IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 443 of 2014
Date of decision: 08.10.2026

Kehar Singh (deceased) through LRs ...Appellants.

Versus

Ramesh Chand & another ...Respondents.

Coram:

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

For the appellants : Mr. Vinod Gupta, Advocate.

For the respondents : Mr. Bhupinder Gupta, Senior Advocate with Mr. Pranjal Munjal, Advocate.

Romesh Verma, Judge (Oral):

The present Regular Second Appeal has been preferred against the judgment and decree passed by the learned District Judge, Sirmaur, dated 30.05.2014, whereby the appeal filed by the defendant was ordered to be dismissed and the judgment and decree as passed by the learned Civil Judge (Senior Division), Sirmaur, District at Nahan, H.P. dated 26.04.2013, was affirmed, whereby the suit filed by the plaintiff/respondent No.1 for permanent prohibitory injunction was decreed.

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

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2. The facts as emerge in the present case are that the plaintiff/respondent No.1 filed a suit for permanent prohibitory injunction against the present appellant/defendant. As per the case as set up by the plaintiff, he is co-owner in possession of the suit land/property comprised in Khata/Khatauni No. 16/24, Khasra No.141/161, measuring 13-09 bighas, situated at Mauza Shambhuwala, Sub-Tehsil Nahan, District Sirmaur, H.P.

3. As per plaintiff, the defendant has got no right, title, or interest of any kind or any type in the suit land, though earlier the defendant was employed by the plaintiff on monthly salary of Rs.1,200/- per month to look after the suit land/property, but defendant's said employment/services regarding the suit land was terminated by the plaintiff on 1st January, 2004. After termination of the services of the defendant, he, in desperation, filed an application before the Assistant Collector, Sub-Tehsil Nahan, claiming tenancy over the suit land, which was still pending for 11th November, 2010, but the same has been filed in an illegal manner just to prejudice the rights of the plaintiff.

4. It was contended in the plaint that the defendant is a quarrelsome person and he has no regard for law, and in case he succeeds in his illegal designs by raising construction on the suit land, or in case he forcibly dispossesses the plaintiff from the suit

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land, in that event, he shall suffer huge and irreparable loss which cannot be compensated by any means of amount. In case the defendant succeeds in raising construction over the suit land, then the same deserves to be removed by way of mandatory injunction and in case defendant succeeds to take possession of the suit land during the pendency of the suit, in that event, the possession of the plaintiff deserves to be restored to its original position.

5. Therefore, under such circumstances, the plaintiff filed a suit seeking decree of permanent prohibitory injunction to restrain the defendant from causing any type of interference over the suit land in any manner. It was prayed that in case defendant succeeds to carry out any construction over the suit land, then in that event, the suit land may be ordered to be restored to its previous position by removing the said construction at the cost of the defendant, by granting decree of mandatory injunction in favour of the plaintiff and against the defendant. In the alternative, it was prayed that in case defendant succeeds to establish the possession over the suit land, in that event, decree of possession on the basis of title be passed in favour of the plaintiff and against the defendant.

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6. The suit as instituted by the plaintiff came to be resisted by the defendant by filing comprehensive written statement. The defendant raised preliminary objections with respect to maintainability, jurisdiction, cause of action, etc. On merits, all the averments as made in the plaint were specifically refuted and denied. The defence as set up by the defendant is that he has already filed an application for correction of the entries of Khasra Girdawari in respect of the suit land before the Land Reforms Officer-cum-Tehsildar, Nahan, in June 2004, to the effect that the suit land was previously in the ownership of one Shri Joginder Singh, resident of Village Shambhuwala, and said Shri Joginder Singh had created a tenancy in favour of the defendant in the year 1980 on payment of one-third batai. At the time of creation of tenancy, only 3.0 bighas of the land was cultivable, and the remaining land was made cultivable by the defendant by spending a handsome amount. The defendant started paying batai to Shri Joginder Singh, who used to issue receipts to the defendant, and some receipts are available with him. He raised construction of four chhappars, cow-shed in the year 1981, and since then, he, along with his family members, is residing over the suit land and was cultivating the same till the institution of the present suit.

