IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 177 of 2023
Date of decision: 27.10.2026

Chaman Lal & another ...Appellants.

Versus

Sunder Lal ...Respondent.

Coram:

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

For the appellants : Ms. Ritta Goswami, Senior Advocate with Ms. Komal Chaudhary and Ms. Bhawna Dhiman, Advocates.

For the respondent : Mr. Sanjeev Kuthiala, Senior Advocate with Ms. Tamanna Sharma & Ms. Preeti Thakur, Advocates.

Romesh Verma, Judge (Oral):

The instant Regular Second Appeal has been filed by the appellants/defendants against the judgment and decree passed by the learned District Judge, Mandi, dated 20th February, 2023, whereby the appeal filed by them was ordered to be dismissed and the judgment and decree as passed by the learned Civil Judge (Junior Division), Court No. 2, Mandi, District Mandi, H.P., dated 9th August, 2017, was affirmed, whereby the

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

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suit filed by the plaintiff/respondent, Sunder Lal, for permanent prohibitory injunction and mandatory injunction was decreed.

2. The facts, as emerge in the present case, are that the plaintiff/respondent filed a suit for permanent prohibitory injunction and mandatory injunction against the defendants/ appellants in the Court of learned Civil Judge (Junior Division), Court No. 2, Mandi, District Mandi, H.P.

3. As per the case set up by the plaintiff, the land comprised in Khewat/Khatauni No. 34/33/51, Khasra No. 808/807/622, measuring 0-5-0 bighas, situated in Mauza Bhartwari, Ill Sanor, Sub-Tehsil Aut, District Mandi, HP is jointly owned and possessed by the plaintiff along with others.

4. It was contended that there was an old house of the plaintiff in part of the suit land and the same had fallen down. The plaintiff had constructed one room (11' × 10') in the aforesaid land, and the rest of the land is vacant on the spot. The defendants are strangers and they have got no right, title, or interest over the suit property in any manner.

5. As per the plaintiff, the defendants, with effect from 21st April, 2004, started raising construction over the vacant land of the plaintiff without any authority and basis. Though the

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defendants were requested not to encroach over the suit land in any manner, they refused to accede to the request of the plaintiff.

6. It was further the case of the plaintiff that the defendants, during the pendency of the suit, raised construction in the shape of a house over the suit land and also encroached over the suit land to the extent of 0-0-12 bighas, as depicted in the spot map dated 6th May, 2004 as Khasra No. 808/622/1; as such, the construction raised by the defendants over the suit land is liable to be demolished by way of mandatory injunction, and the vacant possession of Khasra No. 808/622/1 is liable to be delivered to the plaintiff.

7. Therefore, under such circumstances, the plaintiff had filed a suit for permanent prohibitory injunction and mandatory injunction against the defendants/appellants with respect to the suit land comprised in Khasra No. 808/622/1, measuring 0-0-12 bighas.

8. The suit came to be resisted by the defendants by filing written statement wherein preliminary objections with respect to maintainability, misjoinder, *locus standi*, estoppel, jurisdiction, valuation, etc. were raised On merits, all the averments made in the plaint were specifically refuted and

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denied.

9. It was contended by the defendants that the suit land measuring 0-5-0 bighas was allotted to Chandar Mani, the predecessor-in-interest of the plaintiff, on 19th October, 1985 as *Nautor*, which was already in possession of the predecessor-in-interest of the defendants, Shri Bhikham Ram. As per the defendants, adjoining to this land, the land of the defendants is situated, comprised in Khewat/Khatauni No. 30/38 min, Khasra No. 809/807/622, measuring 0-4-4 bighas, which was allotted to Shri Bhikham Ram, the predecessor-in-interest of the defendants, as *Nautor*.

10. The defendants averred that their predecessor-in-interest, who was in possession of the same prior to its sanction, had constructed his house in the year 1986, much prior to the filing of the suit, within the stipulated period of grant.

11. It was specifically averred by the defendants in their written statement that the possession of the defendants on the suit land, except the 11' × 10' portion constructed by the plaintiff, is continuous, peaceful, uninterrupted, notorious, open, and hostile to the knowledge of the plaintiff and other co-sharers since

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1st August, 1986, as such, they have become the owners of the suit property by virtue of adverse possession.

