IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No 474 of 2018

Reserved on 31.07.2026

Date of Decision: 06.08.2026.

Prittam Chand .....Appellant.

Versus

Vinod Kumar ..... Respondent.

Coram:

Hon'ble Mr. Justice Romesh Verma, Judge.

Whether approved for reporting? [1]

For the Appellant: Mr. Vishwajeet Singh, Advocate.

For the Respondent: Mr. Ajay Sharma, Sr. Advocate, with Mr. Atharv Sharma, Advocate.

Romesh Verma, Judge.

The instant appeal arises out of the judgment and decree as passed by learned Additional District Judge (III), Kangra at Dharamshala, dated 28th August, 2018, whereby the appeal filed by the appellant/plaintiff was ordered to be dismissed, and the judgment and decree as passed by the learned Civil Judge, (Senior Division), Dharamshala, District

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[1] *Whether the reporters of the local papers may be allowed to see the judgment?*

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Kangra, dated 31.10.2017 was affirmed, whereby the suit filed by the plaintiff for grant of decree of possession came to be dismissed.

2. The facts, as emerge in the present case, are that the plaintiff/appellant-Prittam Chand filed a suit for decree of possession of the room No. 1 shown in red zebra lines out of House No. II, situated on the land comprised in Khata No. 66, Khatoni No 103, Khasra No. 271, area measuring 00-43-32 hectares, situated in Up-Mohal Tangroti, Mauja Yol, Tehsil Dharamshala, District Kangra (H.P.).

3. As per the case, as set up by the plaintiff, the land comprised in Khata No. 66, Khatoni No. 103, Khasra No. 271, area measuring 00.43.32 hectares, situated in Up-Mohal Tangroti, Mauza Yol, Tehsil Dharamshala is jointly owned and possessed by the parties. That there are three houses on the plot, one on the North-West of the plot is the house of co-owner Shri Puran Singh, in the middle there are two houses, House No. II was constructed by the plaintiff in the year 1996-97, and the big house adjoining to House No. II was constructed by the plaintiff in the year 1993-94. The plaintiff

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was in the Army and he retired from the services in the year 2010. That after the demise of her first husband Shri Padha, Smt. Punya Devi married with Shri Punnu son of Shri Tulsi. The plaintiff was born out of the wedlock of Smt. Punya Devi and Punnu. That plaintiff succeeded Smt. Punya Devi as per her Will; therefore, he became co-owner-cum-co-sharer in the suit land to the extent of 11/15th share owned by Punya Devi. That the defendant became owner of 1/15th share purchased by him from Smt. Rattani Devi.

4. As per the case, as set up by the plaintiff, the defendant solemnized his second marriage somewhere in the year 2001-02 after obtaining the divorce from the first wife. That his father has his own house on nearby land away from the suit land, and at the time of his first marriage, to meet the paucity of accommodation, he requested the plaintiff and his mother to use a room out of House No. II, which was allowed to be used by the defendant as a licensee. After the marriage, defendant continued to keep his articles such as cot and a steel box there and assured that he would vacate the room as and when sought to be vacated by the plaintiff. The defendant

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got an electric connection in his name in the said room, as there was no electricity in the house. Recently during the partition proceedings on the suit land, the defendant in collusion with the field staff, particularly the Field Kanungo, tried to get the share in the land with House No. II allotted to him, claiming the house as his own. As per the plaintiff, the defendant became owner of 1/15th share by purchase from Smt. Rattani Devi of the suit land. Therefore, the plaintiff sought a decree for possession of House No. II situated on the land contained in Khasra No. 271, situated in Up-Muhal Tangroti, Mauza Yol, Tehsil Dharamshala, District Kangra (H.P.).