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7. It was contended by the defendant that the suit was filed by the plaintiff as a counter-blast to the proceedings which were initiated by the defendant before the revenue authorities. It was also stated that the defendant, prior to the purchase of the suit land by the plaintiff, used to pay batai to Shri Joginder Singh, and after the purchase of suit land by the plaintiff in the year 1984, the defendant was regularly paying 'batai' to the plaintiff, who was receiving the same without any objection of any kind. Therefore, it was prayed that the suit as filed by the plaintiff is devoid of any merit and the same has been filed just to harass the defendant by implicating him in an uncalled-for litigation. The defendant prayed for the dismissal of the suit.

8. The plaintiff filed a replication to the written statement as filed by the defendant, whereby he reiterated all the averments as made in the plaint.

9. The learned trial Court had framed the issues in the matter on 8th July, 2011, in the following manner:

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

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3. Whether the plaintiff, in the alternative is also entitled for the relief of possession, on the basis of title, as prayed for? OPP

4. Whether the suit is not maintainable in the present form? OPD

5. Whether this Court has no jurisdiction to entertain and try the present suit, as alleged? OPD

6. Whether the suit is liable to be dismissed with special costs? OPD

7. Whether the defendant is coming in possession of suit land, as tenant, as alleged? OPD

8. 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 26th April, 2013, the suit as filed by the plaintiff/respondent was decreed, whereby the defendant was permanently injuncted and he was restrained from causing any interference or dispossessing the plaintiff from the suit land comprised in Khata/Khatauni No. 16/24, Khasra No. 141/161, measuring 13-09 bighas, situated at Mauza Shambhuwala, Sub-Tehsil Nahan, District Sirmaur, H.P.

11. Feeling aggrieved, the defendant preferred an appeal under Section 96 of the CPC in the Court of learned District Judge, Sirmaur District at Nahan, H.P. on 5th June, 2013. The learned First Appellate Court, vide its impugned judgment and

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decree, dismissed the appeal as filed by the defendant and affirmed the findings as returned by the learned trial Court.

12. Still feeling dissatisfied, the defendant has approached this Court by invoking the provisions of Section 100 of the CPC.

13. It is contended by Shri Vinod Gupta, 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 learned Courts below have misread, misconstrued, and misapplied the oral as well as documentary evidence placed on record, and have wrongly decreed the suit filed by the plaintiff *dehors* the pleadings and the evidence. He submits that after accepting the present Regular Second Appeal, the suit as filed by the plaintiff/respondent deserves to be dismissed.

14. On the other hand, Mr. Bhupender Gupta, learned Senior Advocate assisted by Sh. Pranjal Munjal, Advocate, for the respondents has defended the impugned judgments and decrees as passed by the learned Courts below. He submitted that there are concurrent findings of fact as returned by the learned Courts below, and this Court, while exercising the power under Section 100 of the CPC, will not interfere in the well-reasoned judgments and decrees passed by the learned Courts below. He has further

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submitted that the appellant is trying to abuse the process of law, as he was employed as a servant/caretaker by the plaintiff, and taking advantage of his position, the defendant tried to interfere in the ownership and possession of the suit land and the learned Courts below have rightly come to the conclusion that on the strength of title, the suit of the plaintiff is liable to be decreed.