12. It was contended by the defendants that the spot map dated 6th May, 2004 is concocted and the same has been prepared in collusion with the revenue authorities, which is not binding on the rights of the defendants. As per the defendants, they have already constructed their house prior to the filing of the suit on the land allotted to their predecessor-in-interest, including the suit land. Therefore, it was prayed that the suit which has been filed by the plaintiff is devoid of any merit and deserves to be rejected.

13. The plaintiff filed replication to the written statement filed by the defendants, wherein he reiterated all the averments as made in the plaint.

14. The learned Trial Court framed the issues in the matter on 14th September, 2007 and 24th May, 2017, in the following manner:-

> 1. Whether the plaintiff is entitled for relief of permanent prohibitory injunction, as prayed for? OPP
>
> 2. Whether the plaintiff is entitled for relief of mandatory injunction in the alternative, as prayed for? OPP

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3. Whether the suit is bad for non-joinder and mis-joinder of necessary parties? OPD

4. Whether the plaintiff has no locus standi to file the present suit? OPD

5. Whether the plaintiff is estopped to file the present suit by his own act and conduct? OPD

6. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD

7. Whether the defendant No.1 has become owner in possession of the suit land except 11 X 10 feet portion by way of adverse possession, as claimed? OPD

8. Relief.

15. The learned Trial Court directed the respective parties to adduce evidence in support of their contentions. Vide its judgment and decree dated 9th August, 2017, the learned Civil Judge (Junior Division), Court No. 2, Mandi, decreed the suit as filed by the plaintiff/respondent by passing a decree of permanent prohibitory injunction restraining the defendants from interfering in the land comprised in Khewat/Khatauni No. 34/33/51, Khasra No. 808/807/622, measuring 0-5-0 bighas, situated in Mauza Bhartwari, III Sanor, Sub-Tehsil Aut, District Mandi, H.P. Further, decree for mandatory injunction in the form of vacant possession was also passed in favour of the plaintiff and against the

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defendants, directing the defendants to demolish the structure raised on part of the suit land comprised in Khasra No. 808/622/1, measuring 0-0-12 biswansis. It was held by the learned Trial Court that for the purpose of identification of the suit land, Tatima Ext. PW-4/A shall form part of the decree.

16. Feeling dissatisfied, the defendants approached the learned District Judge by filing an appeal under Section 96 of the Code of Civil Procedure. The learned First Appellate Court, vide its impugned judgment and decree dated 20th February, 2023, dismissed the appeal filed by the defendants and affirmed the findings of the learned Trial Court.

17. Still feeling aggrieved by the judgments and decrees passed by the learned Courts below, the defendants are before this Court and have invoked the provisions of Section 100 of the Code of Civil Procedure by filing the instant Regular Second Appeal.

18. It is contended by Ms. Ritta Goswami, learned Senior Advocate assisted by Ms. Komal Chaudhary and Ms. Bhawna Dhiman, Advocates that the impugned judgments and decrees passed by the learned Courts below are erroneous and liable to be quashed and set aside. She submits that the Courts below

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have not taken into consideration the oral as well as documentary evidence placed on record and have erred in decreeing the suit as filed by the plaintiff, which is neither maintainable nor sustainable in the eyes of law. She further submits that after accepting the present Regular Second Appeal, the suit filed by the plaintiff/respondent deserves to be rejected.

19. On the other hand, Mr. Sanjeev Kuthiala, learned Senior Advocate assisted by Ms. Tamanna Sharma and Ms. Preeti Thakur, Advocates has defended the impugned judgments and decrees passed by the learned Courts below and submitted that this Court, while exercising power under Section 100 of the Code of Civil Procedure, will not disturb/interfere in the concurrent findings of fact as returned by the learned Courts below. He submits that the Courts below have rightly appreciated the point in controversy at hand and the same does not call for any interference in the attending facts and circumstances of the case.

20. I have heard the learned counsel for the parties. With the consent of the parties, the present appeal is finally disposed of on the following substantial question of law:

> *"Whether the findings of the learned Courts below are perverse and misreading of the oral and documentary evidence rendered by the appellant ?"*

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21. In the present case, the plaintiff/respondent had approached the learned Trial Court for the grant of decree of permanent prohibitory injunction and mandatory injunction with respect to the suit land comprised in Khewat/Khatauni No. 34/33/51, Khasra No. 808/807/622, measuring 0-5-0 bighas, situated in Mauza Bhartwari, III Sanor, Sub-Tehsil Aut, District Mandi. As per the case set up by the plaintiff, the defendants started raising construction with effect from 21st April, 2004 over the vacant land, and during the pendency of the suit, they raised construction in the shape of a house over the suit land and encroached land to the extent of 0-0-12 biswansis, as depicted in the spot map dated 6th May, 2004 as Khasra No. 808/622/1, as such, the construction raised by the defendants over the suit land is liable to be demolished by passing a decree of mandatory injunction.