5. The said suit came to be contested by the defendant by raising preliminary objections such as locus standi, maintainability, estoppel, collusion, etc. On merits, all the averments as made in the plaint were specifically refuted and denied. It was vehemently denied that the disputed house was constructed by the plaintiff in the year 1996-97. As per defendant, the plaintiff has nothing to do with the house and he is wrongly claiming the said house. As a matter of fact, it is

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defendant who is owner of the house, which he constructed in the year 1999-2000 and settled there with his family. As per defendant, he gave one room out of the house to his real brother, who had no house to live in. The plaintiff, who is a very clever person, in connivance with his brother, tried to grab the house. That the plaintiff might have given some assurance to the brother of the defendant to make some settlement with him with an ulterior motive to get the present case decided in his favour. The defendant's father is the original owner in possession of the suit land with other co-sharers, whereas the plaintiff became co-sharer after the demise of Punya Devi much later, whereas the defendant had been coming in possession along with his father from the beginning, and the said house was constructed by the defendant himself, and had installed electricity meter in his house. Therefore, all the contentions as raised in the plaint were specifically refuted and denied. The defendant prayed for the dismissal of the suit as filed by the plaintiff.

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6. The plaintiff filed replication to the written statement as filed by the defendant and reiterated all the averments as made in the plaint.

7. Learned Trial Court framed the issues on 2nd September, 2013 in the following manner:-

> *"(1) Whether plaintiff is entitled for relief of possession as prayed? OPP.*
>
> *(2) Whether suit is not maintainable in the present form? OPD.*
>
> *(3) Whether plaintiff has no cause of action to file the present suit? OPD.*
>
> *(4) Whether plaintiff is estopped from filing the suit by way of his act and conduct as prayed? OPD.*
>
> *(5)Whether plaintiff has not come to the court with clean hands? OPD.*
>
> *(6)Relief."*

8. The learned Trial Court, vide its judgment and decree dated 31st October, 2017, dismissed the suit as filed by the plaintiff/appellant.

9. Feeling aggrieved and dissatisfied, the plaintiff preferred an appeal invoking the provisions of Section 96 of the CPC in the Court of learned Additional District Judge (III), Kangra on 9th January, 2018.

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10. Learned First Appellate Court vide its judgment and decree dated 28th August, 2018 dismissed the appeal as filed by the plaintiff/appellant.

11. Still feeling aggrieved and dissatisfied, the appellant/plaintiff has approached this Court by instituting the present regular second appeal.

12. It is contended by Mr. Vishwajeet Singh, learned counsel for the appellant, that the impugned judgments and decrees as passed by both the learned courts below are erroneous and liable to be set aside. He submitted that the learned courts below have not appreciated the point in controversy and have wrongly dismissed the suit filed by the plaintiff. He further submitted that after accepting the present appeal, the suit as instituted by the plaintiff deserves to be decreed.

13. On the other hand, Mr. Ajay Sharma, learned Senior Counsel assisted by Mr. Athrav Sharma, Advocate, for the respondent, has defended the impugned judgments and decrees passed by both the learned courts below. He submitted

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that there are concurrent findings of fact as returned by both the learned courts below, and this Court will not interfere in those findings while exercising the power under Section 100 of the CPC as per the mandate as laid down by the Hon'ble Apex Court.

14. The present appeal was admitted by this Court on 19th November, 2018 on the following substantial questions of law:-

> *"1) Whether the learned lower Courts have mis-appreciated, mis-construed and mis-read the oral as well as documentary evidence led by the parties to the suit and the finding of lower Courts is inconsistent and contradictory to the evidence and facts on record?*
>
> *2. Whether the impugned judgments and decrees passed by the Ld. Courts below are the result of complete misreading and mis-appreciation of the oral as well as the documentary evidence on record?*
>
> *3. Whether the impugned judgments and decrees are the result of complete misreading. mis-interpretation as well as mis-appreciation of pleadings of the parties?"*

15. I have heard the learned counsel for the parties and have gone through the entire records meticulously.

16. The plaintiff had approached the learned trial Court for the grant of decree of possession on the ground that land as contained in Khata No. 66, Khatoni No. 103, Khasra No. 271 is

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owned and possessed by the parties. As per the case of the plaintiff, there are three houses on the plot, consisting of disputed house, which is described as House No. II. As per plaintiff, the defendant solemnized his second marriage somewhere in the year 2001-2002 after obtaining the divorce from his first wife. That on the request of the defendant, plaintiff permitted to use one room out of House No. II as a licensee. As per the plaintiff, even after the marriage, the defendant continued to keep his articles and assured that he would vacate the room as and when sought to be vacated by the plaintiff. The defendant got an electricity connection in his name in the room as there was no electricity in the house. Recently during partition proceedings, the defendant in collusion with the field staff tried to get the share in the land with House No. II allotted to him, claiming the house as his own. The defendant became owner of 1/15th share by purchase from Smt. Rattani Devi, whereas the disputed house was constructed in the year 1996-97. Therefore, the plaintiff approached the Court for the grant of decree of possession.