15. This Court had admitted the appeal on 25th May, 2015, on the following substantial question of law:-

> *"Whether on account of misappreciation of the pleadings, misreading and misconstruction of the oral as well as documentary evidence available on record and facts of the case, the findings recorded by both Courts below are erroneous and as such the judgment and decree impugned in the main appeal being perverse and vitiated is not legally sustainable?"*

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

17. In the present case, the plaintiff/respondent approached the learned trial Court seeking decree of permanent prohibitory injunction on the ground that he is the co-owner in possession of the suit land comprised in Khata/Khatauni No. 16/24, Khasra No. 141/161, measuring 13-01 bighas, situated at Mauza Shambhuwala, Sub-Tehsil Nahan, District Sirmaur, H.P. It is the case of the plaintiff that the defendant/appellant was employed on a monthly salary of Rs. 1,200/- per month to

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maintain and look after the suit land. However, subsequently his services were terminated by the plaintiff with effect from 1st January, 2004. It is the case of the plaintiff that on account of desperation, the defendant filed a false application before the Assistant Collector, Sub-Tehsil Nahan, claiming tenancy over the suit land, but the same is false, incorrect, and imaginary. Therefore, it was prayed that the defendant, being a quarrelsome person, is trying to interfere in the suit land, as such, he should be injuncted by passing a decree of permanent prohibitory injunction and in case it is found that during the pendency of the suit he succeeds in raising construction, in that event, the possession may be restored to its original position by passing a decree of mandatory injunction.

18. Though the defendant has denied the case as set up by the plaintiff, it is the stand of the present appellant/defendant that the original owner of the suit land, late Shri Joginder Singh, had created tenancy in his favour in the year 1980 on payment of 1/3rd batai. It is the case of the defendant that prior to the purchase of the suit property by the present plaintiff/respondent, ‘batai’ was being paid to Shri Joginder Singh, and thereafter, the batai is being paid regularly to the present plaintiff, and he was receiving the same without any objection of any kind.

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19. The plaintiff, in order to prove his case, examined himself as PW-1. The copy of the affidavit has been placed on record as Exhibit PA. In his deposition, PW-1 has stated that he is the owner in possession of the suit land comprised in Khata/Khatauni No. 16/24, Khasra No. 141/161, measuring 13-09 bighas, situated at Mauza Shambhuwala, Sub-Tehsil Nahan, District Sirmaur. In the affidavit, he has stated that earlier the defendant was employed on monthly salary of Rs. 1,200/- per month to look after the suit property. It was stated that the receipts issued by the defendant after receiving the salary from the plaintiff have been placed on record. The services of the defendant/appellant were terminated by the plaintiff on 1st January, 2004. Thereafter, defendant filed the application for correction of the Khasra Girdawari, thereby falsely claiming tenancy over the suit land. It has been stated by the plaintiff in his affidavit that the story as projected by the defendant qua the tenancy is false, incorrect, and imaginary, and he was never inducted as a tenant over the suit property, rather he was a caretaker/servant whose services were terminated by the plaintiff on 1st January, 2004. In the cross-examination, the defendant could not extract anything favourable in his favour.

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20. In order to rebut the case of the plaintiff, the defendant examined DW-1 Krishan Lal, who was working as a Clerk in the SDM Office, Nahan. As per this witness, he was working in the SDM Office for the last one year and he had brought the requisitioned record. He stated that the application, Exhibit DX, is correct as per the record.

21. DW-2 is the statement of Ashok Kumar, Patwari, Mohal Haripur, Sub-Tehsil Nahan, District Sirmaur,HP. He stated that in 2007, he was posted as Patwari in Patwar Circle Bankala. He stated that he had seen the suit land and he had inspected the spot along with the relevant record. The copy of the report is Exhibit DW-2/A, and the same is correct as per the original record.

22. In his cross-examination, he has admitted that when he inspected the spot, he did not call plaintiff Ramesh Chand on the spot. He further admitted that no notice was issued to the plaintiff while carrying out the inspection of the spot. This witness stated that in his report, he has referred to Ninjo Devi and Guru Prasad, but he is not known to them personally. He denied the suggestion that he inspected the suit land in the absence of the plaintiff and that he had prepared the report on the asking of the defendant Kehar Singh.

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23. DW-3 is the statement of Kehar Singh, and he has filed the affidavit, Exhibit DW-3/A. In the affidavit, he has reiterated the averments as made in the written statement.