22. The defence set up by the defendants in their written statement is primarily on the ground that, by virtue of adverse possession, they have become owners of the suit land. In paragraph 2 of the written statement on merits, it has been contended by the defendants that they are in continuous, peaceful, uninterrupted, notorious, open, and hostile possession to the knowledge of the plaintiff and other co-sharers as such,

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they have become the owners of the suit property by virtue of adverse possession.

23. It is contended by the learned Senior Counsel for the respondent that the case has to be decided in a very narrow compass, as the defendants have raised the plea of adverse possession, and since there are concurrent findings of fact returned by the learned Courts below that the defendants have failed to prove their adverse possession, therefore, the necessary corollary of the same is that once the defendants have raised the plea of adverse possession, they have admitted the title of the plaintiff, thus, at all costs, the suit as filed by the plaintiff deserves to be decreed.

24. In order to substantiate and prove their case Chaman Lal entered the witness box as DW-1. The affidavit of defendant Chaman Lal is Ext. DW-1/A, wherein he reiterated all the averments made in the written statement. In the affidavit, save and except the fact that the possession of the defendants is since 1st August, 1986, nothing substantial has been stated in order to prove the plea of adverse possession.

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25. He has admitted that in Ext. DW-1/A he has not stated qua possession since 1972. He stated that his father had raised the construction of the house in the year 1986.

26. The defendants have failed to plead and prove the case of adverse possession. In the entire testimony, whether it is the affidavit or the cross-examination, the defendant has failed to specify the essential ingredients of adverse possession required under the law in order to acquire ownership on the basis thereof. The learned Courts below have rightly come to the conclusion that once the defendants set up the plea of adverse possession, they acknowledged the title of the plaintiff over the suit land. The pleadings and evidence led by the defendant are vague and defective. The plea of adverse possession has been raised by the defendants half-heartedly, and they have failed to prove the essential elements as laid down by the Hon'ble Apex Court.

27. A person who claims adverse possession must show:

(a) On what date he came into possession;

(b) What was the nature of his possession;

(c) Whether the factum of possession was known to the other party;

(d) How long his possession has continued; and

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(e) His possession was open and undisturbed.

28. A person pleading adverse possession has no equities in his favour since he seeks to defeat the rights of the true owner, therefore, it is for him to clearly plead and establish all the facts necessary to establish adverse possession.

29. Adverse possession is a right which comes into play not just because someone loses his right to reclaim property out of continuous and willful neglect, but also on account of the possessor's positive intent to dispossess. Therefore, it is important to take into account, before stripping somebody of his lawful title, whether there is an adverse possessor worthy and exhibiting a more urgent and genuine desire to dispossess and step into the shoes of the owner of the property on paper.

30. The intention is a mental element which is proved or disproved through positive acts. The existence of certain events can go a long way to weaken the presumption of intention to dispossess, which might have painstakingly grown out of long possession that otherwise would have sufficed in a standard adverse possession case. The fact of possession is important in more than one way: firstly, due compliance on this count attracts

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the Limitation Act; and secondly, it assists the Court to unearth the intention to dispossess.

31. The intention to dispossess needs to be open and hostile enough to bring the same to knowledge so that the plaintiff has an opportunity to object. After all, the right of adverse possession is not a substantive right, but a result of the waiving or omission of the right to defend or care for the integrity of the property on the part of the owner of the property on paper. Adverse possession statutes, like other statutes of limitation, rest on a public policy that does not promote litigation and aims at the repose of conditions that the parties have suffered to remain unquestioned long enough to indicate their acquiescence. Intention implies knowledge on the part of the adverse possessor.

32. The issue is that intention as an adverse user gets communicated to the owner of the property on paper only. This is where the law gives importance to hostility and openness as pertinent qualities of the manner of possession. It follows that the possession of an adverse possessor must be hostile enough to give rise to a reasonable notice and opportunity to the owner of the property on paper. Intention to possess cannot be substituted for intention to dispossess, which is essential to prove adverse

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possession. Physical fact of the exclusive possession and the *animus possidendi* to hold as owner in exclusion to the actual owner are the most important factors that are to be counted in cases of this nature. The plea of adverse possession is not a pure question of law, but a blended one of fact and law.