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17. On the other hand, the averment made in the suit has been specifically refuted and denied by raising the plea that the plaintiff has got nothing to do with the house, and it is the defendant who has constructed the house in the year 1999–2000. The defendant gave one room out of the house to his real brother, who had no house to live in, but the plaintiff, who is a very clever person, in connivance with his brother, instigated his brother so that some settlement may take place *inter se* parties. That defendant's father is original owner in possession of the suit land with other co-sharers, whereas the plaintiff became co-sharer much later after the demise of Punya Devi.

18. The plaintiff, in order to substantiate and corroborate his case, examined himself as PW-1. In his affidavit Exhibit PW-1/A, he has reiterated all the averments as made in the plaint. He stated that he had raised the construction of the house bearing House No. II in the year 1996-97, and adjoining to the same, there is a big house, which was constructed in the year 1993-94. He retired from the Indian Army. His mother got married twice. After the

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death of her first husband, Shri Padha her mother got married with Shri Punnu, and out of the said wedlock, he was born. He stated that his mother had executed a Will in his favour, and on the basis of the same, he became owner-in-possession of 11/15th share over the suit land. The defendant purchased 1/15th share of Rattani Devi. The defendant obtained decree of divorce from his first wife. At the time of solemnization of first marriage of defendant, the plaintiff had agreed to give possession of one room in house No. II to the defendant to utilize the same. However, even after solemnizing the marriage, the defendant kept his articles such as trunk and cot etc. in the said house. The defendant kept on saying that as and when required, he shall vacate the premises on the asking of the plaintiff. That thereafter, without the prior and express consent of the plaintiff, the defendant installed electricity meter in the suit premises. During the partition proceedings, when he went to the Field Kanungo and the Patwari, the defendant started claiming that House No. II belongs to him and the remaining portion of the house is with the plaintiff. He

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requested the defendant to vacate the premises, but the defendant flatly refused to do so.

19. In the cross-examination, PW-1 admitted that in the suit land, the defendant Vinod Kumar is also owner. He admitted that Punya Devi expired in 2012, and he succeeded to the deceased after her death. He admitted that he became the owner of the suit property after the death of his mother Punya Devi. He denied that defendant raised the construction of the house with the consent of his father and uncle in the year 1995. He denied that the partition proceedings have been finalized and he has filed a false and frivolous suit.

20. The plaintiff examined Nand Lal as PW2. The copy of the affidavit has been placed on record as Exhibit PW2/A. He has reiterated the averments as made by PW1. In his deposition/affidavit, he has stated that he remained Pradhan of the Gram Panchayat for about more than 7 years, and he knew the parties. He stated that the disputed house was constructed by Pritam Chand in the year 1996-97 and he had given one room of the house to the defendant. He stated that

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after some time, he left the said premises and started living with his father, but he kept his articles in the said room.

21. In the cross examination, he admitted that he cannot tell khata khatauni and khasra number of the suit land. He stated that he does not know whether the suit land has been partitioned on the spot or not. He stated that over the suit land, two houses have been constructed, which were constructed in the year 1996-97. He stated that he does not know how many rooms are there in those houses. He stated that he does not know that over the suit land, the defendant, Vinod Kumar, had installed electricity meters.

22. PW3 is the statement of Satish Kumar. He filed his affidavit Exhibit PW3/A. In his testimony, he stated that Prittam Chand, plaintiff, is his uncle and the defendant, Vinod Kumar, is his real brother. He stated that the plaintiff had given one room to the defendant for his utilization, and he also gave two rooms in House No. II to him. Prior to taking the possession of said rooms, he had told the plaintiff that he can get the possession of the said rooms as and when he requires. He stated that the defendant, who happens to be his real

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brother, despite making various requests failed to vacate the same, and that after putting lock on the same, he solemnized the marriage, and thereafter he went away.