24. In the cross-examination, he has stated that he is in possession of seven to eight receipts, and the said receipts were written by his brother Naresh in the house of Joginder Singh. He denied the suggestion that no receipt was given by the plaintiff to the defendant. He could not tell how many receipts were prepared after writing Exhibit DY. He stated that he came to know about the Khasra Girdawari during the pendency of the civil suit. He admitted that in the suit premises, no electricity connection has been taken by him. He denied that Exhibit DY is forged and fraudulent. He admitted that Exhibit DY has been written by Shri Nar Singh, who is his real brother. He denied that he was kept as a servant for Rs. 1,200/- per month by the plaintiff. He denied that the plaintiff used to pay salary to the defendant, vide Exhibit PC to Exhibit PF. He denied that he used to append his signatures after admitting the contents of the same to be correct.

25. DW-4 is the statement of Guru Prasad. His affidavit is Exhibit DW-4/A. In his deposition, he has stated that in his presence, Joginder Singh had inducted the defendant to be his tenant on the payment of 1/3rd batai, and he was inducted as a

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tenant in the year 1980. He stated that at the relevant time, only 3 bighas of the land was worth cultivation, and the remaining land was made cultivable by the defendant. He stated that till date, it is the defendant who is in possession of the suit land. As per this witness, defendant on various occasions gave batai to the plaintiff in his presence. He stated that defendant never remained as caretaker/servant of the plaintiff.

26. In his cross-examination, he has stated that his land is adjoining to the land of Raj Kumar, who is his real brother. As per this witness, the plaintiff purchased the land from Joginder Singh in the year 1980. He stated that Joginder inducted the defendant as his tenant on the payment of batai in the year 1980. At the relevant time, one receipt was prepared, and the same was prepared in presence of Joginder Singh, Kehar Singh, and DW-4. He stated that as per his information, only one receipt was prepared. He denied that more receipts were prepared at the relevant time. He denied the suggestion that the plaintiff had employed defendant as his servant at Rs. 1,200/- per month.

27. The plaintiff has placed on record the copy of application for correction of Khasra Girdawari, which was filed by the defendant in the Court of Assistant Collector 1st Grade-cum-Tehsildar, Nahan, on 14th April, 2004, and the copy of the same is

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Exhibit P-1. The said application was rejected by the Assistant Collector vide its order dated 29th September, 2012.

28. Feeling dissatisfied, defendant Kehar Singh had preferred an appeal in the Court of Collector, Nahan Sub-Division, District Sirmaur, H.P., on 16th October, 2012, and the said appeal came to be dismissed on 31st January, 2014.

29. In order to establish the title, plaintiff has placed on record the copy of Jamabandi, Exhibit PB, for the year 2001–02, which specifically reveals that plaintiff is the owner of the suit land bearing Khasra No. 141/161, measuring 13-09 bighas. The plaintiff has tendered documents in order to substantiate that the defendant was hired as his servant, and the copy of the receipts have been placed on record as Exhibit PC to Exhibit PF. The said receipts have been signed by the defendant Kehar Singh, and there is a categorical admission on his part that he was working with the plaintiff for different periods in order to look after and maintain the suit land, and in lieu of that, the plaintiff had given a sum of Rs. 1,200/- per month as salary to the defendant. The signatures as appended by the defendant have not been specifically denied in his evidence.

30. In common parlance, the tenancy is a bilateral agreement and it has to be specifically pleaded and proved by a

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party who is alleging the same. In the present case, save and except the bald statement of the defendant, there is no material placed on record in order to substantiate that defendant was ever inducted as tenant by the previous owner of the suit land, late Shri Joginder Singh. Even otherwise, after the death of Joginder Singh, his wife Smt. Ninjo Devi was the best witness who could have unveiled the truth in the case in hand. The non-examination of Smt. Ninjo Devi is fatal to the case of the defendant, and a very material witness has been withheld by the defendant, as a result of which adverse inference is required to be drawn against him.