33. The Hon'ble Apex Court has laid down the exposition of law for adverse possession in the following manner:

> *(i) In **T. Anjanappa and others vs. Somalingappa and another, (2006) 7 SCC 570**, the Hon'ble Supreme Court held as under:*
>
> > *"12. The concept of adverse possession contemplates a hostile possession i.e. a possession which is expressly or impliedly in denial of the title of the true owner. Possession to be adverse must be possession by a person who does not acknowledge the other's rights but denies them. The principle of law is firmly established that a person who bases his title on adverse possession must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to denial of his title to the property claimed. For deciding whether the alleged acts of a person constituted adverse possession, the animus of the person doing those acts is the most crucial factor. Adverse possession is commenced in wrong and is aimed against right. A person is said to hold the property adversely to the real owner when that person in denial of the owner's right excluded him from the enjoyment of his property.*
> >
> > *13. Possession to be adverse must be possession by a person who does not acknowledge the other's rights but denies them.*
> >
> > > *"24. It is a matter of fundamental principle of law that where possession can be referred to a lawful title, it will not be considered to be adverse. It is on the basis of this principle that it has been laid*

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down that since the possession of one co- owner can be referred to his status as co-owner, it cannot be considered adverse to other co-owner.

14. Adverse possession is that form of possession or occupancy of land which is inconsistent with the title of the rightful owner and tends to extinguish that person's title. Possession is not held to be adverse if it can be referred to a lawful title. The person setting up adverse possession may have been holding under the rightful Owner's title e.g. trustees, guardians, bailiffs or agents. Such persons cannot set up adverse possession.

"Adverse possession" means a hostile possession which is expressly or impliedly in denial of title of the true owner. Under Article 65 of the Limitation Act, burden is on the defendants to prove affirmatively. A person who bases his title on adverse possession must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of his title to the property claimed. In deciding whether the acts, alleged by a person, constitute adverse possession, regard must be had to the animus of the person doing those acts which must be ascertained from the facts and circumstances of each case. The person who bases his title on adverse possession, therefore, must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of his title to the property claimed.

Where possession could be referred to a lawful title, it will not be considered to be adverse. The reason being that a person whose possession can be referred to a lawful title will not be permitted to show that his possession was hostile to another's title. One who holds possession on behalf of another does not by mere denial of that other's title make his possession adverse so as to give himself the benefit of the statute of limitation. Therefore, a person who enters into possession having a lawful title, cannot divest another of that title by pretending that he had no title at all.

(ii) In ***Chatti Konatri Rao and others vs. Palle Venkata Subba Rao, (2010) 14 SCC 316****, the Hon'ble Apex Court further held as under:*

"13. What facts are required to prove adverse possession have succinctly been enunciated by

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this Court in the case of Karnataka Board of Wakf vs. Government of India and Ors. (2004) 10 SCC 779. It has also been observed that a person pleading adverse possession has no equities in his favour and since such a person is trying to defeat the rights of the true owner, it is for him to clearly plead and establish necessary facts to establish his adverse possession. Paragraph 11 of the judgment which is relevant for the purpose reads as follows:

> *"11. In the eye of the law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. It is a well-settled principle that a party claiming adverse possession must prove that his possession is "nec vi, nec clam, nec precario", that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. (See S.M. Karim v. Bibi Sakina AIR 1964 SC 1254, Parsinni v. Sukhi (1993) 4 SCC 375 and D.N. Venkatarayappa v. State of Karnataka (1997) 7 SCC 567) Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no*

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equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. [Mahesh Chand Sharma (Dr.) v. Raj Kumari Sharma

14. In view of the several authorities of this Court, few whereof have been referred above, what can safely be said that mere possession however long does not necessarily mean that it is adverse to the true owner. It means hostile possession which is expressly or impliedly in denial of the title of the true owner and in order to constitute adverse possession the possession must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The possession must be open and hostile enough so that it is known by the parties interested in the property. The plaintiff is bound to prove his title as also possession within 12 years and once the plaintiff proves his title, the burden shifts on the defendant to establish that he has perfected his title by adverse possession. Claim by adverse possession has two basic elements i.e. the possession of the defendant should be adverse to the plaintiff and the defendant must continue to remain in possession for a period of 12 years thereafter.

