expropriated? In these facts and circumstances, we find this conclusion to be unacceptable, and warranting intervention on the grounds of equity and fairness.

18. There is a welter of precedents on delay and laches which conclude either way – as contended by both sides in the present dispute – however, the specific factual matrix compels this court to weigh in favour of the appellant-land owners. The State cannot shield itself behind the ground of delay and laches in such a situation; there cannot be a 'limitation' to doing justice. This court in a much earlier case - Maharashtra State Road Transport Corporation v. Balwant Regular Motor Service, held:

High Court of H.P.

::: Downloaded on - 07/11/2026 16:46:53 :::CIS

'11……"Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted in either of these cases, lapse of time and delay are most material.

But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy."

21. Having considered the pleadings filed, this court finds that the contentions raised by the State, do not inspire confidence and deserve to be rejected. The State has merely averred to the appellants' alleged verbal consent or the lack of objection, but has not placed any material on record to substantiate this plea. Further, the State was unable to produce any evidence

High Court of H.P.

::: Downloaded on - 07/11/2026 16:46:53 :::CIS

> *indicating that the land of the appellants had been taken over or acquired in the manner known to law, or that they had ever paid any compensation. It is pertinent to note that this was the State's position, and subsequent findings of the High Court in 2007 as well, in the other writ proceedings."*

31. The learned First Appellate Court has legally appreciated the oral as well as documentary evidence placed on record and has rightly come to the conclusion that the plaintiffs are entitled for the decree of compensation as the suit land stood utilized for the construction of the road. The learned First Appellate Court has directed the State to acquire the suit land and to pay the amount of compensation to the plaintiffs.

32. The Hon'ble Apex Court has repeatedly held that no person can be deprived of his properties without adopting due process of law, therefore, under such circumstances, plea as set up by the appellants-State is not tenable in the facts and circumstances of the case. Once, they have utilized the land of the villagers without payment of compensation, now the plea as raised by the present appellants is not permissible, that too, at the stage of Regular Second Appeal.

High Court of H.P.

::: Downloaded on - 07/11/2026 16:46:53 :::CIS

33. The Hon'ble Supreme Court while dealing with scope of interference under Section 100 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 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 Chunilal V. Mehta and Sons Ltd. v. Century Spg. & Mfg. Co. Ltd. (AIR 1962 SC 1314) held that : "The proper test for determining whether a*

High Court of H.P.

::: Downloaded on - 07/11/2026 16:46:53 :::CIS

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

High Court of HP

::: Downloaded on - 07/11/2026 16:46:53 :::CIS

Court, or was based upon inadmissible evidence or arrived at by ignoring material evidence. 20. to 22 xx xx xx xx

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."

34. 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

High Court of H.P.

::: Downloaded on - 07/11/2026 16:46:53 :::CIS

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. 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

High Court of H.P.

::: Downloaded on - 07/11/2026 16:46:53 :::CIS

> *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."*

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

36. The learned First Appellate Court has 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.

37. 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

September 23, 2026.
(Nisha)

High Court of H.P.

::: Downloaded on - 07/11/2026 16:46:53 :::CIS