31. It has come in the statement of the defendant that Exhibit DY, the alleged receipt whereby 1/3rd batai was paid to the plaintiff, was written by his brother Naresh alias Nar Singh. It has come on record that though Shri Nar Singh has filed his affidavit by way of examination-in-chief, however, the said witness has been withheld by not producing him for the purpose of cross-examination. By withholding the said witness for the purpose of cross-examination, the Court has rightly drawn adverse inference against the defendant. By not examining Smt. Ninjo Devi and not producing Nar Singh @ Naresh in the witness box for the cross-examination, the defendant has failed to establish the plea of tenancy in its true perspective.

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32. In the cross-examination, the defendant has admitted that over the suit land, neither he has installed the electricity connection nor water connection. It is not possible that in today's time, a person who is occupying the suit land and has raised the construction will be living without any electricity connection. The defendant has also failed to establish that why he did not obtain the receipts of batai which, as per him, he paid to the plaintiff. Though half-heartedly he has tried to project his case that initially he used to give 1/3rd batai to Joginder Singh and after his death, he used to pay the same to the present plaintiff, but there is no material placed on record which may demonstrate that any batai was paid to the plaintiff. As far as the veracity of Exhibit DY is concerned, in the absence of cross-examination of Nar Singh, the brother of the defendant, no reliance can be placed upon this document. The defendant has failed to establish the authenticity and genuineness of this document, therefore, no reliance can be placed on the same.

33. Most importantly, Exhibit PC to Exhibit PF are the receipts whereby the plaintiff had paid a sum of Rs. 1,200/- for different periods in lieu of the services which were rendered by the defendant over the suit land. It clearly establishes that the plaintiff had hired the defendant as a caretaker/servant over the

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suit land, and it was in this background that Exhibit PC to Exhibit PF were executed *inter se* the parties. The defendant has not categorically denied his signatures over these receipts. It has come in the statement of DW-4 that the tenancy was created between the parties in the year 1980. However, Kehar Singh, while examining in the witness box, has stated that he was inducted as a tenant in the year 1982. There is a variation and contradiction in the statement of DW-3 and DW-4 in that regard. Exhibit PB, the copy of Jamabandi for 2001–02, establishes the title of the plaintiff and it shows that he is owner in possession of the suit land. Once the plaintiff has been able to establish his title, therefore, on the strength of the same, he is entitled for decree of injunction. As rightly argued by the learned Senior Counsel, for the respondents that since the defendant was employed as a caretaker over the suit land, therefore, his possession cannot be termed to be that of tenant.

34. This Court in ***RSA No. 192 of 2008***, titled ***Om Prakash (deceased) through LRs vs. Jagan Nath,*** decided on 12th August, 2026, while dealing with a similar proposition, has held that presumption of truth is attached to the revenue record. It was held by this Court that it is a well-settled principle of law that

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a caretaker or servant can never acquire interest in the property irrespective of his long possession.

35. The Hon'ble Apex Court has repeatedly held that the caretaker or the servant has to give the possession forthwith on demand. As in the case in hand, the defendant has no valid or subsisting right qua the suit land, and once he has failed to establish that there was any bilateral tenancy agreement *inter se* the parties, the suit of the plaintiff/respondent has rightly been decreed.

36. A caretaker or agent holds the property of the principal only on behalf of the principal and acquires no right or interest whatsoever for himself in such a property, irrespective of his possession. This proposition of law has been laid down by the Hon'ble Apex Court in ***Maria Margarida Sequeira Fernandes and others vs. Erasmo Jack de Sequeira (dead) through LRs, 2012 (5) SCC 370***, which reads as follows:

> *"94. This Court in Puran Singh v. The State of Punjab (1975) 4 SCC 518 held that:*
>
> > *"12….. an occupation of the property by a person as an agent or a servant at the instance of the owner will not amount to actual physical possession".*
>
> *95. This Court in Mahabir Prasad Jain (supra) has held that the possession of a servant or agent is that of his master or principal as the case may be for all purposes and the former cannot maintain a suit against the latter on the basis of such possession.*