15. Animus possidendi as is well known a requisite ingredient of adverse possession. Mere possession does not ripen into possessory title until possessor holds property adverse to the title of the true owner for the said purpose. The person who claims adverse possession is required to establish the date on which he came in possession, nature of possession, the factum of possession, knowledge to the true owner, duration of possession and possession was open and undisturbed. A person pleading adverse possession has no equities in his favour as he is trying to defeat the rights of the true owner and, hence, it is for him to clearly plead and establish all facts necessary to establish adverse possession. The courts always take unkind view towards statutes of limitation overriding property rights. Plea of adverse possession is not a pure question of law but a blended one of fact and law."

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34. Since the defendants have failed to prove the ingredients of adverse possession in consonance with the exposition of law as laid down by the Hon'ble Apex Court as referred to here-in-above, the Courts below have rightly decreed the suit as filed by the plaintiff based on the title. In the written statement, the defendants have admitted the title of the plaintiff by raising the plea of adverse possession; therefore, under natural circumstances, the learned Courts below have rightly decreed the suit of the plaintiff for vacant possession on the strength of title. The learned Courts below have concurrently held the plaintiff/respondent to be the owner of the suit land.

35. In order to substantiate the title of the present respondent, the plaintiff has placed on record the copy of Jamabandi, Exhibit P-A and Exhibit P-B. The perusal of the revenue record shows that the predecessor-in-interest of the plaintiff, namely Shri Chandramani, has been shown to be the owner-in-possession of Khasra No. 808/807 in the copy of Jamabandi, Exhibit P-B, and it establishes the title and ownership of the present plaintiff/respondent.

36. The learned Courts below have taken note of the copy of the spot map, Exhibit PW-4/A, which establishes the case of

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the plaintiff, whereby it has been categorically stated that over 12 biswansi of the suit land, the defendants have raised the construction of the house, and on the strength of Exhibit PW-4/A, the learned trial Court decreed the suit of the plaintiff for vacant possession. Exhibit PW-6/A is the copy of the *rapat* and Exhibit PW-6/B is the copy of *aks tatima*, which also substantiates and establishes that the defendants have raised the construction over the part of the suit land, and being the owner of the suit land, the plaintiff is entitled for the vacant possession of the same.

37. In case titled as ***Nek Ram v. Surjan Singh***, ***2019 (4) Civil Court Cases 834***, it has been held that the plea of adverse possession is a double-edged sword. Any plea of adverse possession contains the admission that the opposite party is the owner of the property, but the said title of the opposite party has been extinguished because of open, hostile possession with *animus* by the claimant for statutory period. By pleading adverse possession, a party admits the initial title of the opposite party, which however is asserted to have been extinguished.

38. By pleading adverse possession very specifically in the written statement by the defendants, they have admitted the plaintiff to be the owner of the suit land, but asserted that the said

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title was extinguished by the defendants' hostile possession of the property. Once the defendants have raised the plea of adverse possession and have admitted the ownership and title of the plaintiff, this Court does not see any infirmity, illegality, or irregularity in the judgment of the learned trial Court as affirmed by the learned District Judge, whereby decree for permanent prohibitory injunction and mandatory injunction was passed in favour of the plaintiff and against the defendants by directing the defendants to demolish the structure raised upon the part of the suit land comprised in Khasra No. 808/622/1 measuring 0-0-12 biswansi, and for the purpose of identification of the suit land, tatima Exhibit PW-4/A has been ordered to form part of the decree.

39. The Hon'ble Supreme Court in catena of judgments has held that the first appellate Court is the final court of the fact. No doubt, second appellate court exercising the power under Section 100 of CPC can interfere with the findings of fact on limited grounds such as - (a) where the finding is based on inadmissible evidence; (b) where it is in ignorance of the relevant admissible evidence; (c) where it is based on misreading of evidence; (d) where it is perverse, but that is not case in hand.

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40. 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 question of law raised in the case is substantial would, in our*

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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."

41. 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

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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

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> *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."*

42. No other point was urged by the learned counsel for the parties.

43 Both the Courts below have rightly appreciated the point in controversy after considering the oral as well as documentary evidence placed on record and this Court does not find any illegality or perversity in the impugned judgments and decrees, as concurrently passed by the learned Courts below, and the same are upheld. The substantial question of law is answered accordingly.

44 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

October 27, 2026.
(Nisha)

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