23. In his cross-examination, PW3 stated that he is real brother of Vinod Kumar, defendant. He admitted that Patwari and Kanungo in partition proceedings had come on the spot. He denied that the partition proceedings have been finalized *inter se* parties. He admitted that a dispute is going on between him and DW4 (defendant). He denied that partition has taken place. He further denied that defendant Vinod Kumar had erected electricity meter in the suit land.

24. PW4, Satish Chaudhary, has entered into the witness box in order to prove the copy of the plan Exhibit PW4/A. In his cross-examination, he has admitted that he prepared the map/plan Exhibit PW4/A on the asking of the plaintiff. He stated that whatever was told to him by the plaintiff, he did so.

25. RPW1A is the statement of Lekh Raj, in which he deposed that he is working as laborer and that in the year

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1996-97, when the plaintiff was constructing the house, he had brought the construction material viz. bricks, cement, sand and bazari on his mule. He stated that whatever amount was paid to him, that was paid by the plaintiff. Stated that for the purpose of raising construction, the plaintiff had engaged Ravinder and Mehar Chand as masons.

26. In order to rebut the case of the plaintiff, the defendant examined DW1 Mukesh Kumar, Senior Assistant working in HPSEB Sub Division, Sidhpur, Yol. In his deposition, he stated that as per the record an electricity meter was installed in the name of defendant Vinod Kumar, the photocopy of which is Exhibit DW1/A. He stated that the electricity bills from the years 2012 to 2016 are Exhibit DW1/B to Exhibit DW1/F. He stated that the meter is installed in the name of the person, who is the owner of the land or the person who has raised the construction of the house. The plaintiff could not extract anything favorable from this witness.

27. DW2 is the statement of Udho Ram. In his deposition, he has stated that he knew the parties and he has seen the suit land. He stated that the house was constructed by

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Vinod Kumar in the year 1999-2000. He stated that he had prepared the windows, doors and apart from that shuttering work was also done by him. He stated that the plaintiff has got no right, title or interest over the suit land.

28. DW3 is the statement of Ravi Kumar. In his deposition, he has stated that he knew the parties and defendant Vinod Kumar raised the construction of a house in the year 1999-2000 and thereafter he is residing over the same along with his family. This house consists of three rooms and one verandah. In the house of the defendant, he gave one room to his brother Satish Kumar, as he was not having any house to live in. Stated that he had also worked in the house of the plaintiff and he is working as a laborer.

29. The defendant himself entered into the witness-box as DW4, and he reiterated all the averments as made in the written statement. In his deposition, he has stated that he got married second time in the year 1996-97. He stated that he purchased land bearing 15 marlas in the year 2000 from his 'Bua', Smt. Rattani Devi. Thereafter, the necessary mutation with respect to the purchase was also attested. He stated that

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the plaintiff is having 6 to 7 kanals of suit land. Stated that he installed the electricity meter in the year 1999-2000. He denied that the meter was installed after misleading the officials of the department. In the cross-examination, he has refuted that he is making the statement falsely.

30. The plaintiff, in order to substantiate his case, has placed on record the copy of jamabandi Exhibit PW1/B for the year 2010-11, in which defendant Vinod Kumar has been shown in the khata of the suit land bearing khasra No. 271. The copy of the site plan is Exhibit PW4/A. The copies of the electricity bills have been placed on record Exhibit DW1/B to Exhibit DW1/F.

31. The case as set up by the plaintiff before the learned trial court is that he is owner of the suit property and he had allowed the defendant to retain the possession at the time when the defendant got remarried. As per the plaintiff, he has raised the construction of the house in the year 1996-97 and on the basis of ownership, he sought the decree of possession against the defendant.

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32. In the present case, from the perusal of the entire evidence, including oral and documentary evidence placed on record, there is no iota of evidence to substantiate that plaintiff had raised the construction of the disputed house except the bald and self-serving statement, as raised by the plaintiff. There is no material placed on record to establish that the house was constructed by him. The plaintiff has examined the brother of the defendant in order to support his case; however, he has admitted that he is not in talking terms with the defendant.