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96. In Sham Lal v. Rajinder Kumar & Others 1994 (30) DRJ 596, the High Court of Delhi held thus:

> *"12. On the basis of the material available on record, it will be a misnomer to say that the plaintiff has been in 'possession' of the suit property. The plaintiff is neither a tenant, nor a licensee, nor a person even in unlawful possession of the suit property. Possession of servant is possession of the real owner. A servant cannot be said to be having any interest in the suit property. It cannot be said that a servant or a chowkidar can exercise such a possession or right to possession over the property as to exclude the master and the real owner of the property from his possession or exercising right to possession over the property.*
>
> *13. Possession is flexible term and is not necessarily restricted to mere actual possession of the property. The legal conception of possession may be in various forms. The two elements of possession are the corpus and the animus. A person though in physical possession may not be in possession in the eye of law, if the animus be lacking. On the contrary, to be in possession, it is not necessary that one must be in actual physical contact. To gain the complete idea of possession, one must consider*
>
> *(i) the person possessing,*
> *(ii) the things possessed and,*
> *(iii) the persons excluded from possession.*
>
> *A man may hold an object without claiming any interest therein for himself. A servant though holding an object, holds it for his master. He has, therefore, merely custody of the thing and not the possession which would always be with the master though the master may not be in actual contact of the thing. It is in this light in which the concept of possession has to be understood in the context of a servant and & master."*
>
> *The ratio of this judgment in Sham Lal (supra) is that merely because the plaintiff was employed as a servant or chowkidar to look after the property, it cannot be said that he had entered into such possession of the property as would entitle him to exclude even the master from enjoying or claiming possession of the property or as would entitle him to compel the master from staying away from his own property.*

97. Principles of law which emerge in this case are crystallized as under:-

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1. No one acquires title to the property if he or she was allowed to stay in the premises gratuitously. Even by long possession of years or decades such person would not acquire any right or interest in the said property.

2. Caretaker, watchman or servant can never acquire interest in the property irrespective of his long possession. The caretaker or servant has to give possession forthwith on demand.

3. The Courts are not justified in protecting the possession of a caretaker, servant or any person who was allowed to live in the premises for some time either as a friend, relative, caretaker or as a servant.

4. The protection of the Court can only be granted or extended to the person who has valid, subsisting rent agreement, lease agreement or license agreement in his favour.

5. The caretaker or agent holds property of the principal only on behalf of the principal. He acquires no right or interest whatsoever for himself in such property irrespective of his long stay or possession.

37. As has been held by the learned Courts below, the status of the defendant is merely that of a caretaker over the suit land, therefore, the plaintiff being the title-holder and owner of the same is entitled to get the decree of injunction.

38. In the present case, there are concurrent findings as rendered by the learned Courts below, and the scope of interference in the concurrent findings, as per the judgments of the Hon'ble Apex Court, is very narrow and limited. The Hon'ble Apex Court in its various decisions has held that the High Court cannot re-appreciate the evidence to substitute its own view for a

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plausible finding of fact arrived at by the learned First Appellate Court.

39. In view of the findings, especially with respect to Exhibit PB, the copy of Jamabandi, and Exhibit PC to Exhibit PF, the receipts, which clearly establish that the status of defendant over the suit land is that of a caretaker/servant, therefore, the suit of the plaintiff has rightly been decreed by the learned Courts below. As far as the plea of tenancy is concerned, the same has been negated by the Assistant Collector 1st Grade-cum-Tehsildar, Nahan, on 29th September, 2012, and the said findings were affirmed by the Collector on 31st January, 2014.

40. This Court does not find any illegality, perversity, or infirmity in the judgments and decrees as passed by the learned Courts below. There are concurrent findings of fact as returned by the learned Courts below, and the same do not call for any interference in view of the judgments of the Hon'ble Apex Court. Reference in this regard is made to the judgment of the Hon'ble Apex Court in ***Navaneethammal vs. Arjuna Chetty AIR 1996 SC 3521***, wherein it has been held as under:

> *"10. This Court, time without number, pointed out that interference with the concurrent findings of the courts below by the High Court under Section 100 CPC must be avoided unless warranted by compelling reasons. In any case, the High Court is not expected to re-appreciating the evidence just to replace the findings for the lower courts.*

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> *20. In our considered view the lower Appellate Court has fairly appreciated the evidence in the above background and has reached the conclusion that the suit was not barred by Limitation. Even assuming that another view is possible on a re-appreciation of the same evidence, that should not have been done by the High Court as it cannot be said that the view taken by the First Appellate Court was based on no material."*

41. Similarly, the Hon'ble Apex Court in ***Kshitish Chandra Purkait vs. Santosh Kumar Purkait and others (1997) 5 SCC 438*** has held as under:

> *"10. We would only add that (a) it is the duty cast upon the High Court to formulate the substantial question of law involved in the case even at the initial stage; and (b) that in (exceptional) cases, at a later point of time, when the Court exercises its jurisdiction under the proviso to sub-section (5) of Section 100 C.P.C in formulating the substantial question of law, the opposite party should be put on notice thereon and should be given a fair or proper opportunity to meet the point. Proceeding to hear the appeal without formulating the substantial question of law involved in the appeal is illegal and is an abnegation or abdication of the duty cast on Court; and even after the formulation of the substantial question of law, if a fair or proper opportunity is not afforded to the opposite side, it will amount to denial of natural justice. The above parameters within which the High Court has to exercise its jurisdiction under Section 100 CPC should always be borne in mind. We are sorry to state that the above aspects are seldom borne in mind in many cases and second appeals are entertained and/or disposed of, without conforming to the above discipline.*
>
> *11. The guidelines to determine as to what is a "substantial question of law" within the meaning of Section 100 CPC, have been laid down by this Court in a Constitution Bench decision in Chunilal V. Mehta and Sons Ltd. v. Century Spg. and Mfg. Co. Ltd There is also a later decision of this Court in Mahindra and Mahindra Ltd. v. Union of India. It is unnecessary to deal at length with that aspect any further."*

42. In ***Kondiba Dagadu Kadam vs. Savitribai Sopan Gujar and others, AIR 1999 SC 2213***, the Hon'ble Supreme Court has held as under:

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"5. 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 are possible, one drawn by the lower appellate court is binding on the High Court in second appeal. Adopting any other approach is not permissible. The High Court cannot substitute its opinion for the opinion of the first appellate Court unless 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 without evidence."

43. In ***Naresh and others vs. Hemant and others, (2022) 18 SCC 802***, the Hon'ble Supreme Court held as under:

"10. The High Court invoked the presumption without proper consideration and appreciation of the facts considered and dealt with by two courts holding by reasoned conclusions why the presumption stood rebutted on the facts. The High Court also committed an error of record by holding that there was no evidence that Trimbakrao Ingole alone had constructed the house, a finding patently contrary to the admission of PW-1 in his evidence. The fact that mutation also was done in the name of Trimbakrao Ingole alone which remain unchallenged at any time was also not noticed. The conclusion of the High Court that improper appreciation of evidence amounted to perversity is completely unsustainable. No finding has been arrived at that any evidence had been admitted contrary to the law or that a finding was based on no evidence only in which circumstance the High Court could have interfered in the second appeal.

2. The High Court therefore manifestly erred by interfering with the concurrent findings on facts by two courts below in exercise of powers under Section 100, Civil Procedure Code, a jurisdiction confined to substantial questions of law only. Merely because the High Court may have been of the opinion that the inferences and conclusions on the evidence were erroneous, and that another conclusion to its satisfaction could be drawn, cannot be justification for the High Court to have interfered.