33. In the entire pleadings or the evidence, there is no mention that on which date the construction was started, and what was the extent of the measurement of the entire built-up area, and how many rooms were erected in the same. There is no whisper in the entire pleadings that while inducting the defendant as a licensee, what was the agreed amount of license fee to have been agreed *inter se* parties. A simple case has been projected by the plaintiff that being the owner, he gave the possession of House No.II to the defendant. However, as observed earlier, there is no iota of evidence whether the house

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belonged to him, and in case he is the owner, when and on which date the defendant was handed over possession and what were the terms and conditions of the license that has not been placed on record.

34. On the contrary, the defendant has established that he installed electricity meter in the house, and the copies of the bills have been placed on record as Exhibit DW-1/B to Exhibit DW-1/F. Further, the Jamabandi which has been placed on record by the plaintiff also proves that defendant, Vinod Kumar, is one of the co-owners. All the witnesses of the plaintiff have admitted that the defendant had got installed the electricity connection in the suit property; therefore, it has been rightly held by both the learned courts below that the plaintiff has not been able to prove his case beyond reasonable doubt. The plaintiff has failed to plead and prove as in common parlance, a person who alleges has to prove.

35. Once, it is the case of the plaintiff that he is the owner of the suit property and House No.II consisting of one room was given to the defendant on license basis, could not be established as per the record and there are concurrent findings

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of fact as returned by both the learned courts below. Both the learned courts below have concurrently held that the plaintiff has failed to establish the case in his favour.

36. The Hon'ble Apex Court has repeatedly held that the scope of interference while exercising the power under Section 100 of the CPC is very narrow and limited, and it has to be exercised only in the event in case the judgment suffers from perversity.

37. 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.*
>
> *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."*

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

> *"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."*

39. In Civil Appeal No.5131 of 2025, titled ***R. Nagaraj (dead) through LRs and another Vs. Rajmani and others***, the Hon'ble Supreme Court has held as under:-

> *"7. By the impugned judgment and order and without answering anything on the substantial questions of law framed/formulated, absolutely in a casual manner, the High Court has allowed the Second Appeal and has set aside the concurrent findings recorded by both the courts below and thereafter has remanded the matter to the learned trial Court permitting the original plaintiff to amend the plaint and pray for fixation of the boundary.*
>
> *9. Having heard learned counsel for the respective parties and having gone through the impugned judgment and order passed by the High Court, we are constrained to observe that the manner in which the High Court has dealt with the Second*

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> *Appeal under Section 100 of the CPC is not appreciable at all. From the impugned judgment and order passed by the High Court, it appears that the High Court has exercised the powers as if the High Court was deciding the Writ Petition under Article 226 of the Constitution of India. The High Court has not appreciated at all that the High Court was deciding the Second Appeal under Section 100 of the CPC and that too against the concurrent findings of fact by both the courts below, which were, as such, on appreciation of evidence on record. Under the circumstances, the impugned judgment and order passed by the High Court is unsustainable.*
>
> *11. At the cost of repetition, it is observed that the High Court was dealing with the Second Appeal under Section 100 CPC and the concurrent findings recorded by both the courts below which were on appreciation of evidence on record. Neither at the stage of deciding the suit nor even before the first Appellate Court even such a prayer was made to amend the plaint, which is now permitted by the High Court, despite the fact that earlier in the suit during the course of trial, the plaint was amended. Under the circumstances also, the impugned judgment and order passed by the High Court is unsustainable."*

40. In the present case, learned counsel for the appellant has failed to demonstrate perversity in the judgments and decrees as passed by both the learned courts below. Rather, the findings of fact as returned by both the learned courts below have been passed after appreciating the oral as well as documentary evidence placed on record.

41. The findings as returned by both the learned courts below are well-reasoned and sustainable, and do not call for any interference.

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

43. The substantial questions of law are answered accordingly.

44. Consequently, in view of the observations as made hereinabove, this appeal, being devoid of any merit, deserves to be dismissed and is accordingly dismissed. Pending miscellaneous applications, if any, also stand disposed of.

(Romesh Verma)
Judge

6th August, 2026
(Guleria)

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