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12. In Madamanchi Ramappa v. Muthaluru Bojappa, (1964) 2 SCR 673, this court with regard to the scope for interference in a second appeal with facts under Section 100 of the Civil Procedure Code observed as follows:

> *"12. ….The admissibility of evidence is no doubt a point of law, but once it is shown that the evidence on which courts of fact have acted was admissible and relevant, it is not open to a party feeling aggrieved by the findings recorded by the courts of fact to contend before the High Court in second appeal that the said evidence is not sufficient to justify the findings of fact in question. It has been always recognised that the sufficiency or adequacy of evidence to support a finding of fact is a matter for decision of the court of facts and cannot be agitated in a second appeal. Sometimes, this position is expressed by saying that like all questions of fact, sufficiency or adequacy of evidence in support of a case is also left to the jury for its verdict. This position has always been accepted without dissent and it can be stated without any doubt that it enunciates what can be properly characterised as an elementary proposition. Therefore, whenever this Court is satisfied that in dealing with a second appeal, the High Court has, either unwittingly and in a casual manner, or deliberately as in this case, contravened the limits prescribed by s. 100, it becomes the duty of this Court to intervene and give effect to the said provisions. It may be that in some cases, the High Court dealing with the second appeal is inclined to take the view that what it regards to be justice or equity of the case has not been served by the findings of fact recorded by courts of fact; but on such occasions it is necessary to remember that what is administered in courts is justice according to law and considerations of fair play and equity however important they may be, must yield to clear and express provisions of the law. If in reaching its decisions in second appeals, the High Court contravenes the express provisions of section 100, it would inevitably introduce in such decisions an element of disconcerting unpredictability which is usually associated with gambling; and that is a reproach which judicial process must constantly and scrupulously endeavour to avoid."*

13.Though precedents abound on this settled principle of law, we do not consider it necessary to burden our discussion unnecessarily except to rely further on Gurdev Kaur v. Kaki, (2007) 1 SCC 546, holding as follows: "71. The fact that, in a series of cases, this Court was compelled to interfere was because the true legislative intendment and scope of Section 100 CPC have neither

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been appreciated nor applied. A class of judges while administering law honestly believe that, if they are satisfied that, in any second appeal brought before them evidence has been grossly misappreciated either by the lower appellate court or by both the courts below, it is their duty to interfere, because they seem to feel that a decree following upon a gross misappreciation of evidence involves injustice and it is the duty of the High Court to redress such injustice. We would like to reiterate that the justice has to be administered in accordance with law.

xxxx

73. The Judicial Committee of the Privy Council as early as in 1890 stated that there is no jurisdiction to entertain a second appeal on the ground of an erroneous finding of fact, however gross or inexcusable the error may seem to be, and they added a note of warning that no court in India has power to add to, or enlarge, the grounds specified in Section 100.

xxxx

81. Despite repeated declarations of law by the judgments of this Court and the Privy Council for over a century, still the scope of Section 100 has not been correctly appreciated and applied by the High Courts in a large number of cases. In the facts and circumstances of this case the High Court interfered with the pure findings of fact even after the amendment of Section 100 CPC in 1976. The High Court would not have been justified in interfering with the concurrent findings of fact in this case even prior to the amendment of Section 100 CPC. The judgment of the High Court is clearly against the provisions of Section 100 and in no uncertain terms clearly violates the legislative intention.

82. In view of the clear legislative mandate crystallised by a series of judgments of the Privy Council and this Court ranging from 1890 to 2006, the High Court in law could not have interfered with pure findings of facts arrived at by the courts below. Consequently, the impugned judgment is set aside and this appeal is allowed with costs."

14.The order of the High Court interfering with concurrent findings of facts by two courts is, therefore, held to be unsustainable in exercise of the powers under Section 100 of the Civil Procedure Code. The order of the High

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Court is consequently set aside. The orders dated 06.03.1998 and 13.06.2002 of the Trial Court and the First Appellate Court are restored. The suit of the plaintiffs is dismissed. The present appeal is allowed."

44. No other point was urged by the learned counsel for the parties. The substantial question of law is answered accordingly.

45. In view of the observations as made here-in-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 08, 2026.
(Nisha)

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